and the areas of the aircraft or other means of conveyance, equipment or containers that may have been contaminated, and saturate the entire surface with a permitted disinfectant approved for use in this part.

(2) Boats required by this part to be cleaned and disinfected shall be treated in the following manner: Collect all litter and other refuse from the decks, compartments, and all other parts of the boat used for the transportation of the products or materials covered by this part, and from the portable chutes or other appliances, fixtures or areas used in loading and unloading same, and destroy the litter and other refuse by burning or by other approved methods, and saturate the entire surface of the said decks, compartments, and other parts of the boat with a permitted disinfectant approved for use in this part.

(3) Buildings, sheds, and premises required by this part to be disinfected shall be treated in the following manner: Collect all litter and other refuse therefrom and destroy the same by burning or other approved methods, and saturate the entire surface of the fencing, chutes, floors, walls, and other parts with a permitted disinfectant approved for use in this part.

(c) *Permitted disinfectants.* The disinfectants permitted for use in disinfecting railroad cars, trucks, boats, aircraft and other means of conveyance, equipment or containers, yards, and premises against infection of foot-and-mouth disease and rinderpest are freshly prepared solutions of:

(1) Sodium carbonate (4 percent) in the proportion of 1 pound to 3 gallons of water.

(2) Sodium carbonate (4 percent) plus sodium silicate (0.1 percent) in the proportion of 1 pound of sodium carbonate plus sodium silicate to 3 gallons of water.

(3) Sodium hydroxide (Lye) prepared in a fresh solution in the proportion of not less than 1 pound avoirdupois of sodium hydroxide of not less than 95 percent purity to 6 gallons of water, or one 13½-ounce can to 5 gallons of water.[1]

* * * * *

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO UNITED STATES

5. Section 96.9(a)(1) is amended to read as follows:

§ 96.9 Uncertified casings; transportation for disinfection; original shipping containers; disposition of salt.

(a) * * *

(1) Sodium hydroxide (Lye) prepared in a fresh solution in the proportion of not less than 1 pound avoirdupois of sodium hydroxide of not less than 95 percent purity to 6 gallons of water, or one 13½-ounce can to 5 gallons of water.[1]

* * * * *

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, sec. 3, 33 Stat. 1265, as amended, 41 Stat. 699, sec. 2, 65 Stat. 693, 75 Stat. 481, 76 Stat. 130; 21 U.S.C. 111–113, 114a–1, 114g, 116, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

The purpose of the foregoing amendment is to update the regulations contained in 9 CFR, § 71.10, § 76.33, § 79.5, § 95.26, and § 96.9(a)(1), by: (1) revising the list of substances or materials allowed as permitted disinfectants under § 71.10; (2) adding aircraft and other means of conveyance to § 95.26 bringing this section into conformity with modern means of transportation; and (3) revising § 71.10, § 76.33, § 79.5, § 95.26, and § 96.9(a)(1) to make uniform the regulations and instructions contained in these parts, which are applicable to the use of certain approved disinfectants. Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the foregoing amendment are impracticable and contrary to the public interest and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of December 1967.

R. J. ANDERSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 67–14745; Filed, Dec. 19, 1967; 8:48 a.m.]

[1] Due to the extreme caustic nature of sodium hydroxide solution, and of sodium carbonate solution to a lesser degree, precautionary measures such as the wearing of rubber gloves, boots, raincoat and goggles should be observed. An acid solution such as vinegar shall be kept readily available in case any of the sodium hydroxide solution should come in contact with the body.

[1] Due to the extreme caustic nature of sodium hydroxide solution, precautionary measures such as the wearing of rubber gloves, boots, raincoat and goggles should be observed. An acid solution such as vinegar shall be kept readily available in case any of the sodium hydroxide solution should come in contact with the body.

SUBCHAPTER G—ANIMAL BREEDS

PART 151—RECOGNITION OF BREEDS AND BOOKS OF RECORD OF PUREBRED ANIMALS

Recognized Breeds and Books of Record

Pursuant to the provisions of Item 100.01 of Title I of the Tariff Act of 1930, as amended (19 U.S.C. 1202, Item 100.01), § 151.9 of Part 151, Title 9, Code of Federal Regulations, is hereby amended to recognize the additional breeds of animals and books of record as follows:

1. The chart in § 151.9(a) is amended by inserting the following in alphabetical order under the respective headings:

CATTLE

Code	Name of breed	Book of record	By whom published
1112	Aberdeen-Angus	New Zealand Aberdeen-Angus Herd Book.	New Zealand Aberdeen-Angus Cattle Breeders' Association, Post Office Box 83, Hastings, New Zealand.

HORSES

2233	Thoroughbred	Allgemeines deutsches Gestutbuch fur Vollblut.	Direktorium fur Vollblutzucht und Rennen, 6 Cologne Weidenpesch, Rennbahnstrasse 100, Postfach 180, Republic of Germany.
2234	do	Stud Book Uruguayo	Jefe del Stud Book Uruguayo, Jose C. Frigerio, Head, Uruguayan Jockey Club, Montevideo, Uruguay.

SHEEP

4218	Southdown	Southdown Sheep Society of New Zealand (Inc.).	The Southdown Sheep Society of New Zealand (Inc.), S.I. McKenzie, Secretary, A.M.P. Chambers, 14 Broadway, Palmerston North, New Zealand.

2. The chart in § 151.9(b) listing the recognized breeds and books of record in Canada is amended by inserting the word "Lacombe" in the proper alphabetical sequence in the column headed "Swine".

(Section 101, 76 Stat. 72, Item 100.01, Title I, Tariff Act of 1930, as amended; 19 U.S.C. 1202, Item 100.01; 29 F.R. 16210)

The amendment recognizes the Thoroughbred breed of horses listed in the Allgemeines deutsches Gestutbuch fur Vollblut and the Stud Book Uruguayo; the Aberdeen-Angus breed of cattle listed in the New Zealand Aberdeen-Angus Herd Book; the Southdown breed of sheep listed in the Southdown Sheep Society of New Zealand (Inc.); and the Lacombe breed of swine listed in the Canadian National Record of Swine.

The effect of the amendment is to provide for duty-free entry of certain purebred animals and, in order to be of maximum benefit to persons desiring to import such animals, the amendment should be made effective as soon as possible. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of rule-making and other public procedure on the amendment are impracticable and unnecessary, and the amendment may be effective less than 30

days after publication in the FEDERAL REGISTER.

The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of December 1967.

R. J. ANDERSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 67-14746; Filed, Dec. 19, 1967; 8:48 a.m.]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

Division of Examinations; Specific Functions

1. Effective immediately, § 265.2(c) is amended by adding subparagraph (10) as follows:

§ 265.2 Specific functions delegated.

* * * * *

(c) The Director of the Division of Examinations (or, in his absence, the Acting Director) is authorized:

* * * * *

(10) To exercise the functions described in subparagraphs (1), (2), (4), and (7) of paragraph (f) of this section in cases in which the conditions specified in such subparagraphs as prerequisites to exercise of such functions by the Federal Reserve Banks are not present or in which, even though such conditions are present, the appropriate Federal Reserve Bank considers that nevertheless it should not take action on the member bank's request.

* * * * *

2a. This amendment is promulgated pursuant to and in accordance with the provisions of section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)). It is designed to provide a more expeditious means for performance of the Board's functions relating to a State member bank (1) establishing domestic branches, (2) declaring dividends in excess of net profits, (3) reducing its capital stock, and (4) investing in bank premises in an amount in excess of its capital stock. It is believed that the amendment will improve the Board's overall efficiency in fulfilling its statutory responsibilities.

b. The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and to deferred effective dates, were not followed in connection with the adoption of this amendment, because such amendment is procedural in nature and accordingly does not constitute substantive rules subject to the requirements of such section.

Dated at Washington, D.C., this 22d day of November 1967.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 67-14708; Filed, Dec. 19, 1967; 8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 68-2]

PART 16—LIQUIDATION OF DUTIES

Sugar Content of Certain Articles From Australia

DECEMBER 12, 1967.

The Treasury Department is in receipt of official information that the rates of bounties or grants paid or bestowed by the Australian Government within the meaning of section 303, Tariff Act of 1930 (19 U.S.C. 1303), on the exportation during the month of November 1967, of approved fruit products and other approved products containing sugar amounts to Australian $113.50 per 2,240 pounds of sugar content.

The net amount of bounties or grants on the above-described commodities which are manufactured or produced in Australia is hereby ascertained, determined, and declared to be Australian $113.50 per 2,240 pounds of sugar content. Additional duties on the above-described commodities, except those commodities covered by T.D. 55716 (27 F.R. 9595), whether imported directly or indirectly from that country, equal to the net amount of the bounty shown above shall be assessed and collected.

In view of the change in the periods to be covered by countervailing duty orders relating to the sugar content of certain articles from Australia, only the three last Treasury decisions publishing such orders will be listed at any one time in the table in § 16.24(f) of the Customs Regulations.

The table in § 16.24(f) of the Customs Regulations is amended by inserting after the last line under "Australia—Sugar content of certain articles" the number of this Treasury decision in the column headed "Treasury Decision" and the words "New rate" in the column headed "Action." The table in § 16.24(f) is further amended by deleting therefrom under "Australia—Sugar content of certain articles" the number 67-239 in the column headed "Treasury Decision" and the words "New rate" appearing opposite such number in the column headed "Action."

(R.S. 251, secs. 303, 624, 46 Stat. 687, 759; 19 U.S.C. 66, 1303, 1624)

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

Approved: December 12, 1967.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 67-14748; Filed, Dec. 19, 1967; 8:48 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 4, further amended]

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

Subpart E—Deductions; Reductions; Nonpayments; Increases

1. This revision of Subpart E of Regulations No. 4 (20 CFR 404.1001 et seq.) reorganizes, expands, and updates the provisions relating to deductions from benefits, and to reduction, increase, and nonpayment of benefits. They reflect the current substantive policies and procedures that have been and are being applied by the Social Security Administration in implementing the Social Security Act, as amended to date.

Sec.

404.401 Modification in amount of benefits or lump-sum death payments.
404.402 Interrelationship of reductions, increases, deductions, adjustments, and nonpayment of benefits.
404.403 Reduction where total monthly benefits exceed maximum family benefits payable.
404.404 How reduction for maximum affects insured individual and other persons entitled on his earnings record.
404.405 Situations where total benefits can exceed maximum because of "savings clause."
404.406 Reduction for maximum because of retroactive effect of application for monthly benefits.
404.407 Reduction because of entitlement to other benefits.
404.408 Reduction of benefits based on disability on account of receipt of workmen's compensation.
404.409 Increase of benefit amount.
404.415 Deductions because of excess earnings; annual earnings test.
404.416 Amount of deduction because of excess earnings.
404.417 Deductions because of noncovered remunerative activity outside the United States; 7-day work test.
404.418 "Noncovered remunerative activity outside the United States," defined.

Sec.
404.420 Persons deemed entitled to benefits based on an individual's earnings record.
404.421 Deductions because beneficiary failed to have a child in her care.
404.422 Deductions because of refusal to accept rehabilitation services.
404.423 Manner of making deductions.
404.424 Total amount of deductions where more than one deduction event occurs in a month.
404.425 Total amount of deductions where deduction events occur in more than 1 month.
404.428 Earnings in a taxable year.
404.429 Earnings; defined.
404.432 Excess earnings; defined for taxable years ending after December 1965.
404.433 Excess earnings; defined for taxable years beginning after December 1960, or ending after June 1961—up to and including taxable years ending December 31, 1965.
404.434 Excess earnings; method of charging.
404.435 Excess earnings; months to which excess earnings cannot be charged.
404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.
404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.
404.439 Partial monthly benefits; excess earnings of the individual charged against his benefits and the benefits of persons entitled (or deemed entitled) to benefits on his earnings record.
404.440 Partial monthly benefits; prorated share of partial payment exceeds the benefit before deduction for excess earnings.
404.441 Partial monthly benefits; insured individual and a person entitled (or deemed entitled) on his earnings record both have excess earnings.
404.444 Charging of earnings for taxable years beginning after 1954 and before 1961; and ending before July 1961.
404.446 Definition of "substantial services."
404.447 Evaluation of factors involved in substantial services test.
404.450 Required reports of work outside the United States or failure to have care of a child.
404.451 Penalty deductions for failure to report within prescribed time limit noncovered remunerative activity outside the United States or not having care of a child.
404.452 Reports to Administration of earnings; wages; net earnings from self-employment.
404.453 Penalty deductions for failure to timely report earnings.
404.454 Good cause for failure to make required reports.
404.454 Good cause for failure to make required reports.
404.455 Request by Administration of earnings reports; effect of failure to comply with request.
404.456 Current suspension of benefits because an individual works or engages in self-employment.
404.457 Deductions where taxes neither deducted from wages of certain maritime employees nor paid.
404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.
Sec.
404.460 Nonpayment of monthly benefits of aliens outside the United States for 6 months.
404.461 Nonpayment of lump sum after death of alien outside United States for 6 months.
404.462 Nonpayment of hospital and medical insurance benefits of alien outside United States for 6 months.
404.463 Nonpayment of benefits of aliens outside the United States; "foreign social insurance system," and "treaty obligation" exceptions defined.
404.464 Nonpayment of benefits where individual is deported; prohibition against payment of lump sum based on deported individual's earnings records.
404.465 Conviction for subversive activities; effect on monthly benefits and entitlement to hospital insurance benefits.
404.466 Conviction for subversive activities; effect on enrollment for supplementary medical insurance benefits.
404.467 Nonpayment of benefits; individual entitled to disability insurance benefits based on blindness is engaging in substantial gainful activity.

AUTHORITY: The provisions of this Subpart E issued under secs. 205 and 1102, 53 Stat. 1368, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 405, 1302. Additional authority cited in parentheses following the sections affected.

§ 404.401 Modification in amount of monthly benefits or lump-sum death payments.

Under certain conditions the amount of a monthly insurance benefit (see §§ 404.377–404.380 for provisions concerning special payments at age 72) or the lump-sum death payment as calculated under the pertinent provisions of sections 202 and 223 of the Act (excluding reduction for age under section 202(q) of a monthly benefit) must be increased or decreased to determine the amount actually to be paid to a beneficiary. A modification in the amount of a monthly benefit or lump-sum death payment is required in the following instances:

(a) *Reductions.* A reduction of a person's monthly benefit is required where:

(1) The total amount of the monthly benefits payable on an earnings record exceeds the maximum that may be paid (see § 404.403);

(2) An application for monthly benefits is effective for a month during a retroactive period, and the maximum has already been paid for that month or would be exceeded if such benefit were paid for that month (see § 404.406);

(3) An individual is entitled to old-age or disability insurance benefits in addition to any other monthly benefit (see § 404.407);

(4) An individual under age 62 is entitled to disability insurance benefits and to certain periodic workmen's compensation payments after 1965 because of disability (see § 404.408); or

(5) An individual is entitled in a month to a widow's or widower's insurance benefit that is reduced under sections 202 (e)(4) or (f)(5) of the Act and to any other monthly insurance benefit other than an old-age insurance benefit (see § 404.407(b)).

(b) *Increases.* Increases are required (see section 215 of the Act with respect to recomputation or recalculation):

(1) To raise the benefit up to the minimum payable (see § 404.409); or

(2) If a benefit is not a multiple of 10 cents, to raise it to the next higher multiple of 10 cents (see § 404.409).

(c) *Deductions.* A deduction from a monthly benefit or a lump-sum death payment may be required because of:

(1) An individual's earnings or work (see §§ 404.415 and 404.417);

(2) Failure of certain beneficiaries receiving wife's or mother's insurance benefits to have a child in her care (see § 404.421);

(3) The earnings or work of an old-age insurance beneficiary where a wife, husband, or child is also entitled to benefits (see §§ 404.415 and 404.417);

(4) Failure to report within the prescribed period either certain work outside the United States or not having care of a child (see § 404.451);

(5) Failure to report within the prescribed period earnings from work in employment or self-employment (see § 404.453);

(6) Refusal to accept rehabilitation services in certain cases (see § 404.422); or

(7) Certain taxes were neither deducted from the wages of maritime employees nor paid to the Federal Government (see § 404.547).

(d) *Adjustments.* Adjustments may be required because an error has been made in payments to an individual (see Subpart F of this part).

(e) *Nonpayments.* Nonpayment of monthly benefits may be required because the individual is an alien who has been outside the United States for more than 6 months (see § 404.460), because the individual on whose earnings record entitlement is based has been deported (see § 404.464), or because the individual is engaged in substantial gainful activity while entitled to disability insurance benefits based on "statutory blindness" (see § 404.467).

(f) *Recalculations.* A reduction by recalculation of a benefit amount may be prescribed because an individual has been convicted of certain offenses (see § 404.465).

(g) *Suspensions.* Suspension of monthly benefits may be required pursuant to section 203(h)(3) of the Act (the Administration has information indicating that work deductions may reasonably be expected for the year), or pursuant to section 225 of the Act (the Administration has information indicating a beneficiary is no longer disabled).

§ 404.402 Interrelationship of reductions, increases, deductions, adjustments, and nonpayment of benefits.

(a) *Deductions, reductions—increases, adjustments.* Deductions because of earnings or work (see §§ 404.415 and

404.417), failure to have a child "in her care" (see § 404.421), refusal to accept rehabilitation services (see § 404.422), as a penalty (for failure to timely report noncovered work outside the United States, failure by a woman to report that she no longer has a child "in her care" or failure to timely report earnings—see §§ 404.451 and 404.453), or because of unpaid maritime taxes (see § 404.457), are made before making any reductions because of the "maximum" (see § 404.403), before any increase because of the benefit "rounding" provisions (see § 404.409), and, except for deductions imposed as a penalty (see §§ 404.451 and 404.453), before any adjustment necessary because an error has been made in the payment of benefits (see Subpart F). However, for purposes of charging excess earnings for taxable years beginning after December 1960, or ending after June 1961, see paragraph (b) of this section and § 404.437 for reductions that apply before such charging.

(b) *Reductions—increases, nonpayments.* Reduction because of the "maximum" (see § 404.403) is made before reduction because of simultaneous entitlement to old-age or disability insurance benefits and to other benefits (see § 404.407); before increases to round the benefit (see § 404.409); before adjustment necessary because an error has been made in the payment of benefits (see Subpart F); before reduction because of entitlement after 1965 to a periodic benefit under a workmen's compensation law or plan of the United States or a State (see § 404.408); before nonpayment of an individual's benefits because he is an alien living outside the United States for 6 months (see § 404.460), or because of deportation (see § 404.464), and also before the redetermination of the amount of benefit payable to an individual who has been convicted of certain offenses (see § 404.465). Reduction of benefits because of entitlement after 1965 to a periodic benefit under a workmen's compensation law or plan (see § 404.408) is made before deductions under section 203 of the Act relating to work (see §§ 404.415, 404.417, 404.451, and 404.453) and failure to have child in care (see §§ 404.421 and 404.451) and under section 222(b) of the Act on account of refusal to accept rehabilitation services (see § 404.422).

(c) *Alien outside the United States; deportation nonpayment—deduction.* If an individual is subject to nonpayment of a benefit for a month under § 404.460 or § 404.464, no deduction is made from his benefit for that month under § 404.415, § 404.417, or § 404.421, and no deduction is made because of that individual's work from the benefit of any person entitled or deemed entitled to benefits under § 404.420, on his earnings record, for that month.

(d) *Order of priority—deductions and other withholding provisions.* Deductions and other withholding provisions are applied in accordance with the following order of priority:

(1) Current nonpayments under §§ 404.460, 404.464, 404.465, and 404.467;

(2) Current deductions under §§ 404.417, 404.421, and 404.422;

(3) Current withholding of benefits under § 404.456;

(4) Unpaid maritime tax deductions (§ 404.457);

(5) Withholdings to recover overpayments (see Subpart F of this part);

(6) Penalty deductions under §§ 404.451 and 404.453.

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

Where more than one individual is entitled to benefits for the same month on the same earnings record, a reduction in the total benefits payable for that month is required (except in cases involving a "savings clause"—see § 404.405) if the maximum family benefit, as described in the following paragraphs of this section, is exceeded:

(a) *Determining maximum for months after 1964.* Where more than one person is entitled to monthly benefits for the same month on the same earnings record and the total of such monthly benefits exceeds the amount appearing in column V of the table in section 215(a) of the Act on the line on which appears in column IV the primary insurance amount of the insured individual whose earnings record is the basis for the benefits payable, the total benefits for each month after 1964 are reduced to the amount appearing in column V; provided that when any of the persons entitled to benefits on such insured individual's earnings would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the basis of the earnings record of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of $368 or the sum of the maximum amounts of benefits payable on the basis of the earnings records of all such insured individuals.

(b) *Determining maximum for months before 1965 and after 1958.* Where more than one person is entitled to monthly benefits for the same month on the same earnings record and the total of such monthly benefits exceeds the amount appearing in column V of the table in section 101 of the Social Security Amendments of 1958 on the line on which appears in column IV the primary insurance amount of the insured individual whose earnings record is the basis for the benefits payable, the total benefits for each month before 1965 and after 1958 are reduced to the amount appearing in column V; provided that when any of the persons entitled to benefits on such insured individual's earnings record would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the basis of the earnings of one or more other insured individuals, the total benefits payable may not be reduced to less than the smaller of $254, or the sum of the maximum amounts of benefits payable on the basis of the earnings records of all such insured individuals.

(c) *Determining maximum for months before 1959 and after August 1954.* (1) Whenever the total amount of benefits payable for a month after August 1954 and before 1959 on an individual's earnings record is more than $50 and exceeds the greater of one and one-half times the individual's primary insurance amount (see § 404.232), or 80 percent of the individual's average monthly wage (see § 404.237), the total benefits are reduced to the greater of 80 percent of his average monthly wage or one and one-half times his primary insurance amount, but in no case to less than $50 nor to any amount which exceeds $200: *Provided*, That when any of the persons entitled to benefits on the individual's earnings would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the earnings of one or more other insured individuals, the total benefits payable may not be reduced to less than the lower of either $200 or 80 percent of the sum of the average monthly wages of all such insured individuals.

(2) Where, based upon applications filed before September 1954, two or more persons are entitled to benefits for August 1954 upon the earnings record of a deceased individual and the total benefits to which all such persons are entitled, based upon such deceased individual's earnings record, for subsequent months would be reduced by reason of this paragraph, such deceased's average monthly wage for the purpose of determining the maximum amount payable is the larger of his average monthly wage determined as described in § 404.237 or his average monthly wage determined as described in § 404.205 plus $7.

(d) *Determining maximum for months before September 1954 and after August 1952.* Whenever the total amount of benefits payable for a month after August 1952 and before September 1954 on an individual's earnings record exceeds $168.75, or is more than $45 and exceeds 80 percent of the insured individual's average monthly wage (see § 404.205), such total benefits are reduced to the lesser of $168.75 or 80 percent of the insured individual's average monthly wage, but in no case to less than $45: *Provided*, That when any of the persons entitled to benefits on such individual's earnings would, except for the limitation described in § 404.353(d), be entitled to child's insurance benefits on the earnings of one or more other insured individuals, such total benefits are reduced to the lesser of $168.75, or 80 percent of the sum of the average monthly wages of all such insured individuals, but in no case to less than $45.

§ 404.404 How reduction for maximum affects insured individual and other persons entitled on his earnings record.

If a reduction of monthly benefits is required under the provisions of § 404.403, the monthly benefit amount of each of the persons entitled to monthly benefits on the same earnings record (with the exception of the individual entitled to old-age or disability insurance benefits) is proportionately reduced so that the total benefits that can be paid in 1 month

(including an amount equal to the primary insurance amount of the old-age or disability insurance beneficiary, when applicable) does not exceed the maximum family benefit (except as provided in § 404.405 where various savings clause provisions are described).

§ 404.405 Situations where total benefits can exceed maximum because of "savings clause."

The following provisions are "savings clauses" and describe exceptions to the rules concerning the maximum amount payable on an individual's earnings record in a month as described in § 404.403. The effect of a "savings clause" is to avoid lowering benefit amounts or to guarantee minimum increases to certain persons entitled on the earnings record of the insured individual when a statutory change has been made that would otherwise disadvantage them. The reduction described in § 404.403 does not apply in the following instances:

(a) *Months after August 1954.* The reduction described in § 404.403(c) does not apply where:

(1) An insured individual was entitled to old-age insurance benefits for August 1954, and one or more other persons were also entitled to benefits for August 1954 on such individual's earnings record, and all such benefits (including the old-age insurance benefit) were based on applications filed prior to September 1954; and

(2) The total benefits payable to such other persons for any month after August 1954 (and during which the individual was entitled to an old-age insurance benefit) would be reduced to an amount lower than the total of such benefits to which such other persons were entitled for August 1954, due to the increase in the insured individual's primary insurance amount resulting from the Social Security Amendments of 1954 and by application of the reduction described in § 404.403(c). Under these circumstances the maximum amount payable on the insured individual's earnings record for such month after August 1954, is the larger of:

(i) The total benefits payable to such persons for August 1954 after the reduction described in § 404.403(d), plus the amount by which the insured individual's old-age insurance benefit was increased for months after August 1954 by reason of the Social Security Amendments of 1954, or

(ii) The maximum amount payable for August 1954, plus the excess of the amount of the old-age insurance benefit for August 1954 (computed as though the increase by the Social Security Amendments of 1954 (see § 404.230) were applicable for that month), over the actual amount of the old-age insurance benefit for such month.

(b) *Months after August 1957.* (1) The reduction described in § 404.403(c) does not apply where:

(i) Based on application filed prior to September 1957, one or more persons were entitled to parent's insurance benefits for August 1957 on the basis of a deceased individual's earnings record, and

(ii) A person becomes entitled to a widow's, widower's, or mother's insurance benefit for any subsequent month based on such deceased individual's earnings, and

(iii) The total of the benefits to which all persons are entitled for such subsequent month on the basis of such earnings record is decreased under the reduction provisions described in § 404.403(c).

(2) Under the circumstances described in subparagraph (1) of this paragraph, the amount of the benefit to which each person referred to in subdivisions (i) or (ii) of subparagraph (1) of this paragraph is entitled for such subsequent month is increased, after the application of the provisions described in § 404.403(c), as follows:

(i) In the case of a parent's insurance benefit, to the amount it would have been if the person entitled to a widow's, widower's, or mother's insurance benefit were not entitled to such benefit;

(ii) In the case of a widow's, widower's, or mother's insurance benefit, to the amount it would have been if no person were entitled to a parent's insurance benefit for such subsequent month.

(c) *Months after August 1958.* The reduction described in § 404.403(c) does not apply where:

(1) Based on applications filed prior to September 1958, one or more persons were entitled to benefits for August 1958 on the basis of the earnings record of an insured individual; and

(2) Only because of the provisions of the Social Security Amendments of 1958, a person is entitled to a parent's insurance benefit for any month after August 1958 based on such insured individual's earnings record; and

(3) The total of the benefits to which all such persons are entitled for such subsequent month on such deceased insured individual's earnings record are reduced by reason of the reduction described in § 404.403(b) or § 404.403(c). In this case the amount of the benefit to which each person described in subparagraph (1) of this paragraph is entitled for such subsequent month is increased, after the reduction described in § 404.403(c), to the amount it would be if no person referred to in subparagraph (2) of this paragraph were entitled to such parent's insurance benefit for such subsequent month.

(d) *Months after December 1958.* The reduction described in § 404.403(b) does not apply:

(1) When any person is entitled to monthly benefits for December 1958 on the basis of an application filed before January 1959 and the primary insurance amount of the individual upon whose earnings record benefits are based is determined under the provisions of section 215(a)(2) of the Act as it read before the Social Security Amendments of 1965 and the maximum amount payable, as determined by the reduction described in § 404.403(b), is less than that which would be payable as determined under the reduction described in § 404.403(c) or the amount determined under paragraph (a) of this section, if applicable, plus the excess of the primary insurance amount of the insured individual, appearing in column IV of the table appearing in section 101 of the Social Security Amendments of 1958, over his primary insurance amount as determined under the provisions of section 101(c) of the Social Security Amendments of 1958. Under these circumstances the maximum amount payable for a month on the individual's earnings is the higher amount specified in the preceding sentence.

(2) Where a person is entitled to monthly benefits based on the earnings record of an insured individual with respect to whom a period of disability began before January 1959 and continued until January 1959, or a later month, when such individual became entitled to old-age or disability insurance benefits, or died, whichever first occurred, and the primary insurance amount of the insured individual is not less than $68. In this case, the total of such benefits shall not be reduced to less than the smaller of:

(i) $254, or

(ii) The amount in column V of the table in section 101 of the Social Security Amendments of 1958 on the same line on which the insured individual's primary insurance amount appears in column IV of such table, plus the difference between such primary insurance amount and the smaller amount appearing on the same line in column II of such table.

(e) *Months after August 1960.* Where:

(1) Based on application filed prior to September 1960, one or more persons are entitled to monthly benefits for August 1960 based upon the earnings record of an insured individual, and

(2) Any person is entitled, on the basis of the insured individual's earnings, to wife's, husband's, child's, widow's, widower's, or mother's insurance benefits for any month after August 1960 and such person would not be entitled to such benefits except for the provisions of section 216(h)(1)(B), section 216(h)(2)(B), and the last sentence of section 216(e) of the Act, and

(3) The total of the monthly benefits to which all persons are entitled for such month, on the basis of the individual's earnings records for such month after August 1960, would be reduced by reason of the reduction described in § 404.403(b), the amount of the benefit to which each person referred to in subparagraph (1) of this paragraph is entitled for a month after August 1960 shall not, after the reduction described in § 404.403(b), be less than the amount it would have been (determined without regard to subparagraph (2) of paragraph (f) of this section) if no person referred to in subparagraph (2) of this paragraph was entitled to a benefit described therein for such month after August 1960. The amount of the benefit to which each person referred to in subparagraph (2) of this paragraph is entitled shall be determined under the reduction de-

scribed in § 404.403(b) taking into account the benefits payable for such subsequent month to all persons entitled to benefits on the individual's earnings record, including the insured individual himself.

(f) *Months after October 1960.* The reduction described in § 404.403(b) shall not apply to benefits for months after October 1960 in the following cases:

(1) *Prior disability period established.* Where the insured individual became entitled to old-age or disability insurance benefits based on an application filed after October 1960 and before August 1965, or if such individual died prior to becoming so entitled and no person was, based on an application filed prior to November 1960, entitled to monthly benefits for October 1960 or any earlier month, then the reduction described in § 404.403(b) shall not apply:

(i) If a period of disability began for such individual prior to January, 1959, and

(ii) Such period of disability continued until the insured individual became entitled to disability or old-age insurance benefits, or died, whichever occurred first, and

(iii) The primary insurance amount of such insured individual is determined under the provisions of section 215(a)(1) or (3) of the Act, and is $66 or more but less than $97.

Under these circumstances, the total of the benefits payable on the earnings record of the insured individual shall not be reduced to less than the amount in column II of the following table appearing on the same line on which the insured individual's primary insurance amount is shown in column I:

I PIA	II Maximum	I PIA	II Maximum
$66	$99.10	82	160.20
67	102.40	83	163.40
68	106.50	84	167.50
69	110.50	85	171.60
70	113.80	86	174.80
71	117.90	87	178.90
72	121.90	88	183.00
73	125.20	89	186.20
74	129.30	90	190.30
75	133.30	91	194.40
76	136.60	92	197.60
77	140.70	93	201.70
78	144.70	94	205.80
79	148.00	95	206.60
80	152.10	96	206.60
81	156.10		

(2) *Cases in which child's insurance benefit rate increased under 1960 amendments.* Where:

(i) Based on applications filed prior to December 1960, one or more persons were entitled upon the earnings record of a deceased individual to monthly benefits for November 1960 (but not including any person who became so entitled by reason of the provisions of section 216(h)(1)(B), section 216(h)(2)(B), and the last sentence of section 216(e) of the Act, as amended by the Social Security Amendments of 1960), and

(ii) No person (other than those persons referred to in subdivision (i) of this subparagraph and those persons entitled to child's, widow's, widower's, or mother's insurance benefits only by reason of the above cited provisions of the Act) is entitled, based on the deceased individual's earnings record, to benefits for any subsequent month (or for any month after November 1960 and prior to such subsequent month), and

(iii) The total of the benefits to which all persons referred to in clause (i) are entitled for such subsequent month on the basis of the deceased individual's earnings record, exceeds the maximum described in § 404.403(b) then, the amount of the benefit of such person referred to in subdivision (i) of this subparagraph shall be determined as follows:

(*a*) In the case of a person entitled to widow's, widower's, mother's, or parent's insurance benefits, as though the child's insurance benefit rate had not been increased and the provisions of section 216(h)(1)(B), section 216(h)(2)(B), and the last sentence of section 216(e) of the Act were not effective, and

(*b*) In the case of a person entitled to child's insurance benefits, as though no person is entitled to widow's, widower's, mother's, or parent's insurance benefits for such subsequent month and as though the maximum payable is the amount as determined under section 203(a) of the Act, as amended by the 1960 amendments, less the amount of each person's benefit for such month determined pursuant to (*a*) of this subparagraph.

(g) *Months after July 1961.* The reduction described in § 404.403(b) shall not apply where:

(1) Based on applications filed before August 1961, two or more persons were entitled to monthly benefits for July 1961, based on the earnings record of a deceased individual, and one or more of such persons is entitled to a widow's, widower's, or parent's insurance benefit for July 1961; and

(2) No person, other than the persons referred to in subparagraph (1) of this paragraph, is entitled to monthly benefits on the basis of such deceased individual's earnings record for a subsequent month or for any month after July 1961 and before such subsequent month; and

(3) The total of the benefits to which all persons are entitled for such subsequent month on the basis of the deceased individual's earnings record is to be reduced by reason of the reduction described in § 404.403(b). The amount of the benefit to which each person referred to in subparagraph (1) of this paragraph is entitled for such subsequent month, shall be determined without regard to the increase, for months after July 1961, in the benefit rate for widow's, widower's, or parent's insurance benefits to 82½ percent of the deceased individual's primary insurance amount if, after the application of the provisions occasioning such increase, such person's benefit for such month is less than the amount of such benefit for July 1961.

(h) *Months after 1964.* The reduction described in § 404.403(a) does not apply where two or more persons filed application before August 1965 and were entitled to monthly benefits for any month after December 1964 and before August 1965. In such a case, the maximum family benefit on the insured individual's earnings record, for any month after December 1964 may not be less than the larger of:

(1) The maximum family benefit for that month determined under the table in section 215(a) of the Act, or

(2) (i) For months after December 1964 and before August 1965, the total obtained by multiplying each benefit, after reduction for the maximum (and before deduction or reduction for age) as in effect before enactment of the Social Security Amendments of 1965, for each person other than a person entitled to benefits based on full-time school attendance) for that month, by 107 percent and raising each such increased amount, if it is not a multiple of 10 cents, to the next higher multiple of 10 cents.

(ii) For months after July 1965, the total obtained by multiplying each benefit, after reduction for the maximum (and before deduction or reduction for age) as in effect before enactment of the Social Security Amendments of 1965, for each person (other than a person entitled to benefits based on full-time school attendance) for the month of July 1965, by 107 percent and raising each such increased amount, if it is not a multiple of 10 cents, to the next higher multiple of 10 cents. The amount determined to be the maximum family benefit for July 1965 is the maximum payable for months thereafter, without regard to subsequent entitlement (or termination) of persons to benefits on the individual's earnings record.

(i) *Benefits of divorced wife or surviving divorced wife for months after August 1965.* Where a woman is entitled to monthly benefits as a divorced wife or as a surviving divorced wife for a month after August 1965, the benefit to which she is entitled on the earnings record of the insured individiual for such month is determined without regard to § 404.403(a), and the benefits of all other persons who are entitled for that month to monthly benefits on the earnings record of the insured individual are determined as if no such divorced wife or surviving divorced wife was entitled to benefits for that month.

§ 404.406 Reduction for maximum because of retroactive effect of application for monthly benefits.

Under the provisions described in § 404.403, beginning with the month in which a person files an application and becomes entitled to benefits on an insured individual's earnings record, the benefit rate of other persons entitled on the same earnings record (aside from the individual on whose earnings record entitlement is based) are adjusted downward, if necessary, so that the maximum benefits payable on one earnings record will not be exceeded. An application may also be effective (retroactively) for benefits for months before the month of filing (see § 404.607). For any month before the month of filing, however, benefits that have been previously certified by

the Administration for payment to other persons (on the same earnings record) are not changed. Rather, the benefit payment of the person filing the application in the later month is reduced for each month of the retroactive period to the extent that may be necessary, so that no earlier payment to some other person is made erroneous. This means that for each month of the retroactive period the amount payable to the person filing the later application is the difference, if any, between (a) the total amount of benefits actually certified for payment to other persons for that month, and (b) the maximum amount of benefits payable for that month to all persons, including the person filing later.

§ 404.407 Reduction because of entitlement to other benefits.

(a) *Entitlement to old-age or disability insurance benefit and other monthly benefit.* If an individual is entitled to an old-age insurance benefit or disability insurance benefit for any month after August 1958 and to any other monthly benefit payable under the provisions of title II of the Act (see Subpart D of this part) for the same month, such other benefit for that month, after any reduction under section 202(q) of the Act because of entitlement to such benefit for months before retirement age and any reduction under section 203(a) of the Act, is reduced (but not below zero) by an amount equal to such old-age insurance benefit (after reduction under section 202(q) of the Act) or such disability insurance benefit, as the case may be.

(b) *Entitlement to widow's or widower's benefit and other monthly benefit.* If an individual is entitled for any month after August 1965 to a widow's or widower's insurance benefit under the provisions of section 202 (e)(4) or (f)(5) of the Act and to any other monthly benefit payable under the provisions of title II of the Act (see Subpart D) for the same month, except an old-age insurance benefit, such other insurance benefit for that month, after any reduction under paragraph (a) of this section, any reduction for age under 202(q) of the Act, and any reduction under the provisions described in section 203(a) of the Act, shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under paragraph (a) of this section or section 203(a) of the Act.

(c) *Entitlement to old-age insurance benefit and disability insurance benefit.* Any individual who is entitled for any month after August 1965 to both an old-age insurance benefit and a disability insurance benefit shall be entitled to only the larger of such benefits for such month, except that where the individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

(d) *Child's insurance benefits.* A child may, for any month, be entitled to a child's insurance benefit on more than one individual's earnings if all the conditions for entitlement described in § 404.320 are met with respect to each claim. In any case in which a child's entitlement to more than one child's insurance benefit is established for a month, such child shall be paid only the child's insurance benefit for such month which is based on the earnings of the individual who has the highest primary insurance amount.

(e) *Entitlement to more than one benefit where not all benefits are child's insurance benefits and no benefit is an old-age or disability insurance benefit.* If an individual (other than an individual to whom section 202 (e)(4) or (f)(5) of the Act applies) is entitled for any month to more than one monthly benefit payable under the provisions of this subpart, none of which is an old-age or disability insurance benefit and all of which are not child's insurance benefits, only the greater of the monthly benefits to which he would (but for the provisions of this paragraph) otherwise be entitled is payable for such month. For months after August 1965, an individual who is entitled for any month to more than one widow's or widower's insurance benefit to which section 202 (e)(4) or (f)(5) of the Act applies is entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

§ 404.408 Reduction of benefits based on disability on account of receipt of workmen's compensation.

(a) *When reduction required.* Under section 224 of the Act, a disability insurance benefit to which an individual is entitled under section 223 of the Act for a month after 1965 and before the individual attains age 62 (and any monthly benefit for the same month payable to others under section 202 of the Act on the basis of the same earnings record) is reduced (except as provided in paragraph (b) of this section) by an amount as determined under paragraph (c) of this section if:

(1) The individual entitled to the disability insurance benefit is also entitled under a workmen's compensation law or plan of the United States or a State to a periodic benefit for such month for a total or partial disability (whether or not permanent) and

(2) The Secretary has, in a month before such month, received notice of such entitlement for such month, and

(3) The period of disability involved began after June 1, 1965.

(b) *When reduction not made.* The reduction of a benefit otherwise required by paragraph (a) of this section is not made if the workmen's compensation law or plan under which the periodic benefit is payable provides for the reduction of such periodic benefit when anyone is entitled to a benefit under title II of the Act on the basis of the earnings record of an individual entitled to a disability insurance benefit under section 223 of the Act.

(c) *Amount of reduction*—(1) *General.* The total of benefits payable for a month under sections 223 and 202 of the Act to which paragraph (a) of this section applies is reduced (but not below zero) by the amount by which the sum of such total of benefits and such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan exceeds the higher of:

(i) Eighty percent of his "average current earnings," as defined in subparagraph (3) of this paragraph, or

(ii) The total of such individual's disability insurance benefit for such month and all other benefits payable for such month based on such individual's earnings record, prior to reduction under this section.

(2) *Limitation on reduction.* In no case may the total of monthly benefits payable for a month to the disabled worker and to the persons entitled to benefits for such month on his earnings record be less than:

(i) The total of the benefits payable (after reduction under paragraph (a) of this section) to such beneficiaries for the first month for which reduction under this section is made, and

(ii) Any increase in such benefits which is made effective for months after the first month for which reduction under this section is made.

(3) *Average current earnings defined.* An individual's "average current earnings" for purposes of this section means the larger of:

(d) *Items not counted for reduction.* Amounts included in the workmen's compensation award which are specifically identifiable as being for medical, legal or related expenses paid or incurred by the individual in connection with his workmen's compensation claim, or the injury or occupational disease on which it is based, are excluded in computing the reduction under paragraph (a) of this section.

(e) *Certification by individual concerning eligibility for workmen's compensation payment.* Where it appears that an individual may be eligible for a periodic benefit under a workmen's compensation law or plan which would give rise to reduction under paragraph (a) of this section, the individual may be required, as a condition of certification for payment of any benefit under section 223 of the Act to any individual for any month, and of any benefit under section 202 of the Act for such month based on such individual's earnings record, to furnish evidence as requested by the Administration and to certify as to:

(i) The average monthly wage used for purposes of computing the individual's disability insurance benefit under section 223 of the Act, or

(ii) One-sixtieth of the total of his wages and self-employment income for the 5 consecutive calendar years after 1950 for which such wages and self-employment income were highest.

(4) *Reentitlement to disability insurance benefits.* If an individual's entitlement to disability insurance benefits terminates and such individual again becomes entitled to disability insurance benefits, the amount of the reduction is again computed based on the figures specified in this paragraph (c) applicable to the subsequent entitlement.

(1) Whether he has filed or intends to file any claim for such periodic benefit, and

(2) If he has so filed, whether there has been a decision on such claim. In the absence of evidence to the contrary, reliance may be placed upon a certification that he has not filed and does not intend to file such a claim, or that he has filed and no decision has been made, in certifying any benefit for payment pursuant to section 205(i) of the Act.

(f) *Workmen's compensation benefit payable on other than a monthly basis.* Where workmen's compensation benefits are paid periodically but not monthly, or in a lump sum as a commutation of or a substitute for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Administration determines will approximate as nearly as practicable the reduction required under paragraph (a) of this section.

(g) *Priorities.* (1) For an explanation of when a reduction is made under this section where other reductions, deductions, etc., are involved, see § 404.402.

(2) Whenever a reduction in the total of benefits for any month based on an individual's earnings record is made under paragraph (a) of this section, each benefit, except the disability insurance benefit, is first proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefit is then applied to such disability insurance benefit.

Example: Under title II of the Act, A is entitled to a monthly disability insurance benefit of $122. His wife, B, and his two children, C and D, are entitled to monthly insurance benefits of $61 each. After adjustment for the family maximum under section 203(a) of the Act, the benefits are $122 for A and $50.60 for B, C, and D making a total of title II benefits of $273.80. In computing A's "average current earnings," it is determined that A's average monthly wage used in computing his benefit rate is $340, and his average monthly wage for his 5 years of highest earnings after 1950 is $400. Therefore, 80 percent of his "average current earnings" for purposes of the workmen's compensation deduction is $320.

A becomes entitled to workmen's compensation of $48 a week, which converted to a monthly rate amount to $208 a month (i.e., 4⅓ times $48). The total monthly benefits payable under title II of the Act ($273.80) plus the monthly workmen's compensation amount ($208) equals $481.80. The amount of the reduction for workmen's compensation is $161.80 ($481.80 minus $320); and the family benefit payable is $112 ($273.80 minus $161.80 equals $112). (The same result is obtained by subtracting the workmen's compensation amount ($208) from the applicable limit ($320).)

In this example, the $161.80 reduction would be applied first against the three section 202 benefits ($50.60 times 3 equals $151.80) leaving $10 to be deducted from the disability insurance benefit.

(h) *Effect of changes in family composition.* The addition or subtraction in the number of beneficiaries in a family may cause the family benefit to become, or cease to be, the applicable limit for reduction purposes under this section. When the family composition changes, the amount of the reduction is recomputed as though the new number of beneficiaries were entitled for the first month the reduction was imposed, i.e., the same average monthly wage, average current earnings, and workmen's compensation amount and the total benefits payable under title II of the Act for the new number of beneficiaries which would have been subjected to reduction for that first month are used. If the applicable limit both before and after the change is 80 percent of the average earnings, the amount payable remains the same and is simply redistributed among the beneficiaries entitled on the same earnings record.

Example: F is entitled to disability insurance benefits of $110.30 based on an average monthly wage of $289. His wife, G, and his child, H, are entitled to benefits under section 202 of the Act of $55.20 each. F becomes entitled to workmen's compensation of $192 a month. His average monthly wage for his 5 years of highest earnings after 1950 is $260.

The applicable limit on total benefits payable under title II of the Act and workmen's compensation is $231.20 (i.e., 80 percent of F's average current earnings). The amount payable is figured as follows:

Total title II benefits	$220.70	$220.70
Monthly workmen's compensation	192.00	
	412.70	
Less 80 percent of F's average current earnings	231.20	
Reduction amount	181.50	181.50
Amount payable		39.20

(Deducting the workmen's compensation amount ($192) from 80 percent of the average current earnings ($231.20) gives the same amount payable ($39.20).)

Later, another child, J, becomes entitled on F's earnings record and the benefits after adjustment for the family maximum but before reduction for the workmen's compensation become $110.30 to F, and $40.90 to G, H, and J each. Since the total family benefit is now higher than 80 percent of F's average current earnings, the total family benefit becomes the applicable limit and the amount payable is figured merely by deducting the workmen's compensation ($192) from the total title II benefits ($233) leaving $41 payable to F.

(i) *Effect on benefit increases.* Any increase in benefits due to a recomputation or a statutory increase in benefit rates is not subject to the reduction for workmen's compensation and does not change the amount to be deducted from the family benefits. The increase is simply added to what amount if any is payable. If a new beneficiary becomes entitled to monthly benefits on the same earnings record after the increase, the amount of the reduction is redistributed among the new number of beneficiaries entitled under section 202 of the Act and deducted from their current benefit rate.

Example: K is entitled to disability insurance benefits of $118.80 and his wife, L, and his two children, M and N, are entitled to benefits under section 202 of the Act of $47.90 each (after reduction under section 203(a) to conform to the family maximum of $262.40). K becomes entitled to workmen's compensation of $30 per week ($130 per month). The total family benefit is higher by 10 cents than 80 percent of K's average current earnings (80 percent of $328, or $262.40). Therefore, the reduction amount equals the monthly workmen's compensation. One-third of this amount (rounded downward to the nearest 10 cents), i.e., $43.30, is deducted from L, M, and N's benefits leaving benefits payable as follows: $118.80 to K, and $4.60 each to L, M, and N.

Beginning in September 1966, a statutory increase raises K's disability insurance benefit to $122 and causes L, M, and N's benefits to be increased to $50.60 each (an increase of $2.70). The benefits then payable become: $122 to K, and $7.30 (i.e., $4.60 plus $2.70) each to L, M, and N.

In February 1967, O, another child of K, becomes entitled to benefits under section 202 of the Act based on K's earnings record. The benefits payable now become $122 to K, and $37.90 each to L, M, N, and O. The amount to be deducted from the family remains the same, $130, but is to be divided among four beneficiaries instead of three. Deducting one-fourth of $130 ($32.50) from $37.90 leaves $5.40 each to L, M, N, and O, and $122 to K.

(j) *Redetermination of benefits*—(1) *General.* In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 of the Act and any benefits under section 202 of the Act based on his wages and self-employment income is first required (in a continuous period of months), and in each third year thereafter, the amount of such benefits which are still subject to reduction under this section are redetermined, provided such redetermination does not result in any decrease in the total amount of benefits payable under title II of the Act on the basis of such individual's wages and self-employment income. Such redetermined benefit is effective with the January following the year in which the redetermination is made.

(2) *Average current earnings.* In making the redetermination required by subparagraph (1) of this paragraph, the individual's "average current earnings" (as defined in paragraph (c)(3) of this section) is deemed to be the product of his average current earnings as initially determined under paragraph (c)(3) of this section and the ratio of:

(i) The average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year in which such redetermination is made, to

(ii) The average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability). Any amount determined under the preceding sentence which is not a multiple of $1 is reduced to the next lower multiple of $1.

(3) *Effect of redetermination.* Where the applicable limit on total benefits previously used was 80 percent of the average current earnings, a redetermination under this paragraph may cause an increase in the amount of benefits payable. Also, where the limit previously used was

the total family benefit, the redetermination may cause the average current earnings to exceed the total family benefit and thisu become the new applicable limit. If for some other reason (such as a statutory increase or recomputation) the benefit has already been increased to a level which equals or exceeds the benefit resulting from a redetermination under this paragraph, no additional increase is made. A redetermination is designed to bring benefits into line with current wage levels when no other change in payments has done so.

Example: Beginning January 1968, P is entitled to a disability insurance benefit of $140 and his wife, R, and child, S, are entitled to benefits under section 202 of the Act of $70 each. P becomes entitled to workmen's compensation of $208 per month. In this case, the applicable limit on the combined benefits is $360 (80 percent of P's average current earnings). Deducting the workmen's compensation amount of $208 from this limit leaves family benefits payable of $152 ($140 to P and $6 to R and S each). In 1970 a redetermination raises 80 percent of P's average current earnings to $380 effective January 1971. Thus, the family benefit payable becomes $172 ($380 minus $208). P's benefit is $140, and R's and S's benefits are $16 each.

If there had been a benefit increase in 1969 (either by a statutory increase or a recomputation) increasing P's benefit by $10 (to $150) and each other benefit by $5 (to $11), the family would already be receiving $172 ($150 plus $11 plus $11 equals $172) at the time of the redetermination, so that they would not get an additional increase. If the 1969 benefit increase made less than $172 payable to the family, the redetermination would increase the benefit to $172. Any statutory increase that takes effect after the redetermination would be added to the total family benefit.

§ 404.409 Increase of benefit amount.

(a) *Increase due to "rounding" of benefit amount.* Any monthly benefit, after any applicable computation, reduction and/or deduction, which is not a multiple of 10 cents is raised to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents, any benefit amount which contains any such fraction is raised to the next higher multiple of 10 cents. Thus, a child's insurance benefit of $26.104 is rounded to $26.20.

(b) *Increase of survivor's benefit to an amount equal to "minimum."* For months beginning with January 1965, where only one person is entitled to a benefit for a month based on the earnings record of a deceased individual and such benefit is less than $44, such benefit, before any reduction described in § 404.407 and any reduction for age under section 202(q) of the Act, is raised to $44. (For months after July 1961 and before January 1965, the minimum benefit was $40. For months after December 1959 and before August 1961, the minimum benefit was $33. For months after August 1954 and before January 1959, the minimum benefit was $30.)

§ 404.415 Deductions because of excess earnings; annual earnings test.

(a) *Deductions because of beneficiary's earnings.* Under the annual earnings test, deductions are made from monthly benefits (except disability insurance benefits or child's insurance benefits based on the child's disability) payable to a beneficiary for each month in a taxable year beginning after December 1954 in which the beneficiary is under age 72 and to which excess earnings are charged under the provisions described in §§ 404.434 or 404.444.

(b) *Deductions from husband's, wife's, or child's benefits because of excess earnings of the insured individual.* Deductions are made from the wife's, husband's, or 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 under the provisions described in § 404.416.

§ 404.416 Amount of deduction because of excess earnings.

(a) *Taxable years beginning after December 1960, or ending after June 1961—(1) Deductions because of excess earnings of insured individual.* For taxable years beginning after 1960, or ending after June 1961, if excess earnings (as described in §§ 404.432 and 404.433) of an insured individual are chargeable under the annual earnings test to a month, a deduction is made from the total of the benefiits payable to him and to all other persons entitled (or deemed entitled—see § 404.420) on his earnings record for that month. This deduction is an amount equal to the amount of the excess earnings so charged. (See § 404.434 concerning the manner of charging such excess earnings.)

(2) *Deductions because of excess earnings of other beneficiary.* For taxable years beginning after 1960, or ending after June 1961, if benefits are payable to a person entitled (or deemed entitled—see § 404.420) on the earnings record of the insured individual, and such person has excess earnings (as described in §§ 404.432 and 404.433) charged to a month, a deduction is made from his benefits only for that month. This deduction is an amount equal to the amount of the excess earnings so charged. (See § 404.434 for charging of excess earnings where both the insured individual and such person have excess earnings.)

(b) *Taxable years beginning after 1954 and before 1961, and for taxable years ending before July 1961.* For taxable years beginning after 1954 and before 1961, and for taxable years ending before July 1961, if an individual is charged with excess earnings in a month, a deduction is made from the individual's benefit for such month in an amount equal to the benefit payable to the individual for that month. If such a deduction is made and benefits are payable to any other person entitled (or deemed entitled—see § 404.420) on such individual's earnings record, a deduction is also made from the benefits payable to such other person. This deduction is an amount equal to the total of the benefits payable to such other person for that month. (See § 404.444 concerning the manner of charging such excess earnings.)

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

(a) *Deductions because of individual's activity.* Under the 7-day work test, a deduction is made from any monthly benefit (except disability insurance benefits or child's insurance benefits based on the child's disability) payable to an individual for each month in a taxable year beginning after December 1954 in which he, while under age 72, engages in noncovered remunerative activity (see § 404.418) outside the United States on seven or more different calendar days. This deduction is an amount equal to the benefit payable to the individual for that month.

(b) *Deductions from benefits because of earnings or work of an insured individual.* If a deduction, as described in paragraph (a) of this section, is made from the insured individual's benefit for a month, a deduction is also made from any wife's, husband's, or child's insurance benefit payable (or deemed payable—see § 404.420) for that month on the insured individual's earnings record. This deduction is an amount equal to any such benefit.

§ 404.418 "Noncovered remunerative activity outside the United States," defined.

An individual is engaged in noncovered remunerative activity outside the United States for purposes of deductions described in § 404.417 if:

(a) He performs services outside the United States as an employee and the services do not constitute employment as defined in Subpart K of this part and, for taxable years ending after 1955, the services are not performed in the active military or naval service of the United States; or

(b) He carries on a trade or business outside the United States (other than the performance of services as an employee) the net income or loss of which is not includable in computing his net earnings from self-employment (as defined in § 404.1050) for a taxable year and would not be excluded from net earnings from self-employment (see § 404.1052) if the trade or business were carried on in the United States. When used in the preceding sentence with respect to a trade or business, the term "United States" does not include the Commonwealth of Puerto Rico, the Virgin Islands and, with respect to taxable years beginning after 1960, Guam or American Samoa, in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands and, with respect to taxable years beginning after 1960, Guam and American Samoa), and

the term "trade or business" shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1954.

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

For purposes of imposing deductions under the annual earnings test (see § 404.415) and the 7-day work test (see §404.417), a person who is married to an old-age insurance beneficiary and who is entitled to either a mother's insurance benefit or a child's insurance benefit based on the child's disability (and such mother's or child's benefit is based on the earnings record of some third person) is deemed entitled to such benefit based on the earnings record of the old-age insurance beneficiary to whom he or she is married. This paragraph is effective for months in any taxable year of the old-age insurance beneficiary that begins after August 1958.

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

Deductions for failure to have a child "in her care" (as defined in Subpart D) are made as follows:

(a) *Wife's insurance benefits.* A deduction is made from the wife's insurance benefit to which a woman (excluding a "divorced wife" as defined in § 404.1105) is entitled for any month in which she is under age 65 and does not have in her care a child of her husband entitled to a child's insurance benefit. However, a deduction is not made for any month in which she is age 62 or over, but under age 65, and there is in effect a certificate of election for her to receive an actuarially reduced wife's insurance benefit for such month (see Subpart D of this part).

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

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

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

(d) *When child is considered not entitled to benefits.* For purposes of paragraphs (a) and (b) of this section a person is considered not entitled to a child's insurance benefit for any month in which he is age 18 or over, and:

(1) Is entitled to a child's insurance benefit based on his own disability and a deduction is made from the child's insurance benefit because of his refusal of rehabilitation services as described in § 404.422(b); or

(2) Is entitled to a child's insurance benefit because he is a full-time student at an educational institution. This subparagraph applies to benefits for months after December 1964.

§ 404.422 Deductions because of refusal to accept rehabilitation services.

(a) *Deductions because individual entitled to disability insurance benefits refuses rehabilitation services*—(1) *Disability insurance beneficiary.* A deduction is made from any benefit payable to a disability insurance beneficiary for each month in which he refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act.

(2) *Other beneficiaries.* For each month in which a deduction is made from an individual's disability insurance benefit because of his refusal to accept rehabilitation services (as described in subparagraph (1) of this paragraph), a deduction is also made from:

(i) Any wife's, husband's, or child's insurance benefit payable for that month on the earnings record of the individual entitled to disability insurance benefits;

(ii) Benefits payable for that month to the disability insurance beneficiary's spouse who is entitled (on the earnings record of a third person) to a mother's insurance benefit or to a child's insurance benefit based on disability.

(b) *Deductions because individual entitled to a child's insurance benefit based on disability refuses rehabilitation services.* A deduction is made from any benefit payable to an individual who has attained age 18 and is entitled to a child's insurance benefit based on disability, for each month in which he refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act unless, in that month, he is a full-time student at an educational institution.

(c) *Amount of deduction.* The amount deducted from an individual's benefit for a month under the provisions of paragraph (a) or (b) of this section is an amount equal to the benefit otherwise payable for that month.

(d) *Good cause for refusal of rehabilitation services.* An individual may refuse to accept rehabilitation services (for the purposes of paragraphs (a) and (b) of this section) if his refusal is based on good cause. For example, an individual has good cause for refusing rehabilitation services where:

(1) The individual is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and care of any physical or mental impairment, on prayer or spiritual means through the application and use of the tenets or teachings of such church or sect; and

(2) His refusal to accept rehabilitation services was due solely to his adherence to the teachings or tenets of his church or sect.

§ 404.423 Manner of making deductions.

Deductions provided for in §§ 404.415, 404.417, 404.421, and 404.422 (as modified in § 404.458) are made by withholding benefits (in whole or in part, depending upon the amount to be withheld) for each month in which an event causing a deduction occurred. If the amount to be deducted is not withheld from the benefits payable for the month in which the event causing the deduction occurred, such amount constitutes a "deduction overpayment" and is subject to adjustment or recovery in accordance with the provisions of Subpart F of this part.

§ 404.424 Total amount of deductions where more than one deduction event occurs in a month.

If more than one of the deduction events specified in §§ 404.415, 404.417, and 404.421 occurred in any 1 month, each of which would occasion a deduction equal to the benefit for such month, only an amount equal to such benefit is deducted.

§ 404.425 Total amount of deductions where deduction events occur in more than 1 month.

If a deduction event described in §§ 404.415, 404.417, 404.421, and 404.422 occurs in more than 1 month, the total amount deducted from an individual's benefits is equal to the sum of the deductions for all months in which any such event occurred.

§ 404.428 Earnings in a taxable year.

(a) *General.* In applying the annual earnings test (see § 404.415(a)) under the provisions of this subpart, all of a beneficiary's earnings (as defined in § 404.429) for all months of his taxable year are included even though the individual is not entitled to benefits during all months of his taxable year. The taxable year of an employee is presumed to be a calendar year until it is shown to the satisfaction of the Administration that he has a different taxable year. A self-employed individual's taxable year is a calendar year unless he has a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1954. In either case, the number of months in a taxable year is not affected by (1) filing a claim for social security benefits, (2) attainment of age 18, 22, 65, 72, or any other age, (3) marriage, (4) termination of marriage, or (5) adoption. A taxable year ends with the death of the beneficiary. In such a case, the month of death is included as a month of the deceased beneficiary's tax-

able year in determining whether the beneficiary had excess earnings as defined in §§ 404.432, 404.433, and 404.444.

(b) *When derived.* Wages as defined in § 404.429(c) are derived and includable as earnings for the months and year in which the beneficiary rendered the services. Net earnings from self-employment, or net losses therefrom, are derived, or incurred, and are includable as earnings or losses, in the year for which such earnings or losses are reportable for Federal income tax purposes.

§ 404.429 Earnings; defined.

(a) *General.* When the term "earnings" is used in this subpart other than as a part of the phrase "net earnings from self-employment," it means an individual's earnings for a taxable year after 1954. It includes the sum of his wages for services rendered in such year, and his net earnings from self-employment for the taxable year, minus any net loss from self-employment for the same taxable year.

(b) *Net earnings from self-employment; net loss from self-employment.* An individual's net earnings from self-employment and his net loss from self-employment are determined under the provisions in Subpart K of this part except that:

(1) For the purposes of this section, the provisions in Subpart K of this part shall not apply that exclude from the definition of "trade or business" the following occupations:

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

(ii) The performance of service of a duly ordained, commissioned, or licensed minister of a church in the exercise of his 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 profession as a Christian Science practitioner;

(iv) For taxable years ending before 1965, the performance by an individual in the exercise of his profession as a doctor of medicine;

(v) For taxable years ending before 1956, the performance of service by an individual in the exercise of his profession as a lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, or optometrist.

(2) For the sole purpose of the retirement test under this subpart, an individual's gross earnings for taxable years beginning after December 1964 may not include royalties received in or after the year in which the individual attained age 65 if the royalties are attributable to a copyright or patent obtained before the taxable year in which he attained age 65 on property created by his own personal efforts.

(3) In figuring an individual's net earnings or net loss from self-employment, all net income or net loss is includable even though (i) the individual 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 his earnings record, or (iv) the net profit was not reportable for social security tax purposes.

(4) An individual's net earnings from self-employment is the excess of income over the deductions (allowed under the Internal Revenue Code) resulting from such computation. An individual's net loss from self-employment is the excess of deductions (that are allowed under the Internal Revenue Code) over income.

(c) *Wages defined.* Wages include the gross amount of an individual's wages rather than the net amount paid after deductions by the employer for items such as taxes and insurance. For purposes of this section, an individual's wages are determined under the provisions of Subpart K of this part, except that, notwithstanding the provisions of Subpart K, wages also includes:

(1) Remuneration of over $6,600 in calendar years beginning with 1966, or over $4,800 in a calendar year 1959 through 1965, or over $4,200 in a calendar year 1955 through 1958; and

(2) Cash remuneration of less than $50 paid in a calendar quarter to an employee for (i) domestic service in the private home of the employer, or (ii) service not in the course of the employer's trade or business; and

(3) Cash remuneration of less than $150 ($100 in calendar years 1955 or 1956) paid by an employer for services in agricultural labor regardless of whether the employee worked for the employer on 20 or more different days in the year; and

(4) Remuneration, cash and noncash, for service as a homeworker even though the cash remuneration paid the employee is less than $50 in a calendar quarter; and

(5) For taxable years ending after 1955, services performed outside the United States in the military or naval service of the United States; and

(6) Remuneration for services excepted from employment performed within the United States by an individual as an employee that are for that reason not considered wages under Subpart K, if the remuneration for such services is not includable in computing his net earnings from self-employment or net loss from self-employment, as defined in paragraph (b) of this section.

(d) *Presumptions concerning wages.* For purposes of this section, where reports received by the Administration show wages (as defined in paragraph (c) of this section) were paid to an individual during a taxable year, it is presumed that they were paid to him for services rendered in that year until such time as it is shown to the satisfaction of the Administration that the wages were paid for services rendered in another taxable year. If the reports of wages paid to an individual show his wages for a calendar year, the individual's taxable year is presumed to be a calendar year for purposes of this section until it is shown to the satisfaction of the Administration that his taxable year is not a calendar year.

§ 404.432 Excess earnings; defined for taxable years ending after December 1965.

For taxable years ending after December 1965, and individual's excess earnings are the amount of his earnings (as described in § 404.429) that exceed $125 times the number of months in his taxable year, except that his excess earnings do not include an amount equal to one-half of the first $1,200 of such excess amount (or equal to one-half of the entire excess amount if the excess is less than $1,200). Where the excess amount so figured is not a multiple of $1, it is reduced to the next lower dollar. Thus, in the usual 12-month-taxable-year case, an individual's excess earnings are computed as follows:

(a) $1 for each $2 of earnings over $1,500, up to and including $2,700; and

(b) $1 for each $1 over $2,700.

§ 404.433 Excess earnings; defined for taxable years beginning after December 1960 or ending after June 1961—up to and including taxable years ending December 31, 1965.

For taxable years beginning after December 1960, or ending after June 1961; up to and including taxable years ending December 31, 1965, an individual's excess earnings in a taxable year are the amount of his earnings (as described in § 404.429) for such year that exceed $100 times the number of months in his taxable year, except that his excess earnings do not include an amount equal to one-half of the first $500 of such excess amount (or equal to one-half of the entire excess amount if the excess is less than $500). Where the excess amount so figured is not a multiple of $1, it is reduced to the next lower dollar. Thus, in the usual 12-month-taxable-year case, an individual's excess earnings are computed as follows:

(a) $1 for each $2 of earnings over $1,200 up to and including $1,700; and

(b) $1 for each $1 over $1,700.

§ 404.434 Excess earnings; method of charging.

(a) *Months charged.* For purposes of imposing deductions for taxable years after 1960, the excess earnings (as described in §§ 404.432 and 404.433) of an individual are charged to each month beginning with the first month the individual is entitled in the taxable year in question and continuing, if necessary, to each succeeding month in such taxable year until all of the individual's 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.* The insured individual's excess earnings are charged on the basis of $1 of excess earnings for each $1 of monthly benefits to which he and all other persons are entitled (or deemed entitled—see § 404.420) for such month on the insured individual's 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.* The excess earnings of a person other than the insured individual are charged on the basis of $1 of excess earnings for each $1 of monthly benefits to which he is entitled (see 404.437) for such month. The excess earnings of such person, however, are charged only against his own benefits.

(3) *Insured individual and person entitled (or deemed entitled) on his earnings record both have excess earnings.* If both the insured individual and a person entitled (or deemed entitled) on his earnings record have excess earnings (as described in §§ 404.432 and 404.433), the insured individual's excess earnings are charged first against the total family benefits payable (or deemed payable) on his earnings record, as described in subparagraph (1) of this paragraph. Next, the excess earnings of a person entitled on the insured individual's earnings record are charged (as described in subparagraph (2) of this paragraph) against his own benefits, but only to the extent that his benefits have not already been charged with the excess earnings of the insured individual. See § 404.441 for an example of this process and the manner in which partial monthly benefits are apportioned.

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) *Taxable years ending after 1965.* Notwithstanding any of the provisions described in this subpart, an individual's excess earnings in a taxable year ending after 1965 are not charged to any month in which he:

(1) Was not entitled to a monthly benefit;

(2) Was deemed not entitled to benefits (due to noncovered work outside the United States, no child in care, or refusal of rehabilitation, as described in § 404.436);

(3) Was age 72 or over;

(4) Was entitled to payment of a disability insurance benefit;

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

(6) Did not engage in self-employment (see paragraphs (c) and (e) of this section) and did not render services for wages (see paragraph (d) of this section) of more than $125.

(b) *Taxable years beginning after 1960 or ending after June 1961—up to and including taxable years ending before 1966.* Notwithstanding any of the provisions described in this subpart, an individual's excess earnings in a taxable year beginning after December 1960, or ending after June 1961; up to and including taxable years ending before 1966 are not charged to any month in which the individual:

(1) Was not entitled to benefits;

(2) Was deemed not entitled to benefits (see § 404.436);

(3) Was age 72 or over;

(4) Was entitled to a disability insurance benefit payment;

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

(6) Did not engage in self-employment (see paragraphs (c) and (e) of this section) and did not render services for wages (see paragraph (d) of this section) of more than $100.

(c) *When an individual is deemed to have engaged in self-employment.* An individual is deemed to have engaged in self-employment in any month in which he renders substantial services (as defined in § 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 owner or partner even though there may be no earnings or net earnings from self-employment attributable to his services for such month.

(d) *Presumption regarding "services for wages."* With respect to paragraphs (a)(6) and (b)(6) of this section, and § 404.444(c)(5), an individual is presumed to have rendered services in any month for wages (as defined in § 404.429) of more than $125, or more than $100, or more than $80, whichever amount is applicable, until it is shown to the satisfaction of the Administration that the individual did not render services in such month for more than such amount.

(e) *Presumption regarding "engaged in self-employment."* With respect to paragraphs (a)(6) and (b)(6) of this section, and § 404.444(c)(5), an individual is presumed to have engaged in self-employment in each month of his taxable year until it is shown to the satisfaction of the Administration that in a particular month he did not render substantial services (see § 404.446(c)) with respect to any trade or business (or in a combination of trades and businesses if there are more than one) the net income or loss of which is includable in computing his earnings as defined in § 404.429.

§ 404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.

Under the annual earnings test, excess earnings (as described in § 404.432 and § 404.433) are not charged to any month in which an individual is deemed not entitled to a benefit. A beneficiary (i.e., the insured individual or any person entitled or deemed entitled on the insured individual's earnings record) is deemed not entitled to a benefit for a month if he is subject to a deduction for that month because of:

(a) Engaging in noncovered remunerative activity outside the United States (as described in § 404.417 and § 404.418); or

(b) Failure to have a child in her care (in the case of a wife under age 65 or a widow or surviving divorced mother under age 62, as described in § 404.421); or

(c) Refusal by a person entitled to a child's insurance benefit based on disability to accept rehabilitation services (as described in § 404.422). (An insured individual's excess earnings are not charged against the benefit of a child entitled (or deemed entitled) on the insured individual's earnings record for any month in which the child is subject to a deduction for refusing rehabilitation services); or

(d) Refusal by an individual entitled to a disability insurance benefit to accept rehabilitation services as described in § 404.422 (e.g., a wife's excess earnings may not be charged against her benefits for months in which the disability insurance beneficiary on whose account she is entitled to wife's benefits incurs a deduction because he refuses rehabilitation services; also, a woman's earnings may not be charged against the mother's insurance benefit or child's insurance benefit she is receiving (on the earnings record of another individual) for months in which her husband refuses rehabilitation services while he is entitled to a disability insurance benefit).

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

For purposes of deductions because of excess earnings (as described in §§ 404.432 and 404.433), the benefit rate against which excess earnings are charged is the amount of the benefit (other than a disability insurance benefit) to which the person is entitled for the month:

(a) After reduction for the "maximum" (see § 404.403 and § 404.404). The rate as reduced for the maximum as referred to in this paragraph is the one applicable to remaining entitled beneficiaries after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in noncovered remunerative activity outside the United States, failure to have a child in her care, or refusal to accept rehabilitation services);

(b) After any reduction under section 202(q) of the Act because of entitlement to benefits for months before age 65 (this applies only to old-age, wife's, widow's, or husband's benefits);

(c) After any reduction in benefits payable to a person entitled (or deemed entitled; see § 404.420) on the earnings record of the insured individual because of entitlement on his own earnings record to other benefits (see § 404.407); and

(d) After any reduction of benefits payable to a person entitled or deemed entitled on the earnings record of an individual entitled to a disability insurance benefit because of such individual's entitlement to workmen's compensation for months after 1965 (see § 404.408).

§ 404.439 Partial monthly benefits; excess earnings of the individual charged against his benefits and the benefits of persons entitled (or deemed entitled) to benefits on his earnings record.

Deductions are made against the total family benefits where the excess earnings (as described in § 404.432 and § 404.433) of an individual entitled to old-age insurance benefits are charged to a month and require deductions in an amount less than the total family benefits payable on his earnings record for

that month (including the amount of a mother's or child's insurance benefit payable to a spouse who is deemed entitled on the individual's earnings record—see § 404.420). The difference between the total benefits payable and the deductions made under the annual earnings test for such month is paid (if otherwise payable under title II of the Act) to each person in the proportion that the benefit to which each is entitled (before the application of the reductions described in § 404.403 for the family maximum, § 404.407 for entitlement to more than one type of benefit, and section 202(q) of the Act for entitlement to benefits before retirement age) bears to the total of the benefits to which all of them are entitled, except that the total amount payable to any such person may not exceed the benefits which would have been payable to that person if none of the insured individual's excess earnings had been charged to that month.

Example: A is entitled to an old-age insurance benefit of $122. His wife and two children are each entitled to an original benefit rate of $61, making a total unreduced benefit of $305. After A's excess earnings have been charged to the appropriate months in the year, there remains a partial benefit of $200 payable for October, apportioned as follows:

	Original rates	Fraction of total benefit	Maximum and normal rate payable	Partial benefits payable
A	$122	2/5	$122.00	$80
Wife	61	1/5	50.60	40
Child	61	1/5	50.60	40
Child	61	1/5	50.60	40
Total	305	5/5	273.80	200

§ 404.440 Partial monthly benefits; prorated share of partial payment exceeds the benefit before deduction for excess earnings.

Where, under the apportionment described in § 404.439, a person's prorated share of the partial benefit exceeds the benefit rate to which he was entitled before excess earnings of the insured individual were charged, such person's share of the partial benefit is reduced to the amount he would have been paid had there been no deduction for excess earnings (see example). The remainder of the partial benefit is then paid to other persons eligible to receive benefits in the proportion that the benefit of each such other person bears to the total of the benefits to which all such other persons are entitled (before reduction for the family maximum). Thus, if only two beneficiaries are involved, payment is made to one as if no deduction had been imposed; and the balance of the partial benefit is paid to the other. If three or more beneficiaries are involved, however, reapportionment of the excess of the beneficiary's share of the partial benefit over the amount he would have been paid without the deduction is made in proportion to his original entitlement rate (before reduction for the family maximum). If the excess amount involved at any point totals less than $1, it is not reapportioned; instead, each beneficiary is paid on the basis of the last calculation. Also, if in the final apportionment a beneficiary's share of a partial benefit is not a multiple of 10 cents, it is rounded to the next higher multiple of 10 cents.

Example:

	Original rate	Rate after reduction for family maximum that may not be exceeded	Partial payment in proportion to original rate	Paid
Insured individual	$100	$100.00	$70	$74.80
Wife	50	33.40	35	33.40
Child	50	33.40	35	33.40
Child	50	33.40	35	33.40

Family maximum $200; insured individual's excess earnings of $25 charged to month; remaining $175 prorated as partial payment.

§ 404.441 Partial monthly benefits; insured individual and a person entitled (or deemed entitled) on his earnings record both have excess earnings.

Where both the insured individual and a person entitled (or deemed entitled) on his earnings record have excess earnings (as described in §§ 404.432 and 404.433), their excess earnings are charged, and the partial monthly benefit is apportioned, as follows:

Example: M, his wife, and one child are entitled to combined total benefits of $240 based on M's old-age insurance benefit of $120. For the taxable year in question, M's excess earnings were $1,400 and his wife's excess earnings were $360. M had wages of more than $125 in all months of the year except February, while his wife had wages of more than $125 in all months of the year. After M's excess earnings have been charged to the appropriate months (all months through June except February), there remains a partial benefit payment for July of $40, which is allocated among M, his wife, and child in the ratio that the original benefit of each bears to the sum of all their benefits, $20, $10, and $10. His wife's excess earnings are charged against her full benefit for February ($60), her partial benefit for July ($10), her full benefit for August through November, and from $50 of her December benefit, leaving a $10 benefit payable to her for that month.

§ 404.444 Charging of earnings for taxable years beginning after 1954 and before 1961; and taxable years ending before July 1961.

(a) *Taxable years beginning after August 1958 and before 1961, and taxable years ending before July 1961.* For taxable years beginning after August 1958 and before 1961, and taxable years ending before July 1961, an individual's earnings (as defined in § 404.429) are charged to a particular month for purposes of deductions described in § 404.415 as follows:

(1) If an individual's earnings for the taxable year are not more than $100 times the number of months in such taxable year, no month in such year shall be charged with any earnings.

(2) If an individual's earnings for the taxable year exceed $100 times the number of months in such year, then the first $80 of such excess (or the whole of the excess, if it is less than $80) is charged to the first month for which the individual is entitled to benefits in the taxable year; the next $80 of the excess, if any (or the whole of the excess, if it is less than $80) is charged to the next succeeding month and so on, until all of the excess is charged or until every month to which a portion of the excess is chargeable has been so charged.

(b) *Taxable years beginning after 1954 and before September 1958.* For taxable years beginning after 1954 and before September 1958, an individual's excess earnings (see § 404.429) are charged to a particular month for purposes of deductions described in § 404.415 as provided in paragraph (a) of this section except that the excess earnings are charged beginning with the last month for which the individual is entitled to benefits in the taxable year (rather than the first month of such year), and then to the next preceding month (rather than the next succeeding month), and so on until all of the excess is charged or until every month to which a portion of the excess is chargeable has been so charged.

(c) *Months to which earnings cannot be charged.* Notwithstanding any of the provisions described in this section, an individual's excess earnings in a taxable year beginning after 1954 and before 1961 and in a taxable year ending before July 1961, may not be charged to any month in which the individual:

(1) Was not entitled to a monthly benefit under Subpart D of this part; or

(2) Was engaged in noncovered remunerative activity outside the United States (see § 404.418) and a deduction was made from his benefit for such month under the provisions described in § 404.417; or

(3) Was entitled to a wife's insurance benefit or a mother's insurance benefit and for which a deduction was made from such benefit because of failure to have a child in her care; or

(4) Was age 72 or over; or

(5) Did not engage in self-employment (see § 404.435 (c) and (e)) and did not render services for wages (see §§ 404.429 and 404.435(d)) of more than $80, with respect to months in taxable years beginning after 1954 and before September 1958, or of more than $100 with respect to months in taxable years beginning after August 1958.

§ 404.446 Definition of "substantial services."

(a) *General.* In general, the substantial services test is one of whether, in view of all the services rendered by the individual and the surrounding circumstances, the individual can reasonably be considered retired in the month in question. Even though an individual performs some services in a trade or business in a month, such services are not substantial where the evidence establishes to the satisfaction of the Administration that the individual may reasonably be considered retired in that month. In determining whether an individual has or has not performed substantial services in any

month, the following factors are considered:

(1) The amount of time the individual devoted to all trades and businesses;

(2) The nature of the services rendered by the individual;

(3) The extent and nature of the activity performed by the individual before he allegedly retired as compared with that performed thereafter;

(4) The presence or absence of an adequately qualified paid manager, partner, or family member who manages the business;

(5) The type of business establishment involved;

(6) The amount of capital invested in the trade or business; and

(7) The seasonal nature of the trade or business.

(b) *Individual engaged in more than one trade or business.* When an individual, in any month, performs services in more than one trade or business, his services in all trades or businesses are considered together in determining whether he performed substantial services in self-employment in such month.

(c) *Evidentiary requirements.* An individual who alleges that he did not render substantial services in any month, or months, shall submit detailed information about the operation of the trades or businesses, including the individual's activities in connection therewith. When requested to do so by the Administration, the individual shall also submit such additional statements, information, and other evidence as the Administration may consider necessary for a proper determination of whether the individual rendered substantial services in self-employment. Failure of the individual to submit the requested statements, information, and other evidence is a sufficient basis for a determination that the individual rendered substantial services in self-employment during the period in question.

§ 404.447 Evaluation of factors involved in substantial services test.

In determining whether an individual's services are substantial, consideration is given to the following factors:

(a) *Amount of time devoted to trades or businesses.* Consideration is first given to the amount of time the self-employed individual devotes to all trades or businesses, the net income or loss of which is includable in computing his earnings as defined in § 404.429. For the purposes of this paragraph, the time devoted to a trade or business includes all the time spent by the individual in any activity, whether physical or mental, at the place of business or elsewhere in furtherance of such trade or business. This includes the time spent in advising and planning the operation of the business, making business contacts, attending meetings, and preparing and maintaining the facilities and records of the business. All time spent at the place of business which cannot reasonably be considered unrelated to business activities is considered time devoted to the trade or business. In considering the weight to be given to the time devoted to trades or businesses the following rules are applied:

(1) *Forty-five hours or less in a month devoted to trade or business.* Where the individual establishes that the time devoted to his trades and businesses during a calendar month was not more than 45 hours, the individual's services in that month are not considered substantial unless other factors (see paragraphs (b), (c), and (d) of this section), make such a finding unreasonable. For example, an individual who worked only 15 hours in a month might nevertheless be found to have rendered substantial services if he was managing a sizeable business or engaging in a highly skilled occupation. However, the services of less than 15 hours rendered in all trades and businesses during a calendar month are not substantial.

(2) *More than 45 hours in a month devoted to trades and businesses.* Where an individual devotes more than 45 hours to all trades and businesses during a calendar month, it will be found that the individual's services are substantial unless it is established that the individual could reasonably be considered retired in the month and, therefore, that such services were not, in fact, substantial.

(b) *Nature of services rendered.* Consideration is also given to the nature of the services rendered by the individual in any case where a finding that the individual was retired would be unreasonable if based on time alone (see paragraph (a) of this section). The more highly skilled and valuable his services in self-employment are, the more likely the individual rendering such services could not reasonably be considered retired. The performance of services regularly also tends to show that the individual has not retired. Services are considered in relation to the technical and management needs of the business in which they are rendered. Thus, skilled services of a managerial or technical nature may be so important to the conduct of a sizable business that such services would be substantial even though the time required to render the services is considerably less than 45 hours.

(c) *Comparison of services rendered before and after retirement.* Where consideration of the amount of time devoted to a trade or business (see paragraph (a) of this section) and the nature of services rendered (see paragraph (b) of this section) is not sufficient to establish whether an individual's services were substantial, consideration is given to the extent and nature of the services rendered by the individual before his "retirement," as compared with the services performed during the period in question. A significant reduction in the amount or importance of services rendered in the business tends to show that the individual is retired; absence of such reduction tends to show that the individual is not retired.

(d) *Setting in which services performed.* Where consideration of the factors described in paragraphs (a), (b), and (c) of this section is not sufficient to establish that an individual's services in self-employment were or were not substantial, all other factors are considered. The presence or absence of a capable manager, the kind and size of the business, the amount of capital invested and whether the business is seasonal, as well as any other pertinent factors, are considered in determining whether the individual's services are such that he can reasonably be considered retired.

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

(a) *Beneficiary engages in noncovered remunerative activity; report by beneficiary.* Any individual entitled to a benefit which is subject to a deduction in that month because the individual engaged in noncovered remunerative activity outside the United States on 7 or more calendar days (see § 404.417) shall report the occurrence of such event to the Administration before the receipt and acceptance of a benefit for the second month following the month in which such event occurred.

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

(c) *Report required by person receiving benefits on behalf of another.* Where a person is receiving benefits on behalf of a beneficiary (see Subpart Q of this part) it is his duty to make the report to the Administration required by paragraph (a) or (b) of this section, on behalf of the beneficiary.

(d) *Report; content and form.* A report required under the provisions of this section shall be filed with the Social Security Administration. (See § 404.608 for procedures concerning place of filing and date of receipt of such a report.) The report should be made on a form prescribed by the Administration and in accordance with instructions, printed threon or attached thereto, as prescribed by the Administration. Prescribed forms may be obtained at any office of the Administration. If the prescribed form is not used, the report should be properly identified (e.g., show the name and social security claim number of the beneficiary about whom the report is made), describe the events being reported, tell when the events occurred, furnish any other pertinent data (e.g., who has care of the children), and be properly authenticated (e.g., bear the signature and address of the beneficiary making the report or the person reporting on his behalf). The report should contain all the information needed for a proper determination of whether a deduction applies and, if it does, the period for which such deductions should be made.

§ 404.451 Penalty deductions for failure to report within prescribed time limit noncovered remunerative activity outside the United States or not having care of a child.

(a) *Penalty for failure to report.* If an individual (or the person receiving benefits on his behalf) fails to comply with the reporting obligations of § 404.450 within the time specified in § 404.450, a penalty deduction is made from the individual's benefits in addition to the deduction described in § 404.417 (relating to noncovered remunerative activity outside the United States) or § 404.421 (relating to failure to have care of a child).

(b) *Amount of penalty deduction.* The amount of the penalty deduction required under paragraph (a) of this section for each failure to make a timely report is equal to the amount of the deduction from the individual's benefit made under the applicable provisions described in § 404.417 or § 404.421. However, the amount of the first penalty deduction imposed against any individual is equal to the deduction imposed for the first month in which the unreported deduction event occurred, even though the failure to report within the specified time is with respect to a period of more than one month.

(c) *Determining whether failure to report is first or subsequent failure—*(1) *No prior failure.* Where no penalty deduction under paragraph (b) of this section has previously been imposed against the beneficiary for failure to report noncovered remunerative activity outside the United States or for failure to report not having care of a child, all months (and this may include 2 or more months) for which a report is overdue as of the date on which the first delinquent report is made are included in the first failure period. The earliest of the months for which "good cause" (see § 404.454) for failure to make the required report is not found is considered the first failure.

(2) *Second or subsequent failure.* After one penalty deduction under paragraph (b) of this section has been imposed against an individual, each month for which a timely report is not made (and the count commences with reports which become overdue after the date on which the first delinquent report described in subparagraph (1) of this paragraph was made) and for which "good cause" for failure to make the required report is not found, is considered separately in determining whether a penalty applies and, if so, the amount of the penalty.

Example: M became entitled in January 1964 to mother's benefits; these benefits are not payable for any month in which the mother does not have a child in her care. M accepted benefits for each month from January 1964 through June 1965. In July 1965 she reported that she had not had a child in her care in January 1965. As she was not eligible to a benefit for any month she did not have a child in her care, M's July 1965 benefit was withheld to recover the overpayment she had received for January 1965, and the next payment she received was for August 1965. No penalty was imposed for her failure to make a timely report of the deduction event that occurred in January 1965 because it was determined that good cause existed.

In March 1966 M reported that she had not had a child in her care in September or October 1965; however, she had accepted benefit payments for each month from August 1965 through February 1966. Her benefits for March and April 1966 were withheld to recover the overpayment for September and October 1965. Also, it was determined that good cause was not present for M's failure to make a timely report of the deduction event that had occurred in September 1965. A penalty equal to her benefit for September 1965 was deducted from M's May 1966 payment since this was her "first failure" to report not having a child in her care. Payments to her then were continued.

On November 4, 1966, it was learned that M had not had a child in her care in November 1965 or in June, July, or August 1966 although she had accepted benefits for June through October 1966. Consequently, M's benefits for November 1966 through February 1967 were withheld to recover the 4 months' overpayment she received for months in which she did not have a child in her care. In addition, it was determined that good cause was not present for M's failure to report the deduction events, and penalties were imposed equal to M's benefits for June, July, and August 1966. The penalty was on a month-for-month basis as this was M's "second failure" to report not having a child in her care. No further penalty applied for November 1965 because that month was included in M's "first-violation" period.

(3) *Penalty deductions imposed under § 404.453 not considered.* A failure to make a timely report of earnings as required by § 404.452, for which a penalty deduction is imposed under § 404.453, is not counted as a failure to report in determining the first or subsequent failure to report noncovered remunerative activity outside the United States or not having care of a child.

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

(a) *Conditions under which a report of earnings, wages, and net earnings from self-employment is required.* An individual who, during a taxable year, is entitled to a monthly benefit (except if in each month of his taxable year he was entitled only to a disability insurance benefit) is required to report to the Administration the total amount of his earnings (as defined in § 404.429) for each such taxable year under the following provisions.

(1) *Taxable years ending after 1965.* A report is required when the individual's total earnings or wages (as defined in § 404.429) for any taxable year ending after 1965 exceed the product of $125 multiplied by the number of months in his taxable year, except that the report is not required for a taxable year if:

(i) The individual attained the age of 72 in or before the first month of his entitlement to benefits in his taxable year, or

(ii) The individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which he was entitled to benefits and was under age 72.

(2) *Taxable years beginning after 1954 and ending before 1966.* For taxable years beginning after 1954 and ending before 1966, a report is required when an individual's total earnings or wages (as defined in § 404.429) for a taxable year exceed the product of $100 multiplied by the number of months in the taxable year, except that a report is not required if:

(i) The individual attained the age of 72 in or before the first month of his entitlement to benefits in his taxable year, or

(ii) For taxable years beginning after August 1958, the individual's benefit payments were suspended under the provisions described in § 404.456 for all months in a taxable year in which he was entitled to benefits and was under age 72.

(b) *Time within which report must be filed.* The report for any taxable year beginning after 1954 shall be filed with the Social Security Administration 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. (See § 404.3(c) where the last day for filing the report falls on a Saturday, Sunday, or legal holiday, or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order.) The filing of an income tax return with the Internal Revenue Service is not such a report as is required to be filed under the provisions of this section even where the income tax return shows the same wages and net earnings from self-employment that must be reported to the Administration under this section.

(c) *Report required by person receiving benefits on behalf of another.* Where a person is receiving benefits on behalf of a beneficiary (see Subpart Q of this part), it is his duty to make the report to the Administration required by this section.

(d) *Report to be made on forms prescribed by the Administration.* A report required under the provisions of this section shall be filed with the Social Security Administration. (See § 404.608 for procedures concerning place of filing and date of receipt of such a report.) The report shall be made on a form prescribed by the Administration and in accordance with the instructions printed on or attached to the form. The prescribed forms may be obtained from any office of the Social Security Administration. If the prescribed form is not used, the report should show the name and social security claim number of the beneficiary about whom the report is made; identify the taxable year for which the report is made; show the total amount of wages for which the beneficiary rendered services during his taxable year, the amount of his net earnings from self-employment for such year, and the amount of his net loss from self-employment for such year; and show the name and address of the individual making the report. To overcome the presumptions that the beneficiary rendered services for wages exceeding the allowable amount and rendered substantial services in

self-employment in each month (see § 404.435), the report should also show the specific months in which the beneficiary did not render services in employment for wages of more than the allowable amount (as described in § 404.435 and § 404.444) and did not render substantial services in self-employment (as described in § 404.446 and § 404.447).

(e) *Requirement to furnish requested information.* A beneficiary, or the person reporting on his behalf, is required to furnish any other information about the beneficiary's earnings and services that the Administration requests for the purpose of determining the correct amount of benefits payable for a taxable year (see § 404.455).

§ 404.453 Penalty deductions for failure to report earnings timely.

(a) *Penalty for failure to report earnings; general.* Penalty deductions are imposed against an individual's benefits, in addition to the deductions required because of his excess earnings (see § 404.415), if:

(1) He fails to make a timely report of his earnings as specified in § 404.452 for a taxable year beginning after 1954; and

(2) A deduction is imposed because of his earnings (see § 404.415) for that year; and

(3) He received and accepted any payment of benefits for that year.

(b) *Determining amount of penalty deduction.* The amount of the penalty deduction for failure to report earnings for a taxable year within the prescribed time is determined as follows:

(1) *First failure to file timely report.* The penalty deduction for the first failure to file a timely report is an amount equal to the individual's benefit or benefits for the last month for which he was entitled to such benefit or benefits during the taxable year.

(2) *Second failure to file timely report.* The penalty deduction for the second failure to file a timely report is an amount equal to twice the amount of the individual's benefit or benefits for the last month for which he was entitled to such benefit or benefits during such taxable year.

(3) *Subsequent failures to file timely reports.* The penalty deduction for the third or subsequent failure to file a timely report is an amount equal to three times the amount of the individual's benefit or benefits for the last month for which he was entitled to such benefit or benefits during such taxable year.

(c) *Determining whether a failure to file a timely report is first, second, or subsequent failure*—(1) *No prior failure.* Where no penalty deduction under this section has previously been imposed against the beneficiary for failure to make a timely report of his earnings, all taxable years (and this may include 2 or more years) for which a report of earnings is overdue as of the date the first delinquent report is made are included in the first failure. The latest of such years for which "good cause" for failure to make the required report (see § 404.454) is not found is considered the first failure to file a timely report.

Example: X became entitled to benefits in 1964 and had reportable earnings for 1964, 1965, and 1966. He did not make his annual reports for those years until July 1967. At that time it was found that 1966 was the only year for which he had good cause for not making a timely report of his earnings. Since all taxable years for which a report is overdue as of the date of the first delinquent report are included in the first failure period, it was found that his first failure to make a timely report was for 1965. The penalty is equal to his December 1965 benefit rate. If good cause had also been found for both 1965 and 1964, then X would have "no prior failure" within the meaning of this subsection.

(2) *Second and subsequent failures.* After one penalty deduction under paragraph (b) of this section has been imposed against an individual, each taxable year for which a timely report of earnings is not made (and the count commences with reports of earnings which become delinquent after the date the first delinquent report described in subparagraph (1) of this paragraph was made), and for which "good cause" for failure to make the required report is not found, is considered separately in determining whether the failure is the second or subsequent failure to report timely.

Example: Y incurred a penalty deduction for not making his 1963 annual report until July 1964. In August 1966 it was found that he had not made a timely report of either his 1964 or 1965 earnings, and good cause was not present with respect to either year. The penalty for 1964 is equal to twice his benefit rate for December 1964. The penalty for 1965 is equal to three times his benefit rate for December 1965.

(3) *Penalty deduction imposed under § 404.451 not considered.* A failure to make a report as required by § 404.450, for which a penalty deduction is imposed under § 404.451, is not counted as a failure to report in determining, under this section, whether a failure to report earnings or wages is the first or subsequent failure to report.

(d) *Limitation on amount of penalty deduction.* Notwithstanding the provisions described in paragraph (b) of this section, the amount of the penalty deduction imposed for failure to file a timely report of earnings for a taxable year may not exceed the number of months in that year for which the individual received and accepted a benefit and for which deductions are imposed by reason of his earnings for such year. (See § 404.458 for other limitations on the amount of the penalty deduction.)

§ 404.454 Good cause for failure to make required reports.

(a) The failure of an individual to make a timely report under the provisions described in § 404.450 and § 404.452 will not result in a penalty deduction if the individual establishes to the satisfaction of the Administration that his failure to file a timely report was due to good cause and not due to any willful neglect. In determining whether good cause for failure to report timely has been established by the individual, consideration is given to whether the failure to report within the proper time limit was the result of untoward circumstances, misleading action of the Administration, or confusion as to the requirements of the Act resulting from amendments to the Act or other legislation. For example, "good cause" may be found where failure to file a timely report was caused by:

(1) Serious illness of the individual, or death or serious illness in his immediate family;

(2) Inability of the individual to obtain, within the time required to file the report, earnings information from his employer because of death or serious illness of the employer or one in the employer's immediate family; or unavoidable absence of his employer; or destruction by fire or other damage of the employer's business records;

(3) Destruction by fire, or other damage, of the individual's business records;

(4) Transmittal of the required report, within the time required to file the report, in good faith to another Government agency even though the report does not reach the Administration until after the period for reporting has expired;

(5) Unawareness of the statutory provision that an annual report of earnings is required for the year in which the individual attained age 72 where his earnings exceeded $1,500 for a taxable year ending after 1965, or exceeded $1,200 for a taxable year ending before 1966;

(6) Failure on the part of the Administration to furnish forms in sufficient time for an individual to complete and file the report on or before the date it was due, provided the individual made a timely request to the Administration for the forms;

(7) Belief that an extension of time for filing income tax returns granted by the Internal Revenue Service was also applicable to the annual report to be made to the Social Security Administration; or

(8) Reliance upon a written report to the Social Security Administration made by, or on behalf of, the beneficiary before the close of the taxable year, if such report contained sufficient information about the beneficiary's earnings, or work, to require suspension of his benefits (see § 404.456) and the report was not subsequently refuted or rescinded.

(b) Where circumstances are similar and an individual fails on more than one occasion to make a timely report, good cause normally is not found for the second or subsequent violation.

§ 404.455 Request by Administration for reports of earnings; effect of failure to comply with request.

(a) *Request by Administration for report during taxable year; effect of failure to comply.* The Administration may, during the course of a taxable year, request a beneficiary to make a declaration of his estimated earnings (as defined in § 404.429) for his taxable year and to furnish any other information

about his earnings that the Administration may specify. If a beneficiary fails to comply with such a request from the Administration, the beneficiary's failure, in itself, constitutes justification (under section 203(h) of the Act) for a determination that it may reasonably be expected that the beneficiary will have deductions imposed under the provisions described in § 404.415 due to his earnings for that taxable year.

(b) *Request by Administration for report after close of taxable year; failure to comply.* After the close of his taxable year, the Administration may request a beneficiary to furnish a report of his earnings for the closed taxable year and to furnish any other information about his earnings for that year that the Administration may specify. If he fails to comply with this request, this failure shall, in itself, constitute justification (under section 203(h) of the Act) for a determination that the beneficiary's benefits are subject to deductions as described in § 404.415 for each month in the taxable year (or only for the months thereof specified by the Administration).

§ 404.456 Current suspension of benefits because an individual works or engages in self-employment.

(a) *Circumstances under which benefit payments may be suspended.* If, on the basis of information obtained by or submitted to the Administration, it is determined that an individual entitled to monthly benefits for any taxable year may reasonably be expected to have deductions imposed against his benefits (as described in § 404.415) by reason of his earnings for such year, the Administration may, before the close of the taxable year, suspend all or part, as the Administration may specify, of the benefits payable to the individual and to all other persons entitled (or deemed entitled—see § 404.420) to benefits on the basis of the individual's earnings record.

(b) *Duration of suspension.* The suspension described in paragraph (a) of this section shall remain in effect with respect to the benefits for each month until the Administration has determined whether or not any deduction under § 404.415 applies for such month.

(c) *When suspension of benefits becomes final.* For taxable years beginning after August 1958, if benefit payments were suspended (as described in paragraph (a) of this section) for all months of entitlement in an individual's taxable year, no benefit payment for any month in that year may be made after the expiration of the period of 3 years, 3 months, and 15 days following the close of the individual's taxable year unless, within that period, the individual, or any person entitled to benefits based on his earnings record, files with the Administration information showing that a benefit for a month is payable to the individual. Subject to the limitations of this paragraph, a determination about deductions may be reopened under the circumstances described in § 404.957.

§ 404.457 Deductions where taxes neither deducted from wages of certain maritime employees nor paid.

(a) *When deduction is required.* A deduction is required where:

(1) An individual performed services after September 1941 and before the termination of Title I of the First War Powers Act, 1941, on or in connection with any vessel as an officer or crew member; and

(2) The services were performed in the employ of the United States and employment was through the War Shipping Administration or, for services performed before February 11, 1942, through the United States Maritime Commission; and

(3) The services, under the provisions described in § 403.803(d) of Part 403 of this chapter (Regulations No. 3 of the Social Security Administration), constituted employment for purposes of title II of the Social Security Act; and

(4) The taxes imposed (by section 1400 of the Internal Revenue Code of 1939, as amended) with respect to such services were neither deducted from the individual's wages nor paid by the employer.

(b) *Amount of deduction.* The deduction required by paragraph (a) of this section is an amount equal to 1 percent of the wages with respect to which the taxes described in paragraph (a)(4) of this section were neither deducted nor paid by the employer.

(c) *How deduction is made.* The deduction required by paragraph (a) of this section is made by withholding an amount as determined under paragraph (b) of this section from any monthly benefit or lump-sum death payment based on the earnings record of the individual who performed the services described in paragraph (a) of this section.

(Sec. 907 of the Social Security Act Amendments of 1939—Public Law 379, 76th Cong.; 53 Stat. 1402, as amended by Public Law 17, 78th Cong.; 57 Stat. 47.)

§ 404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.

Notwithstanding the provisions described in § 404.415, § 404.417, § 404.421, § 404.422, § 404.451, and § 404.453 about the amount of the deduction to be imposed for a month, no such deduction is imposed for a month when the benefits payable for that month to all persons entitled to benefits on the same earnings record and living in the same household remain equal to the maximum benefits payable to them on that earnings record. Where making such deductions and increasing the benefits to others in the household (for the month in which the deduction event occurred) would give members of the household less than the "maximum" (as determined under § 404.404) payable to them, the amount of the deduction imposed is reduced to the difference between the maximum amount of benefits payable to them and the total amount which would have been paid if the benefits of members of the household not subject to deductions were increased to the deduction for such month may be paid the difference between the deduction so reduced and his benefit as adjusted under § 404.403 (without application of § 404.402(a)). All other persons in the household are paid, for such month, their benefits as adjusted under § 404.403 without application of § 404.402(a).

§ 404.460 Nonpayment of monthly benefits of aliens outside the United States for more than 6 months.

(a) *Nonpayment of monthly benefits.* Except as described in paragraph (b) of this section, after December 1956 no monthly benefit may be paid to any individual who is not a citizen or national of the United States, for any month after the sixth consecutive calendar month during all of which he is outside the United States, and before the first calendar month for all of which he is in the United States after such absence. (See § 404.380 regarding special payments at age 72.)

(1) For nonpayment of benefits under this section, it is necessary that the beneficiary be an alien and while an alien be outside the United States for more than six full consecutive calendar months. The period of absence exceeding 6 months does not include any month before the first month the alien became entitled to monthly benefits. A full calendar month includes 24 hours of each day of the calendar month.

(2) Nonpayment of benefits to an individual under this section does not cause nonpayment of benefits to other persons receiving benefits based on the individual's earnings record.

(b) *When nonpayment provisions do not apply.* The provisions described in paragraph (a) of this section do not apply to a benefit for any month if:

(1) The individual was, or upon application would have been, entitled to a monthly benefit for December 1956, based upon the same earnings record; or

(2) The individual upon whose earnings the benefit is based, before that month, has resided in the United States for a period or periods aggregating 10 years or more or has earned not less than 40 quarters of coverage (for purposes of this subsection a period of residence begins with the day the insured individual arrives in the United States with the intention of establishing at least a temporary home here; it continues so long as he maintains a more or less permanent attachment to and abode in the United States, accompanied by actual physical presence in the United States for a significant part of the period; and ends with the day of departure from the United States with the intention to reside elsewhere); or

(3) The individual is outside the United States while in the active military or naval service of the United States; or

(4) The individual on whose earnings the benefit is based died before that month and:

(i) Death occurred while the individual was on active duty or inactive duty training as a member of a uniformed service, or

(ii) Death occurred after the individual was discharged or released from a period of active duty or inactive duty training as a member of a uniformed service, and the Administrator of Veterans' Affairs determines, and certifies to the Secretary, that the discharge or release was under conditions other than dishonorable and that death was as a result of a disease or injury incurred or aggravated in line of duty while on active duty or inactive duty training; or

(5) The individual on whose earnings record the benefit is based worked in service covered by the Railroad Retirement Act, and such work is treated as employment covered by the Social Security Act under the provisions described in Subpart O of this part; or

(6) The nonpayment of monthly benefits under the provisions described in paragraph (a) of this section would be contrary to a treaty obligation of the United States in effect on August 1, 1956 (see § 404.463(b)); or

(7) The individual is a citizen of a foreign country that the Secretary determines has in effect a social insurance or pension system which meets all of the following conditions:

(i) Such system pays periodic benefits or the actuarial equivalent thereof; and

(ii) The system is of general application; and

(iii) Benefits are paid in this system on account of old age, retirement, or death; and

(iv) Individuals who are citizens of the United States but not citizens of the foreign country and who qualify for such benefits are permitted to receive benefits without restriction or qualification, at their full rate, or the actuarial equivalent thereof, while outside of the foreign country and without regard to the duration of their absence therefrom.

§ 404.461 Nonpayment of lump sum after death of alien outside United States for more than 6 months.

Where an individual dies outside the United States after January 1957 and no monthly benefit was or could have been paid to him for the month preceding the month in which he died because of the provisions described in § 404.460, no lump-sum death payment may be made upon the basis of the individual's earnings record.

§ 404.462 Nonpayment of hospital and medical insurance benefits of alien outside United States for more than 6 months.

No payments may be made under Part A (hospital insurance benefits) of title XVIII for items or services furnished to an individual in any month for which the prohibition described in § 404.460 against payment of benefits to an individual outside the United States for more than six full consecutive calendar months is applicable (or would be if he were entitled to any such benefits). Also, no payments may be made under Part B (supplementary medical insurance benefits) of title XVIII for expenses incurred by an individual during any month the individual is not paid a monthly benefit by reason of the provisions described in § 404.460 or for which no monthly benefit would be paid if he were otherwise entitled thereto.

§ 404.463 Nonpayment of benefits of aliens outside the United States; "foreign social insurance system," and "treaty obligation" exceptions defined.

(a) *"Foreign social insurance system" exception.* The following criteria are used to evaluate the social insurance or pension system of a foreign country to determine whether the exception described in § 404.460(b) to the alien nonpayment provisions applies:

(1) *Social insurance or pension system.* A "social insurance system" means a governmental plan which pays benefits as an earned right, on the basis either of contributions or work in employment covered under the plan, without regard to the financial need of the beneficiary. However, a plan of this type may still be regarded as a "social insurance system" though it may provide, in a subordinate fashion, for a supplemental payment based on need. A "pension system" means a governmental plan which pays benefits based on residence or age, or a private employer's plan for which the government has set up uniform standards for coverage, contributions, eligibility, and benefit amounts provided that, in both of these types of plans, the financial need of the beneficiary is not a consideration.

(2) *"In effect."* The social insurance or pension system of the foreign country must be "in effect." This means that the foreign social insurance or pension system is in full operation with regard to taxes (or contributions) and benefits, or is in operation with regard to taxes (or contribution and provision is made for payments to begin immediately upon the expiration of the period provided in the law for acquiring earliest eligibility. It is not "in effect" if the law leaves the beginning of operation to executive or other administrative action; nor is it in effect if the law has been temporarily suspended.

(3) *"General application."* The term "of general application" means that the social insurance or pension system (or combination of systems) covers a substantial portion of the paid labor force in industry and commerce, taking into consideration the industrial classification and size of the paid labor force and the population of the country, as well as occupational, size of employer, and geographical limitations on coverage.

(4) *"Periodic benefit or actuarial equivalent."* The term "periodic benefit" means a benefit payable at stated regular intervals of time such as weekly, biweekly, or monthly. "Actuarial equivalent" of a periodic benefit means the commutation of the value of the periodic benefit into a lump-sum payment, taking life expectancy and interest into account.

(5) *Benefits payable on account of old age, retirement, or death.* The requirement that benefits be payable "on account of old age, retirement, or death," is satisfied if the foreign social insurance plan or system includes provision for payment of benefits to aged or retired persons and to dependents and survivors of covered workers. The requirement is also met where the system pays benefits based only on old age or retirement. The requirement is not met where the only benefits payable are workmen's compensation payments, cash sickness payments, unemployment compensation payments, or maternity insurance benefits.

(6) *System under which U.S. citizens who qualify may receive payment while outside the foreign country.* The foreign social insurance or pension system must permit payments to qualified U.S. citizens while outside such foreign country, regardless of the duration of their absence therefrom and must make the payments without restriction or qualification to these U.S. citizens at full rate, or at the full actuarial value. The foreign system is considered to pay benefits at the full rate if the U.S. citizen receives the full benefit rate in effect for qualified beneficiaries at the time of his award, whether he is then inside or outside the paying country; and he continues to receive the same benefit amount so long as he remains outside that country, even though he may not receive any increases going into effect after his award, provided that in those other countries in which such increases are denied to beneficiaries, they are denied to all beneficiaries including nationals of the paying country.

(7) *List of countries which meet the social insurance or pension system exception in section 202(t)(2) of the Act.* The following countries have been found to have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Act. Unless otherwise specified, each country meets such requirements effective January 1957. The effect of these findings is that beneficiaries who are citizens of such countries may be paid benefits regardless of the duration of their absence from the United States.

Austria (except from January 1958 through June 1961).
Bolivia.
Brazil.
Canada (beginning January 1966).
Chile.
Congo (Kinshasa), Republic of (beginning July 1961).
Costa Rica (beginning May 1962).
Cyprus (beginning October 1964).
Ecuador.
Ivory Coast.
Luxembourg.
Malta (beginning September 1964).
Monaco.
Panama.
Philippines (beginning June 1960).
Poland (beginning March 7, 1957).
San Marino (beginning January 1965).
Spain (beginning May 1966).
Turkey.
United Kingdom.
Upper Volta (beginning October 1960).
Yugoslavia.

(b) *The "treaty obligation" exception.* It is determined that the Treaties of Friendship, Commerce, and Navigation now in force between the United States and the Federal Republic of Germany, Greece, the Republic of Ireland, Israel, Italy, Japan, and Nicaragua, respectively, create treaty obligations precluding the application of § 404.460(a) to citizens of such countries; and that the Treaty of Friendship, Commerce, and Navigation now in force between the United States and the Kingdom of the Netherlands creates treaty obligations precluding the application of § 404.460(a) to citizens of that country with respect to monthly survivors benefits only. There is no treaty obligation that would preclude the application of § 404.460(a) to citizens of any country other than those listed above.

§ 404.464 Nonpayment of benefits where individual is deported; prohibition against payment of lump sum based on deported individual's earnings records.

(a) *Old-age or disability insurance benefits.* When an individual is deported (after September 1, 1954) under the provisions of paragraphs (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act, no old-age or disability insurance benefit is payable to the individual for any month occurring after the month in which the Administration is notified by the Attorney General of the United States that the individual has been deported and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence. An individual is considered lawfully admitted for permanent residence as of the month he enters the United States with permission to reside here permanently.

(b) *Other monthly benefits.* If, under the provisions described in paragraph (a) of this section, no old-age or disability insurance benefit is payable to an individual for a month, no monthly insurance benefit is payable for that month, based upon the individual's earnings record, to any other person who is not a citizen of the United States and who is outside the United States for any part of that month.

(c) *Lump-sum death payment.* No lump-sum death payment is payable on the basis of the earnings of an individual deported under paragraphs (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act if the individual dies in or after the month in which notice that he has been deported is received by the Administration and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence.

§ 404.465 Conviction for subversive activities; effect on monthly benefits and entitlement to hospital insurance benefits.

(a) *Effect of conviction.* Where an individual is convicted of any offense (committed after August 1, 1956) under chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or under section 4, 112, or 113 of the Internal Security Act of 1950, as amended, the court, in addition to all other penalties provided by law, may order that, in determining whether any monthly benefit is payable to the individual for the month in which he is convicted or for any month thereafter, and in determining whether the individual is entitled to hospital insurance benefits under Part A of title XVIII for any such month, and in determining the amount of the benefit for that month, the following are not to be taken into account:

(1) Any wages paid to such individual, or to any other individual, in the calendar quarter in which such conviction occurred or in any prior calendar quarter, and

(2) Any net earnings from self-employment derived by the individual, or any other individual, during the taxable year in which the conviction occurred or during any prior taxable year.

(b) *Recalculation of benefit.* When notified by the Attorney General that the additional penalty as described in paragraph (a) of this section has been imposed against any individual entitled to benefits under section 202 or section 223 of the Act (see Subpart D), the Administration, for the purposes of determining the individual's entitlement to such benefits as of the month in which convicted and the amount of the benefit, will exclude the applicable wages and net earnings in accordance with the order of the court.

(c) *Effect of pardon.* In the event that an individual, with respect to whom the additional penalty as described in paragraph (a) of this section has been imposed, is granted a pardon of the offense by the President of the United States, such penalty is not applied in determining such individual's entitlement to benefits, and the amount of such benefit, for any month beginning after the date on which the pardon is granted.

§ 404.466 Conviction for subversive activities; effect on enrollment for supplementary medical insurance benefits.

An individual may not enroll under Part B (supplementary medical insurance benefits) of title XVIII if he has been convicted of any offense described in § 404.465.

§ 404.467 Nonpayment of benefits; individual entitled to disability insurance benefits based on blindness is engaging in substantial gainful activity.

An individual who has attained age 55 and who meets the definition of disability for disability insurance benefit purposes based on "statutory blindness," as defined in § 404.1501, may be entitled to disability insurance benefits for months in which he is engaged in certain types of substantial gainful activity. No payment, however, may be made to the individual or to beneficiaries entitled to benefits on his earnings record for any month in which such individual engages in any type of substantial gainful activity.

2. Section 404.365 is deleted. The material contained in this section has been transferred to § 404.464 without substantive change and with a continuity of force and effect. This change has been made solely for the purposes of organization.

3. *Effective date.* The foregoing amendments shall become effective on the date of publication in the FEDERAL REGISTER.

Dated: December 5, 1967.

[SEAL] ROBERT M. BALL,
Commissioner of Social Security.

Approved December 14, 1967.

WILBUR J. COHEN,
Acting Secretary of Health, Education, and Welfare.

[F.R. Doc. 67-14735; Filed, Dec. 19, 1967; 8:47 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER D—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES; DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Exemptions for Small Packages, Minor Hazards, and Special Circumstances

Effective on date of publication of this order in the FEDERAL REGISTER, § 191.63 is republished in its entirety as follows for codification and editorial change purposes. No substantive changes are made hereby.

§ 191.63 Exemptions for small packages, minor hazards, and special circumstances.

(a) The following exemptions are granted for the labeling of hazardous substances under the provisions of § 191.62:

(1) When the sole hazard from a substance in a self-pressurized container is that it generates pressure or when the sole hazard from a substance is that it is flammable or extremely flammable, the name of the component which contributes the hazard need not be stated.

(2) Common matches, including book matches, wooden matches, and so-called "safety" matches are exempted from the labeling requirements of section 2(p)(1) of the act insofar as they apply to the product being considered hazardous because of being "flammable" or "highly flammable" as defined in § 191.1(k).

(3) Paper items such as newspapers, wrapping papers, toilet and cleansing tissues, and paper writing supplies are exempted from the labeling require-