may be obtained from NCWM by calling 402–434–4880, by E-mailing *nfo@ncwm.net,* or on the Internet at *http://www.nist.gov/owm.*

(b) The following Handbook 44 requirements are not incorporated by reference:

Scales (2.20)

S.1.8. Computing Scales
S.1.8.2. Money-Value Computation
S.1.8.3. Customer's Indications
S.1.8.4. Recorded Representations, Point of Sale
S.2.5.2. Jeweler's, Prescription, & Class I & II Scales
S.3.3. Scoop Counterbalance
N.1.3.2. Dairy-Product Test Scales
N.1.5. Discrimination Test (Not adopted for Grain Test Scales only)
N.1.8. Material Tests
N.3.1.2. Interim Approval
N.3.1.3. Enforcement Action For Inaccuracy
N.4. Coupled-in-Motion Railroad Weighing Systems
N.6. Nominal Capacity of Prescription Scales
T.1.2. Postal and Parcel Post Scales
T.2.3. Prescription Scales
T.2.4. Jewelers' Scales (all sections)
T.2.5. Dairy—Product—Test Scales (all sections)
T.N.3.9. Materials Test on Customer—Operated Bulk—Weighing Systems for Recycled Materials
UR.1.4. Grain Test Scales: Value of Scale Divisions
UR.3.1. Recommended Minimum Load
UR.3.1.1. Minimum Load, Grain Dockage

Automatic Bulk Weighing Systems (2.22)

N.1.3. Decreasing-Load Test

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–30712 Filed 12–7–10; 8:45 am]

BILLING CODE 3410–KD–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA 2009–0073]

RIN 0960–AH07

Amendments to Regulations Regarding Withdrawal of Applications and Voluntary Suspension of Benefits

AGENCY: Social Security Administration.

ACTION: Final rule with request for comments.

SUMMARY: We are modifying our regulations to establish a 12-month time limit for the withdrawal of old-age benefits applications, allow one withdrawal per lifetime, and limit the voluntary suspension of benefits for purposes of receiving delayed retirement credits to months for which you have not received a payment. We are making these changes to revise current policies that have the potential for misuse.

DATES: This final rule will be effective December 8, 2010. To ensure that your comments are considered, we must receive them no later than February 7, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0073 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2009–0073. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Deidre Bemister, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, Office of Applications and Electronic Services Support Policy, 2500 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 410–966–6223. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

In 1935, Congress passed the Social Security Act (Act), which established and funded the Social Security program. In his Presidential signing statement, President Franklin D. Roosevelt affirmed that the lawmakers intended the Act to "give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age." [1] Due to concerns about the solvency of the Social Security program, in 1977 Congress passed amendments to the Act designed to restore the long-term balance of the program. Among the changes enacted was a delayed retirement credit (DRC) that increased benefits for those who delay retirement past full retirement age (FRA).[2]

Workers choose when to apply for old-age benefits. Workers who apply for old-age benefits at FRA will receive full benefit rates. Workers may also choose to apply before or after FRA. Workers who apply between age 62 and FRA will receive benefit amounts reduced by a certain percentage for each month they collect benefits before FRA. Workers who apply between FRA and age 70 will receive amounts increased by a certain percentage for each month they forego benefit payments after FRA. Workers who live to their average life expectancies will receive about the same amount in lifetime benefits, regardless if they began receiving benefits at age 62, FRA, age 70, or any age in between.

Benefit Application Withdrawal

Workers occasionally reconsider their having applied for old-age benefits. Continued work is a common reason for such reconsideration. The income from continued work may bring workers earnings over the annual earnings limit and require us to withhold benefits. Although the Act does not include a specific provision concerning

[1] *Presidential Statement Signing the Social Security Act, August 14, 1935.* Available at: *http://www.ssa.gov/history/fdrstmts.html#signing.*

[2] Section 216(l) of the Act provides for a gradual increase in the full retirement age from age 65 to age 67. The change first affected those workers born in 1938. By 2027, the incremental increases will be complete and a full retirement age of 67 will be applicable to all workers born in 1960 or later. These provisions do not change the age at which a worker can take early retirement at a reduced benefit amount, which remains age 62.

withdrawal of an application, we have a longstanding policy that allows workers to withdraw benefit applications.

Our current regulations permit living applicants or beneficiaries to withdraw benefit applications for any reason. Applicants or beneficiaries need simply submit written requests for withdrawal, and beneficiaries must repay benefits received. Our program experience has shown that most workers withdraw their applications within one year of application.

Recent media articles have promoted the use of our application withdrawal process as a means for retired beneficiaries to increase their benefits or acquire an "interest-free loan." [3] Our current policy permits retirement beneficiaries to apply for old-age benefits prior to FRA, begin receiving reduced benefits, withdraw their applications, repay benefits, and reapply for full or increased benefits later. Under this policy, the payment of monthly benefits ceases until the beneficiary reapplies, at which time the beneficiary receives a higher monthly benefit amount than before.

Reacting to this media attention, the Center for Retirement Research at Boston College published an article titled, *Strange but True: Free Loan from Social Security* that discussed this "unconventional claiming strateg[y]." [4] The authors very astutely observed that our current withdrawal policy has the potential to "pay higher lifetime benefits to some individuals and increase system costs." [5]

This "free loan" is not free. It denies the Trust Fund and the Federal Government the use of these monies and the potential returns on the use of those funds. Moreover, the processing of withdrawal applications uses resources that we could use to serve others. Our Nation faces significant challenges resulting from the potential number of future retirees. Current market and economic conditions have exacerbated these challenges.

Additionally, our current withdrawal policy has the potential to benefit those with the least need. Because a worker must repay previously awarded benefits in one lump sum, without interest, it is unlikely that the average retired beneficiary is in a position to reverse this earlier decision. Those who have the means to take advantage of our current policy do so at the expense of the Trust Fund.

Our field offices have noticed an increase in the number of application withdrawals. We anticipate that the number of withdrawals will continue to rise if this policy is not changed. The current economic climate may lead many current retirees to return to work in order to obtain a higher future benefit. Current retirees with the means to repay benefits received could decide to do so in order to start collecting higher benefits immediately.

Benefit Suspension

We currently allow beneficiaries to suspend past, current, and future old-age benefit payments. Beneficiaries who suspend past payments must repay benefits received during the period of suspension. This policy also has the potential for misuse. Our current policy allows workers to apply for old-age benefits prior to FRA, begin receiving reduced benefits, suspend the benefits retroactively, repay benefits, and earn DRCs for the period of suspension. Workers earn DRCs for each month retirement is delayed past FRA up to age 70. As a result, workers who retroactively suspend old-age benefits to earn DRCs receive a higher monthly benefit amount. Because beneficiaries could use retroactive voluntary suspension as a vehicle to repay benefits and then reapply for higher benefits at a later age, we are revising this policy.

Regulatory Changes

We are under a clear congressional mandate to protect the Trust Funds. It is crucial that we change our current policies that have the effect of allowing beneficiaries to withdraw applications or suspend benefits and use benefits from the Trust Funds as something akin to an interest-free loan. At the same time, we also need to ensure that beneficiaries who experience an unforeseen change of circumstances and who may need to withdraw an application or suspend benefits are able to do so. Establishing limitations on the number and scope of application withdrawals and on the period for which you can voluntarily suspend your benefits for purposes of receiving delayed retirement credits will help prevent abuse and maintain flexibility for beneficiaries.

In our experience, we have not found that survivor and disability beneficiaries withdraw their applications and repay the benefits they have received. Applications for old-age benefits are most prone to manipulation for personal financial gain by our current policies. For these reasons, these changes will be limited solely to applications for old-age benefits.

We are modifying section 404.640 to limit the withdrawal of old-age applications. Under this final rule, application withdrawals will be limited to one withdrawal per lifetime. The withdrawal must occur within 12 months of the first month of entitlement. This 12-month limitation will allow flexibility for beneficiaries who experience an unexpected change in circumstances during that time. In addition, limiting the period for application withdrawals to within 12 months of the first month of entitlement will minimize the likelihood of abuse and the potential harm to the Trust Funds.

We decided to limit the withdrawal of old-age benefits to 12 months. We chose 12 months as an appropriate period because it balances giving claimant's flexibility in reconsidering their claiming benefit decisions with eliminating the "interest-free loan" loophole. First, a longer period would not appreciably increase the universe of claimants who reconsider their claiming decisions, because our data show that in recent years 85–90 percent of applicants who withdrew their applications did so in the first twelve months.

Second, the 12-month limitation period is a financial disincentive—there is little to be gained by investing benefits for only 12 months. Finally, for those cases where claimants request withdrawal after 12 months, we have other ways to address their concerns if they wish to change their date of entitlement to benefits. For example, we can revise a month of election determination using existing policies:

- Evaluating conditional month of election determinations—if individuals who are subject to the annual earnings test are due no payment for the year of entitlement, they might believe that they need to withdraw their application and re-file. However, withdrawing the application is unnecessary because we may reopen and revise the month of election. Because these claimants have earnings above the annual earnings limit, we consider their month of election as "conditional" and would automatically revise it to a later date based on the annual earnings report;
- Adjusting benefits to consider the effect of work and earnings on benefit amounts—if individuals decide to return to work, it is unnecessary for them to withdraw their application. Beneficiaries will receive credit for all months in which they do not receive a

[3] Janet Novack, *Trade in Your Social Security Check,*" *Forbes,* 7 February 2008. Available at: *http://www.forbes.com/2008/02/07/retirement-roth-taxes-pf-guru-in_jn_0207retirement_inl.html.*

[4] Munnell, Alicia H., Alex Golub-Sass, and Nadia Karamcheva, *Strange but True: Free Loan From Social Security,* Trustees of Boston College, Center for Retirement Research. March 2009, Number 9–6. Available at: *http://crr.bc.edu/images/stories/Briefs/ib_9-6.pdf.*

[5] *Id.*

full monthly benefit. When individuals reach full retirement age, SSA will increase their monthly benefits under a process called the adjustment of the reduction factor. This process removes from the calculation of the ongoing benefit at full retirement age, the actuarial reduction associated with each month for which beneficiaries do not receive a full monthly benefit; and,

• Reopening determinations under our rules of administrative finality—SSA might discover that duplicate postings result in an incorrect payment amount, causing a claimant to elect retirement benefits instead of widow's benefits. The claimant does not need to withdraw the retirement application. Instead, we can use our rules of administrative finality to reopen the prior entitlement decision.

The 12-month limitations period should have no effect on beneficiaries who wish to change their month of election because of a change in their circumstances or because of an error in the calculation of their benefits. It would, however, effectively eliminate "interest-free loans."

We are also modifying section 404.313 to limit the voluntary suspension of benefits. Under these final rules, if we have determined that you are entitled to benefits, you may voluntarily suspend benefits for any month beginning the month after the month in which you request that we voluntarily suspend your benefits. If you apply for benefits, and we have not made a determination that you are entitled to benefits, you may voluntarily suspend benefits for any month for which you have not received a payment.

Under the Act, if the beneficiary is entitled to retirement benefits, delayed retirement credits may be available if the beneficiary "did not receive benefits pursuant to a request by such individual that benefits not be paid."[6] In these rules, we are interpreting the statutory phrase "did not receive benefits pursuant to a request by such individual that benefits not be paid" to mean that the beneficiary may voluntarily suspend benefits for purposes of the DRC only on a prospective basis.

Applicants for whom we have not made an initial determination may voluntarily suspend benefits for purposes of the DRC, for any months.[7] We recognize that this is a change from our current policy. However, because the statute refers to benefits that the "individual did not receive," rather than "received and repaid," we believe that the policy we are adopting in these rules is consistent with the language of the statute and congressional intent.

The following illustrates the change in policy:

1. Example—Beneficiary currently receiving benefits:

A beneficiary is currently receiving old-age benefits and requests to voluntarily suspend retroactive, current, and future benefits and repay all benefits received during the retroactive period.

The beneficiary can suspend benefits beginning with the month after the month in which the beneficiary requests that we voluntarily suspend benefits, provided the beneficiary has not received a monthly benefit amount for those months. The beneficiary may not suspend retroactive monthly benefits for which we have made a determination or suspend retroactive monthly benefits that we have already paid.

2. Example—Applicant filing a new application:

An applicant files for old-age benefits one or more months after the month the applicant attains FRA. The applicant could potentially be due retroactive benefits. We have not yet made an initial determination about monthly benefits or entitlement. In order to earn DRCs, the applicant voluntarily requests to suspend retroactive, current, and future benefits.

The applicant can suspend past, current, and future benefits for months to which the applicant is entitled because we have not made any monthly benefit determinations or payments.

We believe these changes will not penalize applicants who require the suspension of unpaid benefits for reasons not related to misuse.

When will we start to use these rules?

We will start to use these rules on the date shown under **DATES** earlier in this preamble. However, we are also inviting public comments on the changes made by these rules. We will consider any relevant comments we receive. We plan to publish another final rule document to respond to any such comments we receive and to make any changes to the rules as appropriate based on the comments.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.[8]

We find that good cause exists for proceeding without prior public notice and comment in this instance. This final rule addresses our policies on benefit application withdrawal and retroactive benefit suspension that beneficiaries could take advantage of to obtain increased benefits. Because these policies have the potential for abuse, any delay in their modification through the revision of our regulations could result in the harm that we are trying to prevent. Providing prior public notice may act as a catalyst for more applicants and beneficiaries to request withdrawal of their applications. Accordingly, we find that prior public comment would be contrary to the public interest. However, we are inviting public comment on the final rule and will consider any substantive comments we receive within 60 days of the publication of this final rule.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this final rule.[9] We find that it is contrary to the public interest to delay the effective date of our rule changes because any delay in their modification could result in the harm that we are trying to prevent. Accordingly, we are making this final rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866 and were subject to OMB review.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities as it affects individuals only. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and does not require Office of Management and Budget approval under the Paperwork Reduction Act.

[6] 42 U.S.C. 402(w)(2)(B)(ii).

[7] *Id.*

[8] 5 U.S.C. 553(b)(B).

[9] 5 U.S.C. 553(d)(3).

(Catalog of Federal Domestic Assistance Program No. 96.002 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 404

Aged, Old-age, Survivors and disability insurance; Social Security.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending 20 CFR chapter III, part 404, subparts D and G as follows:

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

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

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

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

■ 2. Amend § 404.313(a) to add fifth and sixth sentences to the end of the paragraph to read as follows:

§ 404.313 What are delayed retirement credits and how do they increase my old-age benefit amount?

(a) * * * If we have determined that you are entitled to benefits, you may voluntarily suspend benefits for any month beginning with the month after the month in which you voluntarily request that we suspend your benefits. If you apply for benefits, and we have not made a determination that you are entitled to benefits, you may voluntarily have your benefits suspended for any month for which you have not received a payment.

* * * * *

Subpart G—Filing of Applications and Other Forms

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

Authority: Secs. 202(i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

■ 4. Amend § 404.640 to add new paragraph (b)(4) to read as follows:

§ 404.640 Withdrawal of an application.

* * * * *

(b) * * *

(4) *Old age benefits.* An old age benefit application may be withdrawn if, in addition to the requirements of this section—

(i) The request for withdrawal is filed within 12 months of the first month of entitlement; and

(ii) The claimant has not previously withdrawn an application for old age benefits.

* * * * *

[FR Doc. 2010–30868 Filed 12–7–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2010–N–0002]

Oral Dosage Form New Animal Drugs; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Huvepharma AD. The ANADA provides for use of tylosin tartrate soluble powder in drinking water of chickens, turkeys, swine, and honey bees for the treatment or control of various bacterial diseases.

DATES: This rule is effective December 8, 2010.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, *e-mail: john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria, filed ANADA 200–473 that provides for use of PHARMASIN (tylosin tartrate) Soluble in medicated drinking water for chickens, turkeys, swine, and honey bees for the treatment or control of various bacterial diseases. Huvepharma AD's PHARMASIN Soluble is approved as a generic copy of Elanco Animal Health's TYLAN Soluble, approved under NADA 13–076. The ANADA is approved as of October 1, 2010, and the regulations in 21 CFR 520.2640 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.2640, revise paragraphs (a), (b), and (d)(3)(ii) to read as follows:

§ 520.2640 Tylosin.

(a) *Specifications.* Each container contains tylosin tartrate equivalent to 100 grams tylosin base.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 000986 for use as in paragraph (d) of this section.

(2) No. 016592 for use as in paragraphs (d)(1), (d)(2), (d)(3)(i), (d)(3)(ii)(B), (d)(3)(iii), and (d)(4) of this section.

* * * * *

(d) * * *

(3) * * *

(ii) *Indications for use*—(A) For the treatment and control of swine dysentery associated with *Brachyspira hyodysenteriae* and for the control of porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis.*

(B) For the treatment and control of swine dysentery associated with *B. hyodysenteriae.*

* * * * *