

(d) The declining market for retreaded passenger car tires.

(7) Are there any abuses occurring in the distribution, promotion, sale or manufacture of tires that are not addressed by the Guides? If so, what mechanisms should be explored to address such abuses (e.g., consumer education, industry self-regulation, Guide amendment)?

List of Subjects in 16 CFR Part 228

Advertising, Automobile tires, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission, Commissioner Harbour not participating.

Donald S. Clark,

Secretary.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF62

Amendments to Annual Earnings Test for Retirement Beneficiaries

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are providing notice of proposed rulemaking to conform to the “Senior Citizens’ Freedom to Work Act of 2000”. This legislation was enacted on April 7, 2000, and became retroactively effective on January 1, 2000. It eliminates the Social Security annual earnings test for retirement beneficiaries, starting from the month in which they reach full retirement age. Before the passage of this legislation, persons reaching full retirement age were subject to an earnings test until the month in which they attained age 70.

DATES: To ensure that your comments are considered, we must receive them no later than October 24, 2003.

ADDRESSES: You may give us your comments by using: our Internet site facility (i.e., Social Security Online) at <http://www.socialsecurity.gov/regulations/>, e-mail to regulations@ssa.gov, telefax to (410) 966–2830 or by sending a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard,

Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

ELECTRONIC VERSION: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: http://www.access.gpo.gov/su_docs/aces/aces/140.html. It is also available on the Internet site for SSA (i.e., “Social Security Online”) at <http://www.socialsecurity.gov>.

FOR FURTHER INFORMATION CONTACT:

Dorothy Skipwith, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–4231 or TTY (410) 966–5609. For information on eligibility or filing benefits: Call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0078, or visit our Internet web site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

In addition to the revisions necessitated by the changes in the “Senior Citizens’ Freedom to Work Act of 2000,” Pub. L. 106–182, which eliminated the annual earnings test for persons reaching full retirement age, we are proposing changes necessitated by the “Social Security Amendments of 1983,” Pub. L. 98–21. This legislation will increase the full retirement age for persons born in 1938 or later in incremental amounts, with a full 2-year increase in full retirement age for persons born in 1960 or later. We are also proposing the revision of the existing regulatory sections, numbered below, to present them in plainer language and to update the examples.

Explanation of Proposed Changes

The following is a brief summary of the sections we propose to revise and the changes to each of them.

Section 404.338 Widow’s and widower’s benefits amounts. This section describes the benefit amount a widow or widower may expect to receive relative to the benefit amount of the deceased insured spouse. The benefit amount for the widow or widower may include increased benefits based on delayed retirement credit of the deceased insured spouse, or reduced benefits based on the deceased insured spouse retiring before reaching full

retirement age. This section also includes discussion on widow or widower benefits based on a special primary insurance amount when the insured died before reaching age 62. We propose to revise this section to reflect the change in full retirement age.

Sections 404.415 and 404.416 Deductions because of excess earnings; annual earnings test. Amount of deduction because of excess earnings. We propose to combine sections §§ 404.415 and 404.416 into a revised section § 404.415, “Deductions because of excess earnings,” because the topics are closely related and overlapping.

Revised section § 404.415 would explain the effect of excess earnings on the benefits of:

1. An insured person caused by his/her excess earnings.
2. An auxiliary beneficiary because of the excess earnings of the insured person on whose record he/she draws benefits.
3. An auxiliary beneficiary because of his/her own excess earnings, which reduce only that beneficiary’s benefits.

This revised section § 404.415 would also reflect the legislated changes in full retirement age and annual earnings test.

Section 404.428 Earnings in a taxable year. This section clarifies the method for calculating a beneficiary’s or prospective beneficiary’s annual earnings with respect to the annual earnings test. It also clarifies when the claimant may use a taxable year other than a calendar year, and the number of months in a taxable year used in the earnings test calculation for the year of death. This section also defines which reporting year wage earners and self-employed individuals must use relative to the year in which the earnings were earned.

We propose to revise the section to reflect changes in the annual earnings test and full retirement age.

Section 404.429 Earnings; defined. This section defines wages and net earnings from self-employment for earnings test purposes. It also lists the self-employment occupations that are included in “net earnings from self-employment” for earnings test purposes. This section also defines the allowable level of a claimant’s involvement and performance in an ongoing business in determining whether the claimant’s retirement actually has taken place.

We propose to revise the section to reflect the new annual earnings test and full retirement age legislation.

Section 404.430 Excess earnings defined for taxable years ending after December 1972; monthly exempt amount defined. This section defines the maximum monthly and annual

amounts of earnings that can be earned by retirement and survivor beneficiaries without the earnings causing a reduction in their benefits. It then also delineates the reduction if these earning limits are exceeded, as a proportion of the amount of earnings that are above those limits.

We propose to revise this section by changing the section heading to "Monthly and annual exempt amounts defined; excess earnings defined," and deleting obsolete material. This section would also reflect the changes in the annual earnings test and full retirement test, and display annual earnings test exempt amounts for 2000 through 2003.

Section 404.434 Excess earnings; method of charging. This section describes the method of charging estimated excess earnings of an insured person and also the excess earnings of a beneficiary. Although the excess earnings may not completely eliminate the benefits to be paid on the insured's record, all the estimated earnings of the calendar (or fiscal) year are charged to the earlier months of the year. This may eliminate benefits for those earlier months, and may allow full benefits in the later months of the year.

This section also clarifies that the excess earnings of a person receiving benefits on another's record only diminish or eliminate the benefits of that beneficiary; they do not affect the benefits of the insured or those of others receiving benefits on the insured's record.

This section also states that if both the insured and other(s) receiving benefits on an insured's record have excess earnings, the excess earnings of the insured are first charged to the total family benefits payable (or deemed payable), and then the excess earnings of the secondary beneficiary are charged against the insured's remaining benefits. We propose to rewrite this section in plain language.

Section 404.435 Excess earnings; months to which excess earnings cannot be charged. This section lists the situations in which one's excess earnings in a month are not counted to cause reductions in benefits. The section defines the grace year and the termination grace year, and delineates the circumstances where an individual can have more than one grace year. The section cites examples to clarify these concepts.

This section also states the presumption that an individual was

engaged in self-employment and/or performing services for wages each month in a taxable year in which such earnings are reported, until the individual provides evidence to us about non-earning months in that year.

We propose to rewrite this section in plain language, change the heading to "Excess earnings; months to which excess earnings can or cannot be charged; grace year defined," to reflect the change in the full retirement age, update outdated examples, and delete obsolete material.

Section 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings. This section delineates the various benefit reduction factors to which a beneficiary may be subjected. We propose to rewrite the section by using simpler, clearer language. We also propose to revise the section heading to "Excess earnings; benefits subject to deductions because of excess earnings."

Section 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment. This section contains the reporting requirements and conditions under which Social Security survivor and retirement beneficiaries who have not yet reached full retirement age, are required to report earnings to the Social Security Administration. The purpose of these reports are: (1) To enable the Social Security Administration to adjust the monthly benefit amounts that may have been affected by the earnings test; and (2) to establish whether a grace year has occurred because the earnings of a beneficiary fell below the earnings test amount. This section also conveys what reporting formats are acceptable, the filing deadlines and possible extensions, and the reporting requirements of persons receiving benefits on behalf of others (representative payees).

We propose to rewrite this section to reflect changes in the full retirement age, to reflect section 309(c) of Public Law 103-296, which eliminates any exceptions to the requirement to file an annual report for beneficiaries under age 70 receiving auxiliary or survivors benefits when there are auxiliary or survivor beneficiaries living in a separate household and to delete obsolete material.

Regulatory Procedures

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each

agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments and suggestions on how to make these proposed rules yet easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under E.O. Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to the Social Security Administration and the Internal Revenue Service, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms.

Section No.	Number of respondents	Average burden per response	Frequency of response	Estimated annual hour burden
§ 404.428(b)	1	1	1	1
§ 404.429(d)	1	1	1	1
§ 404.435(d)	1	1	1	1
§ 404.435(e)	1	1	1	1
§ 404.452(a)&(c)	1	1	1	1
§ 404.452(b)&(c)	1	1	1	1
§ 404.452(d)	1	1	1	1
§ 404.452(e)(1)	1	1	1	1
§ 404.452(e)(2)	1	1	1	1
Totals	9	9	9	9

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6402.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by the Social Security Administration within 30 days of publication.

(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; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure in the Federal, old age, survivors and disability insurance program; earnings coverage; insured status; computation of, and eligibility for benefits.

Dated: July 15, 2003.

Jo Anne B. Barnhart,
Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts D and E of part 404 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

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

Subpart D—[Amended]

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

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.338 is revised to read as follows:

§ 404.338 Widow's and widower's benefits amounts.

(a) A widow's or widower's monthly benefit is equal to the insured person's primary insurance amount. If the insured person dies before reaching age 62 and the widow or widower is first eligible after 1984, we may compute a special primary insurance amount to determine the amount of the monthly benefit (see § 404.212(b)).

(b) We may increase the monthly benefit amount if the insured person delays filing for benefits or requests voluntary suspension of benefits, and thereby earns delayed retirement credit (see § 404.313), and/or works before the year 2000 after reaching full retirement age (as defined in § 404.409). The amount of the monthly benefit may change as explained in § 404.304.

(c) The widow's or widower's monthly benefit will be reduced if the insured person chooses to receive old-age benefits before reaching full retirement age. If so, the benefit will be reduced to the amount the insured person would be receiving if alive, or 82½ percent of his or her primary insurance amount, whichever is larger.

Subpart E—[Amended]

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security

Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a.).

4. Section 404.415 is revised to read as follows:

§ 404.415 Deductions because of excess earnings.

(a) *Deductions because of insured individual's earnings.* Under the annual earnings test, we will reduce your monthly benefits (except disability insurance benefits based on the beneficiary's disability) by the amount of your excess earnings (as described in § 404.434), for each month in a taxable year (calendar year or fiscal year) in which you are under full retirement age (as defined in § 404.409).

(b) *Deductions from husband's, wife's, and child's benefits because of excess earnings of the insured individual.* We will reduce husband's, wife's, and child's insurance benefits payable (or deemed payable—see § 404.420) on the insured individual's earnings record because of the excess earnings of the insured individual. However, beginning with January 1985, we will not reduce the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years.

(c) *Deductions because of excess earnings of beneficiary other than the insured.* If benefits are payable to you (or deemed payable—see § 404.420) on the earnings record of an insured individual and you have excess earnings (as described in § 404.430) charged to a month, we will reduce only your benefits for that month under the annual earnings test. Child's insurance benefits payable by reason of being disabled will be evaluated using Substantial Gainful Activity guidelines (as described in § 404.1574 or § 404.1575). This deduction equals the amount of the excess earnings. (See § 404.434 for charging of excess earnings where both the insured individual and you, a beneficiary, have excess earnings).

§ 404.416 [Removed]

5. Section 404.416 is removed.

6. Section 404.428 is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) When we apply the annual earnings test to your earnings as a beneficiary under this subpart (*see* § 404.415), we count all of your earnings (as defined in § 404.429) for all months of your taxable year even though you may not be entitled to benefits during all months of that year. (*See* § 404.430 for the rule that applies to the earnings of a beneficiary who attains full retirement age (as described in § 404.409)).

(b) Your taxable year is presumed to be a calendar year until you show to our satisfaction that you have a different taxable year. If you are self-employed, your taxable year is a calendar year unless you have a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1986. In either case, the number of months in a taxable year is not affected by:

- (1) The time a claim for Social Security benefits is filed;
- (2) Attainment of any particular age;
- (3) Marriage or the termination of marriage; or
- (4) Adoption.

(c) The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430. For beneficiaries who die after November 10, 1988, we use twelve as the number of months to determine whether the beneficiary had excess earnings for the year under § 404.430.

(d) Wages, as defined in § 404.429(c), are charged as earnings for the months and year in which you rendered the services. Net earnings or net losses from self-employment count as earnings or losses in the year for which such earnings or losses are reportable for Federal income tax purposes.

7. Section 404.429 is revised to read as follows:

§ 404.429 Earnings; defined.

(a) *General.* The term "earnings" as used in this subpart (other than as a part of the phrase "net earnings from self-employment") includes the sum of your wages for services rendered in a taxable year, plus your net earnings from self-employment for the taxable year, minus any net loss from self-employment for the same taxable year.

(b) *Net earnings or net loss from self-employment.* Your net earnings or net loss from self-employment are determined under the provisions in subpart K of this part, except that:

(1) In this section, the following occupations are included in the definition of "trade or business" (although they may be excluded in subpart K):

(i) The performance of the functions of a public office;

(ii) The performance of a service of a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) The performance of service by an individual in the exercise of his or her profession as a Christian Science practitioner;

(iv) The performance by an individual in the exercise of his or her profession as a doctor of medicine, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, or optometrist.

(2) For the sole purpose of the earnings test under this subpart:

(i) If you reach full retirement age, as defined in § 404.409, on or before the last day of your taxable year, you will have excluded from your gross earnings from self-employment, your royalties attributable to a copyright or patent obtained before the taxable year in which you reach full retirement age; and

(ii) If you are entitled to insurance benefits under title II of the Act, other than disability insurance benefits or child's insurance benefits payable by reason of being disabled, we will exclude from gross earnings any self-employment income you received in a year after your initial year of entitlement that is not attributable to services you performed after the first month you became entitled to benefits. In this section, services means any significant work activity you performed in the operation or management of a trade, profession, or business which can be related to the income received. If a part of the income you receive in a year is not related to any significant services you performed after the month of initial entitlement, only that part of your income may be excluded from gross earnings for deduction purposes. We count the balance of the income for deduction purposes. Your royalties or other self-employment income is presumed countable for purposes of the earnings test until it is shown to our satisfaction that such income may be excluded under this section.

(3) We do not count as significant services:

(i) Actions you take after the initial month of entitlement to sell a crop or product if it was completely produced in or before the month of entitlement. This rule does not apply to income you receive from a trade or business of

buying and selling products produced or made by others; for example, a grain broker.

(ii) Your activities to protect an investment in a currently operating business or activities that are too irregular, occasional, or minor to be considered as having a bearing on the income you receive, such as—

(A) Hiring an agent, manager, or other employee to operate the business;

(B) Signing contracts where your signature is required, so long as the major contract negotiations were handled by others in running the business for you;

(C) Looking over the company's financial records to assess the effectiveness of those agents, managers, or employees in running the business for you;

(D) Personally contacting an old and valued customer solely for the purpose of maintaining good will when such contact has a minimal effect on the ongoing operation of the trade or business; or

(E) Occasionally filling in for an agent, manager, or other employee or partner in an emergency.

(4) In figuring your net earnings or net loss from self-employment, we count all net income or net loss even though:

(i) You did not perform personal services in carrying on the trade or business;

(ii) The net profit was less than \$400;

(iii) The net profit was in excess of the maximum amount creditable to your earnings record; or

(iv) The net profit was not reportable for social security tax purposes.

(5) Your net earnings from self-employment is the excess of gross income over the allowable business deductions (allowed under the Internal Revenue Code). Net loss from self-employment is the excess of business deductions (that are allowed under the Internal Revenue Code) over gross income. You cannot deduct, from wages or net earnings from self-employment, expenses in connection with the production of income excluded from gross income under (b)(2)(ii) of this section.

(c) *Wages.* Wages include the gross amount of your wages rather than the net amount paid after deductions by your employer for items such as taxes and insurance. Wages are defined in subpart K of this part, except that we also include the following types of wages that are excluded in subpart K:

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

(2) Wages of less than the amount stipulated in section § 404.1057 that you

receive in a calendar year for domestic service in the private home of your employer, or service not in the course of your employer's trade or business;

(3) Payments for agricultural labor excluded under § 404.1055;

(4) Remuneration, cash and non-cash, for service as a home worker even though the cash remuneration you received is less than the amount stipulated in § 404.1058(a) in a calendar year;

(5) Services performed outside the United States in the Armed Forces of the United States.

(d) *Presumptions concerning wages.* For purposes of this section, when reports received by us show that you received wages (as defined in paragraph (c) of this section) during a taxable year, it is presumed that they were paid to you for services rendered in that year unless you present evidence to our satisfaction that the wages were paid for services you rendered in another taxable year. If a report of wages shows your wages for a calendar year, your taxable year is presumed to be a calendar year for purposes of this section unless you present evidence to our satisfaction that your taxable year is not a calendar year.

8. Section 404.430 is revised to read as follows:

§ 404.430 Monthly and annual exempt amounts defined; excess earnings defined.

(a) *Monthly and annual exempt amounts.* (1) The earnings test monthly and annual exempt amounts are the amounts of wages and self-employment income which you, as a Social Security beneficiary, may earn in any month or year without part or all of your monthly benefit being deducted because of excess earnings. The monthly exempt amount, (which is 1/12 of the annual exempt amount), applies only in a beneficiary's grace year or years. (See § 404.435(a) and (b)). The annual exempt amount applies to the earnings of each non-grace taxable year prior to the year of FRAfull retirement age, as defined in § 404.409. A larger "annual" exempt amount applies to the total earnings of the months in the taxable year that precedes the month in which you attain FRAfull retirement age. The full annual exempt amount applies to the earnings of these pre-FRAfull retirement age FRAmonths, even though they are earned in less than a year. For beneficiaries using a fiscal year as a taxable year, the exempt amounts applicable at the end of the ends of their fiscal year apply.

(2) We determine the monthly exempt amounts for each year by a method that depends on the type of exempt amount.:

(i) For the lower exempt amount (the one applicable before the calendar year of reaching the FRAfull retirement age), we multiply \$670 (the lower exempt amount for 1994) by the ratio of the national average wage index for the second prior year to that index for 1992. If the amount so calculated is not a multiple of \$10, we round it to the nearest multiple of \$10 (*i.e.*, if the amount ends in \$5 or more, we round up, otherwise we round down). The annual exempt amount is then 12 times the rounded monthly exempt amount.

(ii) The higher exempt amount (the one applicable in months of the year of attaining full retirement age FRA that precede such attainment) was set by legislation (Pub. L. 104-121) for years 1996-2002. To calculate the higher exempt amount for any year after 2002, we will multiply \$2,500 (the higher exempt amount for 2002) by the ratio of the national average wage index for the second prior year to that index for 2000. We round the result as described in paragraph (a)(2)(i) of this section for the lower exempt amount.

(iii) The following are the annual and monthly exempt amounts for taxable years 2000 through 2003.

Year	For years through taxable year preceding year of reaching full retirement age		Months of taxable year prior to month of full retirement age	
	Reduction: \$1 for every \$2 over the exempt amount		Reduction: \$1 for every \$3 over the exempt amount	
	Annual	Monthly	Annual	Monthly
2000	\$10,080	\$840	\$17,000	\$1,417
2001	10,680	890	25,000	2,084
2002	11,280	940	30,000	2,500
2003	11,520	960	30,720	2,560

(b) *Method of determining excess earnings for years after December 1999.* If you have not yet reached your year of full retirement ageFRA, your excess earnings for a taxable year are 50 percent of your earnings (as described in § 404.429) that are above the exempt amount. After December 31, 1999, in the taxable year you will reach full retirement age, the annual (and monthly, if applicable) earnings limit applies to the earnings of the months prior to the month in which you reach full retirement age. Excess earnings are 33 1/3% of the earnings above the annual exempt amount. Your earnings after reaching the month of FRAfull retirement age are not subject to the earnings test.

9. Section 404.434 is revised to read as follows:

§ 404.434 Excess earnings; method of charging.

(a) *Months charged.* If you have not yet reached your year of full retirement age, and if your estimated earnings for a year result in estimated excess earnings (as described in § 404.430), we will charge these excess earnings to your full benefit each month from the beginning of the year, until all of the estimated excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 404.435 and 404.436.

(b) *Amount of excess earnings charged.* (1) *Insured individual's excess earnings.* For each \$1 of your excess

earnings we will decrease by \$1 the benefits to which you and all others are entitled (or deemed entitled—see § 404.420) on your earnings record. (See § 404.439 where the excess earnings for a month are less than the total benefits payable for that month.)

(2) *Excess earnings of beneficiary other than insured individual.* We will charge a beneficiary, other than the insured, \$1 for each \$1 of the beneficiary's excess earnings (see § 404.437). These excess earnings, however, are charged only against that beneficiary's own benefits.

(3) *You, the insured individual, and a person entitled (or deemed entitled) on your earnings record both have excess earnings.* If both you and a person

entitled (or deemed entitled) on your earnings record have excess earnings (as described in § 404.430), your excess earnings are charged first against the total family benefits payable (or deemed payable) on your earnings record, as described in paragraph (b)(1) of this section. Next, the excess earnings of a person entitled on your earnings record are charged against his or her own benefits remaining after part of your excess earnings have been charged against his/her benefits (because of the reduction in the total family benefits payable). See § 404.441 for an example of this process and the manner in which partial monthly benefits are apportioned.

(c) Earnings test applicability.

Public Law 106-182 eliminated the Social Security earnings test, beginning with the month in which a person attains full retirement age (as defined in §§ 404.409), for taxable years after 1999. In the year that you reach full retirement age, the annual earnings test amount is applied to the earnings amounts of the months that precede your month of full retirement age. (See § 404.430). The reduction rate for these months is \$1 of benefits for every \$3 you earned above the earnings limit in these months. The earnings threshold amount will be increased in conjunction with increases in average wages.

10. Section 404.435 is revised to read as follows:

§ 404.435 Excess earnings; months to which excess earnings can or cannot be charged; grace year defined.

(a) *Monthly benefits payable.* We will not reduce your benefits on account of excess earnings for any month in which you, the beneficiary—

(1) Were not entitled to a monthly benefit;

(2) Were considered not entitled to benefits (due to non-covered work outside the United States or no child in care, as described in § 404.436);

(3) Were at full retirement age (as described in § 404.409);

(4) Were entitled to payment of a disability insurance benefit as defined in § 404.315; (see § 404.1592 and § 404.1592a(b)) which describes the work test if you are entitled to disability benefits;

(5) Are age 18 or over and entitled to a child's insurance benefit based on disability;

(6) Are entitled to a widow's or widower's insurance benefit based on disability; or

(7) Had a non-service month in your grace year (see paragraph (b) of this section). A non-service month is any month in which you, while entitled to retirement or survivors benefits:

(i) Do not work in self-employment (see paragraphs (c) and (d) of this section);

(ii) Do not perform services for wages greater than the monthly exempt amount set for that month (see paragraph (e) of this section and § 404.430); and

(iii) Do not work in non-covered remunerative activity on 7 or more days in a month while outside the United States. A non-service month occurs even if there are no excess earnings in the year.

(b) *Grace year defined.* (1) A beneficiary's initial grace year is the first taxable year in which the beneficiary has a non-service month (see paragraph (a)(7) of this section) in or after the month in which the beneficiary is entitled to a retirement, auxiliary, or survivor's benefit.

(2) A beneficiary may have another grace year each time his or her entitlement to one type of benefit ends and, after a break in entitlement of at least one month, the beneficiary becomes entitled to a different type of retirement or survivors benefit. The new grace year would then be the taxable year in which the first non-service month occurs after the break in entitlement.

(3) For purposes of determining whether a given year is a beneficiary's grace year, we will not count as a non-service month, a month that occurred while the beneficiary was entitled to disability benefits under section 223 of the Social Security Act or as a disabled widow, widower, or child under section 202.

(4) A beneficiary entitled to child's benefits, to spouse's benefits before age 62 (entitled only by reason of having a child in his or her care), or to mother's or father's benefits is entitled to a termination grace year in any year the beneficiary's entitlement to these types of benefits terminates. This provision does not apply if the termination is because of death or if the beneficiary is entitled to a Social Security benefit for the month following the month in which the entitlement ended. The beneficiary is entitled to a termination grace year in addition to any other grace year(s) available to him or her.

Example 1: Don, age 62, will retire from his regular job in April of next year. Although he will have earned \$15,000 for January-April of that year and plans to work part time, he will not earn over the monthly exempt amount after April. Don's taxable year is the calendar year. Since next year will be the first year in which he has a non-service month while entitled to benefits, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will

receive benefits for all months in which he does not earn over the monthly exempt amount (May-December) even though his earnings have substantially exceeded the annual exempt amount. However, in the years that follow, up to the year of full retirement age, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings amounts.

Example 2: Marion was entitled to mother's insurance benefits from 1998 because she had a child in her care under age 18. Because she had a non-service month in 1998, 1998 was her initial grace year. Marion's child married in May 2000 and her entitlement to mother's benefits terminated in April 2000. Since Marion's entitlement did not terminate by reason of her death and she was not entitled to another type of Social Security benefit in the month after her entitlement to a mother's benefit ended, she is entitled to a termination grace year for 2000, the year in which her entitlement to mother's insurance benefits terminated. She applied for and became entitled to widow's insurance benefits effective February 2001. Because there was a break in entitlement to benefits of at least one month before entitlement to another type of benefit, 2001 will be a subsequent grace year if Marion has a non-service month in 2001.

(c) *You worked in self-employment.* You are considered to have worked in self-employment in any month in which you performed substantial services (see § 404.446) in the operation of a trade or business (or in a combination of trades and businesses if there are more than one), as an owner or partner even though you had no earnings or net earnings resulting from your services during the month.

(d) *Presumption regarding work in self-employment.* You are presumed to have worked in self-employment in each month of your taxable year until you show to our satisfaction that in a particular month you did not perform substantial services (see § 404.446(c)) in any trades and businesses from which you derived your annual net income or loss (see § 404.429).

(e) *Presumption regarding services for wages.* You are presumed to have performed services in any month for wages (as defined in § 404.429) of more than the applicable monthly exempt amount in each month of the year, until you show to our satisfaction that you did not perform services for wages in that month that exceeded the monthly exempt amount.

11. Section 404.437 is revised to read as follows:

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

We will further reduce your benefits (other than a disability insurance benefit) because of your excess earnings

(see § 404.430), after your benefits may have been reduced because of the following:

(a) The family maximum (see §§ 404.403 and 404.404), which applies to entitled beneficiaries remaining after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in non-covered remunerative activity outside the United States or failure to have a child in one's care);

(b) Your entitlement to benefits (see § 404.410) for months before you reach full retirement age FRA (see § 404.409) (this applies only to old-age, wife's, widow's, widower's or husband's benefits);

(c) Your receipt of benefits on your own earnings record, which reduces (see § 404.407), your entitlement (or deemed entitlement; see § 404.420) to benefits on another individual's earnings record; and

(d) Your entitlement to benefits payable (or deemed payable) to you based on the earnings record of an individual entitled to a disability insurance benefit because of that individual's entitlement to worker's compensation (see § 404.408).

12. Section 404.452 is revised to read as follows:

§ 404.452 Reports to Social Security Administration of earnings: wages; net earnings from self-employment.

(a) *Reporting requirements and conditions under which a report of earnings, that is, wages and/or net earnings from self-employment, is required.* (1) If you have not reached full retirement age (see § 404.409) and you are entitled to a monthly benefit, other than only a disability insurance benefit, you are required to report to us the total amount of your earnings (as defined in § 404.429) for each taxable year. This report will enable SSA to pay you accurate benefits and avoid both overpayments and underpayments.

(2) If your wages and/or net earnings from self-employment in any month(s) of the year are below the allowable amount (see §§ 404.446 and 404.447), your report should include this information in order to establish your grace year (see § 404.435) and possible eligibility for benefits for those months.

(3) Your report to us for a taxable year should be filed on or before the 15th day of the fourth month following the close of the taxable year; for example, April 15 when the beneficiary's taxable year is a calendar year. An income tax return or form W-2, filed timely with the Internal Revenue Service, may serve as the report required to be filed under the provisions of this section, where the

income tax return or form W-2 shows the same wages and/or net earnings from self-employment that must be reported to us. Although we may accept W-2 information and special payment information from employers, you still have primary responsibility for making sure that the earnings we use for deduction purposes are correct. If there is a valid reason for a delay, we may grant you an extension of up to four (4) months to file this report.

(4) You are not required to report to us if:

(i) You reached full retirement age before the first month of your entitlement to benefits; or

(ii) Your benefit payments were suspended under the provisions described in § 404.456 for all months of a taxable year before the year of full retirement age, or for all months prior to your full retirement age in the full retirement age year, unless you are entitled to benefits as an auxiliary or survivor and your benefits are reduced for any month in the taxable year because of earnings and there is another person entitled to auxiliary or survivor's benefits on the same record, but living in a different household.

(b) *Report required by person receiving benefits on behalf of another.* When you receive benefits as a representative payee on behalf of a beneficiary (see subpart U of this part), it is your duty to report any earnings of the beneficiary to us.

(c) *Information required.* If you are the beneficiary, your report should show your name, address, Social Security number, the taxable year for which the report is made, and the total amount of your wages and/or net earnings from self employment during the taxable year. If you are a representative payee, your report should show the name, address, and Social Security number of the beneficiary, the taxable year for which the report is made, and the total earnings of the beneficiary, as well as your name, address, and Social Security number.

(d) *Requirement to furnish requested information.* You, the beneficiary (or the person reporting on his/her behalf) are required to furnish any other information about earnings and services that we request for the purpose of determining the correct amount of benefits payable for a taxable year (see § 404.455).

(e) *Extension of time for filing report.*

(1) *Request for extension to file report.* Your request for an extension of time, or the request of your authorized agent, must be in writing and must be filed at a Social Security Administration office before your report is due. Your request

must include the date, your name, the Social Security number of the beneficiary, the name and Social Security number of the person filing the request if other than the beneficiary, the year for which your report is due, the amount of additional time requested, the reason why you require this extension (see § 404.454), and your signature.

(2) *Evidence that extension of time has been granted.* If you do not receive written approval of an extension of time for making your report of earnings, it will be presumed that no extension of time was granted. In such case, if you do not file on time, you will need to establish that you had good cause (§ 404.454) for filing your report after the normal due date.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-033P]

RIN 0910-AA01

Oral Health Care Drug Products for Over-the-Counter Human Use; Antigingivitis/Antiplaque Drug Products; Establishment of a Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 25, 2003, the comment period for an advance notice of proposed rulemaking (ANPR) for over-the-counter (OTC) antigingivitis/antiplaque drug products. The ANPR was published in the **Federal Register** of May 29, 2003. FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to submit comments and information on the conditions under which OTC antigingivitis/antiplaque drug products are generally recognized as safe and effective and not misbranded. FDA is also extending the reply comment period to February 23, 2004.

DATES: Submit written or electronic comments by November 25, 2003.