

or other comments that may be pertinent to this issue.

Executive Order 12866

For purposes of Executive Order 12866, this advance notice of proposed rulemaking is determined to be not significant.

List of Subjects in 15 CFR Part 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: June 9, 1995.

David Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95-19633 Filed 8-8-95; 8:45 am]

BILLING CODE 3510-08-M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960-AD82

Supplemental Security Income for the Aged, Blind, and Disabled; Valuation of In-Kind Support and Maintenance With Cost-of-Living Adjustment

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 13735 of the Omnibus Reconciliation Act of 1993 (OBRA 1993). This statutory provision amends the Social Security Act (the Act) and requires that the new benefit rate, as increased by a cost-of-living adjustment (COLA), be used in determining the value of the statutory one-third reduction and the regulatory presumed maximum value for the computation of Federal supplemental security income (SSI) benefit payments for the first 2 months for which the COLA is in effect. These rules will provide that we will value the statutory one-third reduction and the regulatory presumed maximum value using the benefit rate as increased by a COLA to determine the amount of in-kind support and maintenance received by an individual which is to be counted for those months. This will preclude a decrease in the benefit amount the third month after a COLA, a situation which occurred under the present regulations. The legislation is effective for benefits

paid for months after calendar year 1994.

DATES: To be sure that your comments are considered, we must receive them no later than October 10, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by e-mail to regulations@ssa.gov., or delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 a.m. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in Wordperfect and will remain on the FBB during the comment period.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1759.

SUPPLEMENTARY INFORMATION: Under retrospective monthly accounting (RMA), an individual's current SSI benefit amount is usually determined based upon the individual's income in the second preceding month ("budget month") before the current month. For example, January's SSI benefit amount is based on the individual's November income. In some instances, an individual receives income in the form of in-kind support and maintenance and it is counted using the value of the one-third reduction (VTR) or the presumed maximum value (PMV) rule. Under the law prior to the effective date of section 13735 of Public Law 103-66, the VTR and the PMV were based on the applicable benefit rates in effect in the "budget month." Because of RMA principles, when an annual COLA to the SSI benefit rate became effective in January, we used the VTR/PMV amount from November of the previous year to determine the individual's benefit for January if an individual had in-kind support and maintenance in the "budget month." For example, in figuring an individual's January 1994 benefit, we used November 1993 as the "budget month." Thus, in a computation using the VTR, we would subtract the 1993

VTR amount of \$144.66 from the 1994 benefit rate of \$446.00, giving the individual an SSI benefit of \$301.34. February's benefit amount would also be computed using the new benefit rate and the 1993 VTR amount. However, in computing March's benefit amount, we used the benefit rate of \$446.00 less the January 1994 VTR amount of \$148.66, resulting in an SSI benefit amount of \$297.34. Thus, the individual's January and February payments exceeded the March payment because of the increased amount of the new VTR used when January was the "budget month." Notices were then released to these individuals notifying them of the decrease in their March payment. This was confusing to SSI recipients because their payment amounts increased and then decreased even if there is no change in their living arrangements.

We propose to change the method of valuation of the VTR/PMV to reflect section 13735 of Public Law 103-66 for benefits paid after calendar year 1994, by using the new benefit rate as increased by a COLA in determining the VTR or PMV for the computation of SSI benefits for the first 2 months for which the COLA is in effect. Thus, with a COLA effective January 1, 1995, both the new increased 1995 benefit rate and new increased VTR or PMV amounts are being used in computing a January and February 1995 benefit amount. Unlike the example used previously, the individual's January, February, and March payments calculated by using the VTR amount will be the same assuming all other income remains constant—i.e., there will be no decrease in the SSI benefit amount the third month after a COLA. This will eliminate confusion for recipients and also eliminate the need for issuance of notices informing affected recipients of the decrease in their March payment.

We state in the proposed regulations at § 416.420(a) that we will use the benefit rate, as increased by a COLA, in determining the value of certain in-kind support and maintenance used to compute an individual's SSI benefit amount for the first 2 months in which the COLA is in effect. We also propose to add a third example to § 416.420(a) to further clarify the regulatory intent.

We state in the proposed regulations at § 416.1130 how we value in-kind support and maintenance when a COLA applies and have altered the example to reflect the situation when a COLA becomes effective.

Regulatory Procedures*Executive Order No. 12866*

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

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

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

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 27, 1995.

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts D and K of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**Subpart D—Amount of Benefits**

1. The authority citation for Part 416, Subpart D continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. Section 416.420 is amended by revising paragraph (a) to read as follows:

§ 416.420 Determination of benefits; general.

* * * * *

(a) *General rule.* We generally use the amount of your countable income in the second month prior to the current month to determine how much your benefit amount will be for the current

month. We will use the benefit rate (see §§ 416.410 through 416.414), as increased by a cost-of-living adjustment, in determining the value of the one-third reduction or the presumed maximum value, to compute your SSI benefit amount for the first 2 months in which the cost-of-living adjustment is in effect. If you have been receiving an SSI benefit and a Social Security insurance benefit and the latter is increased on the basis of the cost-of-living adjustment or because your benefit is recomputed, we will compute the amount of your SSI benefit for January, the month of an SSI benefit increase, by including in your income the amount by which your social security benefit in January exceeds the amount of your social security benefit in November. Similarly, we will compute the amount of your SSI benefit for February by including in your income the amount by which your social security benefit in February exceeds the amount of your social security benefit in December.

Example 1. Mrs. X's benefit amount is being determined for September (the current month). Mrs. X's countable income in July is used to determine the benefit amount for September.

Example 2. Mr. Z's SSI benefit amount is being determined for January (the current month). There has been a cost-of-living increase in SSI benefits effective January. Mr. Z's countable income in November is used to determine the benefit amount for January. In November, Mr. Z had in-kind support and maintenance valued at the presumed maximum value as described in § 416.1140(a). We will use the January benefit rate, as increased by the COLA, to determine the value of the in-kind support and maintenance Mr. Z received in November when we determine Mr. Z's SSI benefit amount for January.

Example 3. Mr. Y's SSI benefit amount is being determined for January (the current month). Mr. Y has Social Security income of \$100 in November, \$100 in December, and \$105 in January. We find the amount by which his Social Security income in January exceeds his Social Security income in November (\$5) and add that to his income in November to determine the SSI benefit amount for January.

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Subpart K—Income

3. The authority citation for part 416, subpart K continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec 211 of Pub. L. 93-66, 87 Stat. 154.

4. Section 416.1130 is amended by revising paragraph (a) to read as follows:

In-Kind Support and Maintenance**§ 416.1130 Introduction.**

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally, we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules. In these sections (§§ 416.1130 through 416.1148) we use the in-kind support and maintenance you receive in the month as described in § 416.420 to determine your SSI benefit. We value the in-kind support and maintenance using the Federal benefit rate for the month in which you receive it. *Exception:* For the first 2 months for which a cost-of-living adjustment applies, we value in-kind support and maintenance you receive using the VTR or PMV based on the Federal benefit rate as increased by the cost-of-living adjustment.

Example: Mr. Jones receives an SSI benefit which is computed by subtracting one-third from the Federal benefit rate. This one-third represents the value of the income he receives because he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). In January, we increase his SSI benefit because of a cost-of-living adjustment. We base his SSI payment for that month on the food and shelter he received from his son two months earlier in November. In determining the value of that food and shelter he received in November, we use the Federal benefit rate for January.

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165**

[CGD01-95-123]

RIN 2115-AA97

Safety Zone: Grande Fiesta Italiana Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone located in Hempstead Harbor, New York, for the Grande Fiesta Italiana fireworks program. If adopted, the safety zone would be in effect from 9 p.m.