(2) Where relevant, that the adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the adviser believes the index is appropriate; and

(5) Where an adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available, how the securities will be valued and the extent to which the valuation will be determined independently.

(e) *Arms-Length contract.* The investment adviser (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph (g)(1), the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph (g) (4).

(f) *Transition rule.* (1) The proviso of paragraph (a) and paragraphs (b), (c) and (e) of this rule do not apply to any advisory contract (or renewal or extension thereof) between an investment adviser and a client where (i) the contract was entered into prior to and continued in force after November 14, 1985; and (ii) the adviser, at the time the contract was entered into, was not registered or required to be registered as an investment adviser under the Act; provided however, that all provisions of this rule shall apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after the effective date of this rule.

(2) Notwithstanding paragraph (f)(1), the renewal or extension of a contract described therein will be subject to paragraph (e).

(g) *Definitions.* For the purposes of this rule:

(1) The term "company" has the same meaning as in section 202(a) (5) of the Act, but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(2) The term "private investment company" means a company which would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of such Act.

(3) The term "affiliated person" has the same meaning as in section 2(a)(3) of the Investment Company Act.

(4) The term "client's independent agent" means any person agreeing to act as the client's agent in connection with the contract other than:

(i) The investment adviser acting in reliance upon this rule, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser, or an interested person of the investment adviser as defined in paragraph (g)(5);

(ii) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser as defined in paragraph (g)(5); or

(iii) A person with any material relationship between himself (or an affiliated person of such person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the previous two years.

(5) The term "interested person" as used in paragraph (g)(4) means:

(i) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(ii) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if the beneficial or legal interest of the person in any security issued by the investment adviser or by a controlling person of the investment adviser (A) exceeds one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or (B) exceeds 5% of the total assets of the person (seeking to act as the client's independent agent).

(iii) Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment adviser.

(6)(i) the term "securities for which market quotations are readily available" in paragraph (c) has the same meaning as in Rule 2a-4(a) (1) under the Investment Company Act of 1940 [17 CFR 270.2a-4(a)(1)].

(ii) The term "securities for which market quotations are not readily available" in paragraph (c) means securities not described in paragraph (g) (6) (i) of this rule.

(h) An investment adviser entering into or performing an investment advisory contract under this rule is not relieved of any obligations under section 206 of the Adviser Act or of any other applicable provisions of the federal securities laws.

(i) Nothing in this rule relieves a client's independent agent from any obigations to the client under applicable law.

By the Commission.

John Wheeler,

Secretary.

November 14, 1985.

[FR Doc. 85-28007 Filed 11-25-85; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. Rm 79-14]

Natural Gas Policy Act; Order of the Director, OPPR, of Publication of Incremental Pricing Acquisition Cost Thresholds

Issued November 21, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: December 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of December 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to December 1985 are found in the table in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1984]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352	$2.359	$2.366
NGPA section 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797	3.821	3.845
NGPA Section 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428	2.436	2.444
130 percent of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	7.230	7.040	7.290

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA Section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130 percent of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140

[FR Doc. 85–28219 Filed 11–25–85; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility; Amount of Benefits; Payment of Benefits, Overpayments, and Underpayments, Reports Required; Income; Resources; and State Supplementation Provisions, Agreements; Payments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules; interim final rules with comment period.

SUMMARY: We are revising our regulations to reflect the provisions of section 2341 of Pub. L. 97–35 (the Omnibus Budget Reconciliation Act of 1981), which amended section 1611(c) of the Social Security Act (the Act). Section 2341 of Pub. L. 97–35 establishes a new period for determining eligibility for Supplemental Security Income (SSI) benefits and the amount of benefit payments, as well as a new method for computing the amount of benefits. These statutory provisions were effective with months beginning April 1982. These regulations provide that eligibility will be based on an individual's income, resources, and other relevant circumstances in a current month rather than in a calendar quarter. The amount of a benefit will, with certain exceptions, be based on an individual's income in the second month prior to the month for which the benefit is to be paid.

These regulations also implement sections 181 and 183 of Pub. L. 97–248 (the Tax Equity and Fiscal Responsibility Act of 1982), which further amended section 1611(c) of the Act. Section 181 provides for the proration of SSI benefits in the initial month of eligibility or re-eligibility. Section 183 provides for counting title II increases to determine the SSI benefit amount for the first, and at the Secretary's option, the second month of an SSI benefit increase.

DATES: These regulations are effective December 1, 1985. The statutory changes regarding retrospective monthly accounting (RMA) which the regulations reflect were effective April 1, 1982. The provisions of sections 181 and 183 of Pub. L. 97–248 were effective October 1, 1982. We shall consider comments on § 416.420 (a) and (b) and § 416.501 on or before January 27, 1986.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 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.

FOR FURTHER INFORMATION CONTACT: Henry Lerner, Legal Assistant, 3–B–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7463.

SUPPLEMENTARY INFORMATION: We published an NPRM covering the provisions of retrospective monthly accounting (RMA) on October 29, 1981 (46 FR 53449). We are revising our rules under the SSI program to implement the provisions of section 2341 of Pub. L. 97–35 which amends sections 1611(c) and 1612(b)(3) of the Act. Section 2341 establishes a new period for determining eligibility for SSI benefits and the amount of benefit payments, as well as a new accounting system to be used to determine the amount of a benefit payment.

Since the SSI program began, the Act has provided for both eligibility for benefits and the benefit amount to be determined on a calendar-quarter basis.

Under this provision, income received in the third month of a quarter could negate an individual's eligibility for that quarter or reduce benefits for all months of the quarter. As a result, overpayments could occur. Section 1611(c) of the Act as amended by section 2341 of Pub. L. 97-35 provides that eligibility and the benefit amount will be determined for each month rather than on a quarterly basis. An individual's eligibility for SSI benefits for a month is always to be determined on the basis of income, resources, and other relevant factors in that month (the current month). If eligibility is found for a current month, the benefit amount is determined by income in a prior month. The statute provides that the benefit amount can be based on income in either the first or second month prior to the current month. These regulations provide in most cases for use of the second prior month. This is advantageous to claimants as well as the agency because it provides more time to report events that affect benefits and to make the necessary adjustments.

The statute provides certain exceptions to the use of a prior month's income as the basis for determining benefit amounts. In the case of a month of initial eligibility (or re-eligibility in a month after a month of ineligibility), the amount of benefits to be paid will be based on the income and other factors in that same month. While the statute permits the use of the second month's income to determine benefits for the second month of eligibility or re-eligibility, these regulations provide for use of the first prior month as the basis for determining the benefit amount for the second month of initial eligibility or re-eligibility.

Section 2341 of Pub. L. 97-35 authorized the Secretary of Health and Human Services (the Secretary) to determine the conditions for transitional payments—payments for April and May 1982, the first two months the provisions of the statute were effective. The Secretary decided to treat all those who were SSI beneficiaries as of March and April 1982 as though they were newly eligible in April of that year. Thus, both eligibility and the benefit amount for April 1982 were determined on the basis of the income, resources, and other relevant factors that existed in that month. In May 1982, eligibility was determined on the basis of the factors that existed in May, but the benefit amount was determined on the basis of April's income. This transitional rule was indicated in the preamble of the NPRM and is not included in the regulations because it had only one-time effect.

Section 1611(c) of the Act as amended by section 2341 of Pub. L. 97-35 also provides that the Secretary may waive certain limitations on eligibility and payment amount that apply to benefits for individuals in certain institutions (according to sections 1611(e)(1)(A) and 1611(e)(1)(B) of the Act). The Secretary is not acting on this provision at this time.

Discussion of Dates

As previously discussed, we shall consider comments on two provisions of these regulations that have been added as interim final rules to implement sections 181 and 183 of Pub. L. 97-248: (1) proration of benefits for the first month of eligibility at §§ 416.420(b) and 416.501; and (2) treatment of cost-of-living and other increases of social security insurance benefits at § 416.420(a). These provisions have been included in these final regulations because they affect certain provisions of these regulations and their effective date was October 1, 1982. Their omission would result in publication of inaccurate, outdated RMA rules. Section 181 of Pub. L. 97-248 also requires changes in other Part 416 regulations that are not a part of these regulations. These will be accomplished in a separate Notice of Proposed Rulemaking (NPRM) and published in the **Federal Register** with opportunity for comment. Written comments for the new rules in this publication will be considered if received January 27, 1986, and changes will be made, if appropriate.

Subpart B—Eligibility

Since publication of the NPRM, the final recodification of Subpart B (Eligibility) has been published (January 22, 1982, 47 FR 3099). Therefore, the revisions to Subpart B that are included in these final regulations apply to sections in the recodified subpart. There is no change in the substance of the rules from those in the NPRM. Sections 416.200 and 416.204 have been revised to show that eligibility is now determined and redetermined on a monthly rather than a quarterly basis. We have deleted a phrase from § 416.200 which stated that the benefit amount is determined on the same basis as eligibility for benefits. In § 416.203 we have replaced the former explanation of how benefits are determined with a new paragraph that explains that eligibility is based on meeting all the requirements for one month, but that the amount of the benefit for that month is, with certain exceptions, based on income in a prior month. The paragraph is cross-referred to the section in Subpart D that includes a detailed explanation of computation of benefits. We have also deleted the definition of a calendar quarter from § 416.201, as quarters no longer are significant in determining eligibility for benefits. However, the definition is being moved to § 416.1101 because the concept is still used for purposes of determining whether small amounts of income can be excluded because they are received infrequently or irregularly.

Subpart D—Amount of Benefits

We have made editorial changes in some of the sections as published in the NPRM to make them clearer. We have also revised sections that were not included in the NPRM as described later. None of these revisions changes the policies that were spelled out in the NPRM but are added for clarification and to make them parallel companion sections. However, we have included two changes which implement sections 181 and 183 of Pub. L. 97-248 which were effective October 1, 1982. Sections 181 and 183 of Pub. L. 97-248 contain provisions which directly affect sections being revised in these final regulations. Section 181 of Pub. L. 97-248 amends section 1611(c) of the Act to provide that benefits for the month in which an application becomes effective are payable from the date of application or the date an individual first meets all eligibility requirements, whichever is later. Formerly, an application was considered to have been received on the first day of the month in which it was filed and benefits were paid for the entire month if the individual met all eligibility requirements at any point in that month. The revised rule reflecting proration is stated in § 416.420(b) of this subpart. As required by the statute, this rule also provides for proration for a month after a month of ineligibility.

Section 183 of Pub. L. 97-248 also amended section 1611(c)(3) of the Act to provide that a cost-of-living or other increase in Social Security insurance (title II) benefits will be counted in determining the amount of an SSI benefit for the first month and at the Secretary's option, the second month in which there is an SSI benefit increase. This provision is stated in § 416.420(a). The statute made both provisions effective October 1, 1982. We have included these two changes only to the extent that they affect sections already being revised in these final regulations. As stated earlier, we are inviting comments and will make changes, if appropriate. Changes in other sections or other subparts will be published as separate NPRM's. Section 183 also added section 1611(c)(4) of the Act to provide that if the Secretary determines that reliable information is currently available to her with respect to income or other circumstances, she may determine the current month's benefit amount based on such information. It also provides that the Secretary must state in regulations the circumstances in which such information may be used to determine the SSI benefit amount. These regulations do not include a rule to determine a current month's benefit based on reliable information which is currently available. The Secretary has this matter under consideration, and is not exercising this authority at this time.

Other than the changes just discussed that implement certain provisions of Pub. L. 97-248, the major revision as reflected in the NPRM in this subpart, is in § 416.420 which states the RMA general rule and its exceptions for determining the amount of an SSI benefit. The general rule is that the amount of benefits for a given month is based on income in the second prior month. The rule cannot apply in the first or second month of eligibility so exceptions are necessary. In the first month of eligibility, or in a month after a period of at least a month of ineligibility, the amount of the benefit is based on the income in that same month. In the second month, we will use the same income used for the first month. Therefore, when an individual first becomes eligible for benefits or becomes re-eligible for benefits, the benefit amount for the first 3 months is based on income in the first month of eligibility or re-eligibility. Because we are implementing the statute in this way, in the case of an individual who receives income in that first month which he or she will not receive in the following one or two months, we count that income in determining the individual's benefit amount for the first 3 months of eligibility. We have not identified any significant problems resulting from our decision to implement the statute in this way. We invite comments on this provision of the regulations. We will consider changing the regulations in the future if our method of counting non-recurring income causes problems for recipients. Thereafter, the general rule applies.

Sections 416.410 through 416.414 deal with the rates and amounts of benefits payable in specific situations: to an eligible individual; to an eligible couple; to a qualified individual who has an essential person; and to eligible individuals or couples if either or both are receiving treatment in a medical care facility which receives substantial Medicaid payments for their care so that the $25 Federal benefit rate (FBR) applies. Section 416.413 was not included in the NPRM because no major change was required but is included in these final regulations to make it parallel to §§ 416.410, 416.412, and 416.414. Section 416.414 also was not included in the NPRM but has been added as it was a new section published with the recodification of Subpart B (47 FR 3099). This section is revised to reflect cross-references to § 416.420. For clarification purposes, the NPRM and these final regulations delete a qualification from §§ 416.410 and 416.412 in regard to beneficiaries who live in the household of another. None of these deletions and revisions change or create new policy.

Section 416.422 has been deleted as it related to a quarterly period for computing benefits. Section 416.424, which was revised in the NPRM, has been deleted as the provisions are covered in other sections in the subpart. There are a number of editorial changes in the language in §§ 416.426, 416.432 and 416.435 as published in the NPRM to make them clearer and consistent with other sections. We have updated cross-references throughout the subpart.

Subpart E—Payment of Benefits, Overpayments and Underpayments

We deferred changes in this subpart when we published the NPRM but are including them in these final regulations. We have revised § 416.501 to show that individuals may meet the requirements for eligibility in the current month but not receive a payment for the month. We have also added a provision to §§ 416.501 and 416.502 that is required by enactment of section 181 of Pub. L. 97-248. Section 181 of this statute provides that SSI benefits are not payable for a month of initial eligibility (or re-eligibility in a month after a month of ineligibility) before the date an individual meets all eligibility requirements. Thus, benefit payments will be prorated and will cover the days of such a month that the individual is eligible whether this is a month of initial eligibility or a month following at least a month of ineligibility. It is possible for members of a couple to become eligible on different days of a month and receive different payment amounts for the month if each meets the requirements on different days of the month.

Sections 416.502, 416.503, 416.536, 416.538, and 416.553 have been revised to reflect monthly determinations and monthly amounts. Section 416.538 explains how the amount of an underpayment or overpayment is determined and defines the period used in the determination. This section provides that the period ends with the month the initial determination is made. Regulations previously stated that the period ends with the month immediately preceding the calendar quarter in which the determination is made. We have also updated cross-references wherever appropriate. Section 416.531 has been deleted because it repeats material appropriately covered in Subpart D, Amount of Benefits (§ 416.413).

Some States supplement the Federal SSI monthly benefit and the Social Security Administration administers that supplement for some States. When we do, we add the State supplement to the SSI benefit and issue the total in one monthly check. Section 416.503 now states that the minimum monthly SSI benefit payable is $1. That is, if the amount which otherwise would be due is less than $1, we will raise that amount to $1. This section of the regulations was amended to make clear that we look at the total SSI benefit and the federally administered State supplement to decide if we must round the benefit amount up to $1. That is, if the total of the SSI benefit and the State supplement is less than $1, we raise the total to $1. If the SSI benefit is less than $1 but the total of the SSI benefit and the federally administered State supplement is $1 or more, we do not round up the SSI benefit. We pay the actual amount of the SSI benefit plus the State supplement.

Subpart G—Reports Required

Sections 416.714, 416.726, 416.728, and 416.730 are being revised to show that reports of events which effect SSI eligibility or benefit amount are considered to be late if they are not submitted within 10 days after the close of the month in which the event occurs. Individuals are subject to penalties if reports are not submitted timely. The existing regulations allow 30 days after the close of the calendar quarter in which the event occurs. The time must be shortened because monthly determinations allow less time to process necessary changes. We discuss this 10-day period further in the part of the preamble in which we respond to comments received following publication of the NPRM.

Subpart K—Income

The basic rules on income, its definition and its exclusions, are unchanged. The changes in these regulations are being made because RMA can involve more than one income calculation—one to determine eligibility for a month and the other to determine the benefit amount for that month. The use of income in a prior month to determine the amount of a benefit for a current month, with a different FBR under certain circumstances, requires detailed explanations. This is particularly true for the rules on deeming of income of others to an SSI recipient. We have made a number of revisions and added some sections in these final regulations that were not in the NPRM. These changes, which are discussed below, are being made since they pertain to RMA and were overlooked when the NPRM was drafted. They are needed for the necessary implementation of the RMA provisions. Only revisions that apply to deeming of income as explained in our discussion in this preamble of § 416.1160 constitute a change of policy from that stated in the NPRM. Throughout the subpart we have corrected cross-references that had become outdated.

Section 416.1100 is revised to include a general statement to show that determinations of income will now be on a monthly rather than a quarterly basis, and that we usually use a prior month's income to determine a benefit amount. Sections 416.1111, 416.1112, 416.1123, and 416.1124 have been revised to reflect the change from quarterly to monthly determinations including, where appropriate, the dollar amounts of exclusion from income. (Section 416.1112(c)(4) was amended to change quarterly to monthly determinations in final rules published May 16, 1983 (48 FR 21943), Determination of Certain Impairment-Related Work Expenses for Substantial Gainful Activity Purposes and for Purposes of Determining Countable Earned Income.) As explained in the preamble to the NPRM, §§ 416.1112 and 416.1124 include a change in the definition of some of the exclusions from income, an "infrequent" receipt. We have qualified the definition to exclude up to $10 or $20 a month (earned or unearned income respectively) if received no more often than once a quarter from a single source. Since the statute as amended provides for the exclusion of certain amounts on a monthly basis, "from a single source" has been added to clarify that each source of income is considered separately in making a frequency determination. This clarification prevents regular monthly payments from a single source being excluded as infrequently received income. While these kinds of payments may be excluded under the regular exclusions of earned and unearned income, we do not think they should be excluded as being received infrequently. These regulations also revise §§ 46.1123 (a) and (d) to reflect monthly determinations. Paragraph (d) of this section was part of the final regulations published February 3, 1982 (47 FR 4985), (Reduction of Retroactive Social Security Benefits) which implemented section 501 of Pub. L. 96–265. In § 416.1124(c)(10) we have added an exception to the general income exclusion to make the information in this paragraph complete. We state that this exclusion does not apply to income in the form of in-kind support and maintenance provided in the household of another (the one-third reduction rule). This exception is not new policy as it has previously been included in our rule in § 416.1131.

Section 416.1130 is the first of a number of sections that cover the rules on in-kind support and maintenance as income. We have expanded paragraph (a) and have added an example to clarify that the value of in-kind support and maintenance, under RMA, is based on the FBR in effect in the month in which the in-kind support and maintenance is received.

In these final regulations (not in the NPRM) we are deleting the last sentence of § 416.1140(a)(1) that indicates if an individual receives in-kind support and maintenance that is not subject to the one-third reduction rule and has no other income, use of the presumed maximum value rule will result in the same benefit as use of the one-third reduction rule. Under RMA rules because of the effect of a change in couple status and the use of a prior month's income to determine the benefit amount, it is not true in all cases that, for individuals with no other income, the presumed maximum value has the same effect on benefits as the one-third reduction rule for valuing in-kind support and maintenance. Both the NPRM and these final regulations delete § 416.1146 which refers to the obsolete quarterly calculation. A new § 416.1147a has been added in these final regulations to describe how we determine countable income and benefit amounts when members of a couple form or separate, and in-kind support and maintenance has been involved. When both members of the couple have been eligible for SSI benefits, the RMA rules apply. The effects of the changes in status were not clearly spelled out in the NPRM.

Sections 416.1160 through 416.1169 cover the rules on deeming of income in general, deeming from an ineligible spouse or ineligible parent to an eligible individual, and from an essential person to a qualified individual. In each section, the procedures and the examples have been revised to reflect monthly rather than quarterly determinations and to show that separate determinations may be necessary for eligibility and benefit amount.

We have made three significant changes in § 416.1160(a)(3)(ii). The changes constitute a more liberal policy on deeming of income from an ineligible spouse or parent under certain circumstances and on deeming the income of essential persons than that provided in the NPRM. We have subdivided the section for clarity. The changes, which are discussed in more detail below, involve using only an eligible individual's own income in a prior month, not including any income deemed in that month, to compute a current month's benefit payment if: (1) Prior to the current month the ineligible spouse or parent whose income was deemed has died or an eligible child has attained age 18; (2) the eligible individual is in a medical care facility which receives substantial Medicaid payments on his behalf so that the maximum possible SSI benefit is $25 in the current month; or (3) the eligible individual has had an essential person but in the current month is not entitled to receive an increased benefit because of the essential person. The first two changes are also reflected in §§ 416.1163(e) and 416.1165(f) which describe deeming of income from a spouse or parent. All three changes are based on a review of the statutory provisions, are made in the interests of equity, and respond to comments from the public. Each change, at most, affects only two months' benefit computations.

Death of Ineligible Spouse or Parent; Eligible Child's Attainment of Age 18

Several commenters were concerned that, under RMA, eligible individuals can be charged with income, including income deemed in a prior month from a spouse or parent, when that income may no longer be available. Except for deeming the income and resources of essential persons and sponsors of aliens, the Secretary has discretion under sections 1614(f) (1) and (2) of the Act to determine the circumstances under which it would be inequitable to deem. Accordingly, these regulations reflect the determination that it would be inequitable to compute benefit payments based on income deemed in a prior month from an ineligible spouse or parent when there has been a change which is wholly beyond the control both of the eligible individual and of the spouse or parent. These regulations recognize only two such situations: death of the ineligible spouse or parent and an eligible child's attainment of age 18.

$25 Federal Benefit Rate (FBR) Applies

Based on our conclusion that anyone subject to the $25 FBR should have that amount to purchase small comfort items not supplied by the medical care facility, it also would be inequitable to use income deemed from a spouse or parent in a prior month to compute benefit payments when the $25 FBR applies in the current month. Continued use of income deemed in a prior month could mean that an individual would have little or nothing with which to obtain comfort items. These regulations reflect the determination that it would be inequitable to deem under the circumstances described.

Deeming From an Essential Person

These final regulations also state that we do not use income deemed from an essential person in a prior month to determine the benefit amount of an eligible individual (or eligible spouse) beginning with the month the eligible individual (or eligible spouse) is no longer eligible for an increased benefit because of the essential person. Thus, in these circumstances, only the eligible individual's (or eligible spouse's) own income in a prior month is used in determining the benefit amount for the current month. The revision, which is a change from the rule proposed in the NPRM, is consistent with the provisions of the statute that provide for essential persons. Section 211 of Pub. L. 93–66 requires the deeming of the income and resources of an essential person in conjunction with augmented payment (an increment) to the qualified individual. An essential person is an individual who has lived with an SSI recipient since December 1973, did not receive State assistance in December 1973, and does not receive SSI benefits. Since the increment is no longer payable when the individual (or eligible spouse) no longer has an essential person, deeming of the essential person's income should also end for purposes of computing benefit amounts. This revised policy is stated in §§ 416.1168(c) and 416.1169, which explain how and when we deem income from an essential person.

We have made a number of editorial changes throughout the sections that deal with deeming to make them clearer. We have made a conforming change in § 416.1165 to point out that income of a child may include in-kind support and maintenance received from parents when their inocme is no longer deemed to the child.

Subpart L—Resources

The only necessary change in this subpart is in § 416.1232. It reflects the change from quarterly determinations to monthly determinations in regard to cash (and interest) received to replace lost, damaged, or stolen resources. Such cash (and interest) not so spent within nine months will be counted as a resource beginning with the tenth month.

Subpart T—State Supplementation Provisions; Agreements; Payments

Existing regulations in Subpart T require some changes to conform to the provisions of section 2341 of Pub. L. 97–35. In general, monthly periods are used to determine eligibility, and the amount of State supplements administered by us. However, particulars are being accomplished for the most part in the individual agreements that provide for Federal administration of State supplementary payments. We are amending § 416.2020 by deleting references to quarters as they now relate to federally administered State supplementary payments. We are adding a new paragraph (c) to § 416.2030 to explain how State payment levels relate to the new accounting system.

Other Subparts

Subpart M, Suspensions and Terminations, is presently being recodified. Revisions to implement RMA (Section 2341 of Pub. L. 97–35) are included in the recodification. No major changes in this respect are anticipated but the recodification is being published as an NPRM and comments will be invited.

Comments Received Following Publication of the Notice of Proposed Rulemaking Published October 29, 1981 (46 FR 53449)

We received 12 comments in response to the NPRM: seven from State departments that administer programs for the needy and one each from a law center, a private welfare agency, a center on aging, the mayor of a city and an association of homes for the aging. All commented on one or more provisions of the regulations. We have combined those comments that deal with the same issue.

Comment: Five commenters objected to the rule in § 416.728 (a) and (b), the reduction from 30 days after the end of a quarter in which an event occurred to 10 days after the end of a month in which an event occurs for beneficiaries to report changes that affect their SSI eligibility or benefit payment. Most noted that SSI beneficiaries are frequently handicapped by age or disability so that reporting presents problems for them. Some also said that we could retain the 30 days and still make timely changes in eligibility or the amount of benefits. One cited an example that a change in August could be reported by September 30 and give SSA all the month of October to effect the change in the benefit.

Response: Ten days is a shortened period, but a short period is necessary since changes can affect both eligibility for payments and the amount of a payment. Changes must be reported in time for us to change the amount of the check. A change in August that was reported as late as September 30 could not be reflected in the check the recipient receives on October 1. We would have to receive the report by September 10.

It is during the intervening period that we must receive the report, update our records, issued a notice of change, and notify the Treasury Department to change the amount of the check or not to issue it. A longer reporting period would result in more overpayments to individuals. Timely notification of changes so that the correct amount of benefits can be paid is important to the recipient because it eliminates his or her burden of later paying back an overpayment.

We have operated under this requirement (as well as the other provisions of RMA) since April 1982. We are not aware of any hardship that the reporting provision has caused recipients. Our regulations provide that no recipient who has good cause for failure to report on time will be penalized (20 CFR 416.732). In case of hardship which constitutes good cause, the Social Security Administration does not impose a penalty for late reporting.

Comment: Two commenters pointed out that the statute provides an alternative of one or two months for RMA. They believe one prior month to determine the amount of benefits would be preferable to the two prior months that these regulations provide.

Response: The objective of RMA is to promote accurate payment of benefits to beneficiaries and reduce overpayments. It would not be possible to achieve this if we were to pay benefits to individuals on the first of the month on the basis of income for the immediately preceding month. There would be no lapse of time for individuals to report and for us to process the change.

Comment: Three State offices that administer programs for the needy objected to one of the effects of RMA—the fact that beneficiaries receive Social

Security insurance and other program benefit increases in one month but that SSI benefits are not reduced accordingly until the second month thereafter.

Response: Congress has recognized this problem and has amended the statute to remedy it. Section 183 of Pub. L. 97-248 provides that cost-of-living and other increases in Social Security insurance benefits at the time of SSI benefit increases are to be used to determine the amount of SSI benefits for months in which the increase is received. This applied in January and February 1984, the first two months of an SSI benefit increase following enactment of Pub. L. 97-248. It will also apply to the first two months of SSI benefit increases in the future. Section 1611(c) of the Act, as amended, also provides that the Secretary prescribe by regulation the circumstances under which there is reliable information currently available on other kinds of income so that changes in amounts may be used to determine the monthly SSI benefit for the month in which the change occurs. However, we have not yet determined the best way to implement this provision with reference to benefits other than Social Security increases at the time of an SSI benefit increase.

Comment: Three State offices that administer programs for the needy and a private welfare agency are concerned about beneficiaries being charged with income, including income deemed, in a prior month when that income may no longer be available. For example, a couple is divorced or a spouse or a parent dies and his or her income from prior to the divorce or death continues to be counted for two months.

Response: In recognition of this problem, these final regulations have been revised. To determine benefit amounts, we will not use income deemed from an ineligible spouse or ineligible parent in a prior month to determine the benefit amount for a current month when the parent or spouse dies. The Secretary has authority under sections 1614(f) (1) and (2) of the Act not to deem the income of a spouse or parent when it is inequitable to do so. The Secretary considered extending this policy to other situations such as divorce or separation but decided not to do so for the reasons stated in the preamble in the discussion of the deeming provisions. However, we must use an eligible individual's own income in a prior month to compute a benefit payment. There is no statutory authority to do otherwise.

Comment: The law center requests that SSI recipients be sent notices to explain how benefits will be determined during the transitional period, from April 1982 when the new provisions begin to June 1982 when the two-month retrospective accounting applies.

Response: Each SSI recipient received a "stuffer" with the March 1982 check. This stuffer explained the new system and how the conversion would be accomplished. We made the notice as clear as possible. Those who did not understand had a month to call or visit a Social Security office for clarification.

Comment: One State noted that there seemed to be no need for Federal living arrangement codes "B" and "D" and this would affect State supplements. ("B" designates a recipient who is receiving food and shelter while living in the household of another, "D", an individual in a medical care facility and subject to the $25 FBR.) The State saw a problem in that there seemed to be insufficient time to renegotiate agreements for Federal administration of the State's supplementary payments. The State did not intend that individuals receive higher or lower payments in April than they did in March because of the retrospective budgeting.

Response: We continue to use living arrangement codes. The codes are entered in our computer systems and are used for effective and efficient administration of both the Federal SSI and State supplementary payments that we administer for the States. Thus, States continue to determine the amounts of supplements they wish to provide to their recipients in accordance with our system of administration. Under RMA, some individuals may receive more and some individuals may receive less overall income, including the Federal and State benefits, if eligibility continues but a change occurs in living arrangements between the month for which countable income is used to compute a payment and the month for which payment is made. There is no alternative under the statute. Of course, this did not occur in April 1982 because, under the provisions for the transition to RMA, individuals received payments for April based on April's income.

Comment: One State department questioned the legal authority for our counting the same income for more than one month. We count the same income for three months during the transition period and when individuals first become eligible or after a period of ineligibility. The State says this counting is illegal in the Aid to Families With Dependent Children program.

Response: We reviewed our implementation of this aspect of the SSI RMA statute in response to the comment. We have not identified any significant problems resulting from our decision to implement RMA by counting the income from the first month of eligibility in determining the benefit for the second and third months in the period. This policy is clearly authorized by the SSI statute. Section 1611(c)(2) of the Act provides that the amount of an SSI benefit for the month of initial eligibility and the month following a month of ineligibility will be computed prospectively. It further permits but does not require the Secretary to apply this provision to the month immediately following one of those months. The Secretary has decided not to apply prospective accounting in the second month of eligibility or re-eligibility but rather to use one month retrospective accounting as section 1611(c)(1) of the Act clearly allows. In the third month of eligibility or re-eligibility, 2-month retrospective accounting is used under section 1611(c)(1). We will continue to monitor our implementation of this provision and will consider making any changes if problems are identified in the future.

Comment: An association of homes for the aging asks whether § 416.2030(c) permits States to apply a current month accounting system for determining benefit amount under a retrospective system for determining eligibility.

Response: Section 416.2030(c) of these regulations requires the use of the current month to determine eligibility and a retrospective month to determine benefit amount (the converse of the association's proposal). The regulation makes Federal administration of a State's optional supplementation program consistent with the RMA legislation.

Comment: A State objects to the revised definition of infrequent or irregular income. The commenter suggests that the quarterly limits, $30 for earned income and $60 for unearned income, be retained with the proviso that the exclusion be restricted to payments received only once a quarter from a single source.

Response: We have no option to retain the quarterly dollar amounts because the statute, as amended, stipulates the $10 and $20 amounts for monthly payments. As the commenter is aware, in implementing this provision we do limit the exclusion to payments received only once a quarter from a single source in order to eliminate the exclusion of recurring payments.

Comment: A State believes these regulations are unclear in regard to determination of SSI payments for individuals who have been receiving benefits and move from a deeming situation into a medical care facility where the $25 FBR applies.

Response: In these final regulations, we have rewritten and revised the rules on deeming when an individual is in a medical facility and subject to the $25 FBR. We believe the commenter will now find them clear.

Comment: Several commenters are concerned about loss of benefits for individuals who become subject to the $25 FBR. Rather than having $25 for the first two months of care, these individuals may have no income at all because of RMA. The commenters point out that these individuals will have no monies for personal needs.

Response: Since publication of the NPRM and receipt of these comments, we have reviewed this policy and have revised the rules. While the amended statute requires that income in a prior month be used to establish a benefit amount for the current month it does not specifically require that deemed income in the prior month be included. Also, sections 1614(f) (1) and (2) of the Act give the Secretary the authority to determine the circumstances under which it would be inequitable to deem from an ineligible spouse or parent. The Secretary has determined that it would be inequitable to use income deeded in a prior month from an ineligible spouse or ineligible parent to determine the benefit amount when the $25 FBR applies. However, if nonpayment is caused by the individual's own income in a prior month, the Secretary has no option and must follow the RMA rules.

Comment: Two States report that they have conducted studies on the impact of RMA on their programs for the needy and find that the new accounting will be more costly for them than anticipated. They ask that we request legislation to establish prospective monthly accounting.

Response: The cost features of RMA have been brought to the attention of Congress and have been remedied to a large extent. As discussed earlier in this preamble and in response to comments, RMA will not apply for increases in Social Security benefits, as such increases can be counted in the current month to determine the amount of benefits. Such a policy would be applied at the time of a benefit increase in Social Security and SSI benefits. While section 1611(c)(4) of the Act allows the use of prospective accounting if the Secretary determines there is reliable information currently available, as discussed earlier in this preamble and in response to another comment, the Secretary has this matter under consideration and is not exercising this authority at this time.

Note.—We received several comments on the implications for Medicaid of our proposed RMA rules. The commenters asked that we consider these Medicaid implications before issuing these final RMA rules. SSA is required by statute to use RMA for SSI purposes even though there may be some Medicaid implications. We have asked the Health Care Financing Administration to consider the Medicaid comments.

Justification for Dispensing With Notice of Proposed Rulemaking

Section 1611(c) of the Act, as reflected in these final regulations, provides for monthly determinations of SSI eligibility and benefit amount. This section provides for the use of retrospective monthly accounting to determine benefit amount in most cases. However, in a month of initial eligibility or re-eligibility benefit amount is determined on a prospective basis. Before the final rules implementing RMA could be published, section 1611(c) was further amended by sections 181 and 183 of Pub. L. 97-248. Section 181 provides for prorating SSI benefits in a month of initial eligibility or re-eligibility. Section 183 provides for counting title II increases in the first and, at the Secretary's option, the second month of an SSI benefit increase.

The provisions of sections 181 and 183 affect the regulations set out in these final RMA rules. If the changes required by sections 181 and 183 are not included in these final RMA rules, several sections of the RMA regulations will be incorrect. Therefore, it would be necessary to delay publication of either all of the final regulations on RMA or the specific provisions affected by sections 181 and 183 until the rules reflecting sections 181 and 183 could be promulgated pursuant to prior notice and public comment procedures. The final RMA regulations, particularly § 416.420 that is affected by sections 181 and 183, are crucial to the SSI program since they affect every determination of eligibility and benefit amount. Therefore, the final RMA rules need to be published without delay so the public is aware of how RMA is being implemented. Accordingly, we believe the use of prior notice and comment procedures for the rules implementing sections 181 and 183 of Pub. L. 97-248 would be impracticable and contrary to the public interest.

In addition, we believe that publication of these regulations implementing sections 181 and 183 in proposed form is unnecessary since they merely reflect the statutory requirements and do not represent any meaningful exercise of discretion. The regulations implementing section 181 merely state, as the statute requires, that SSI benefits in the initial month of eligibility or re-eligibility will be prorated to reflect the number of days in the month that the recipient is eligible. The regulations implementing section 183 do exercise the option authorized by the statute of counting the title II increase in the second as well as the first month of an SSI benefit increase. However, the Secretary's exercise of this option is not truly discretionary. Rather, it is the only logical option in light of the manner in which she has chosen to implement RMA. The RMA provision gives the Secretary the choice of determining benefit amount based on one month or two month retrospective accounting. Under the SSI program, title II benefits are counted as income in determining the amount of the SSI benefit. The purpose of section 183 was to alleviate a problem caused under RMA because SSI benefits and title II benefits are increased in the same month but the title II benefit increase is not countable under RMA until either one or two months after the increase occurred. If the Secretary had chosen one month retrospective accounting, counting the title II benefit increase in only the first month of the SSI benefit increase would carry out the purpose of section 183. However, since the Secretary chose two month retrospective accounting, as reflected in the RMA NPRM and in these final regulations, it is necessary for the Secretary to exercise the option under section 183 and count the title II increase in the second month of an SSI benefit increase to carry out the purpose of that provision.

Accordingly, we believe that under 5 U.S.C. 553(b)(B) good cause exists for waiver of notice of proposed rulemaking on the rules implementing sections 181 and 183 since issuance of proposed regulations would be unnecessary, impracticable and contrary to the public interest.

While the notice of proposed rulemaking is being waived we are interested in comments regarding the interim regulations at §§ 416.420 (a) and (b) and 416.501. We will review any comments received, and will revise the rules if appropriate, based on the comments received.

Regulatory Procedures, Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, an economic impact analysis is not required. Any costs have been the direct result of implementing the statute and do not result from this rule. Retrospective Monthly Accounting (RMA) was implemented by statute on April 1, 1982 at an annual cost of $30 million for FY 1982 and $5 million for FY 1983. We estimate that there will be no program cost or savings from RMA for FY 1984 or FY 1985. The change made in RMA by section 183 of Pub. L. 97-248 (The Tax Equity and Fiscal Responsibility Act of 1982), which deals with the coordination of title II and XVI benefit increases, revised the main feature of RMA which previously resulted in program cost. The use of RMA to determine client benefits may result in benefit reduction for some clients, but these costs are expected to be minor.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring OMB clearance. SSA has clearance for form SSA-8150 (OMB No. 0960-0128) on which beneficiaries are to report income and other factors.

Regulatory Flexibility Act

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

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program).

List of Subjects in 20 CFR Part 416

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

Dated: May 8, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 14, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart B—Eligibility

1. The authority citation for Subpart B of Part 416 is revised to read as follows:

Authority: Sec. 1102, 1602, 1611, 1614, and 1631 of the Social Security Act as amended; secs. 211 and 212 of Pub. L. 93-66; 49 Stat. 647 as amended, 86 Stat. 1465, 86 Stat 1466, 86 Stat. 1471, and 86 Stat. 1475; (42 U.S.C. 1302, 1381a, 1382, 1382c, and 1383).

2. Section 416.200 is revised to read as follows:

§ 416.200 Introduction.

You are eligible for SSI benefits if you meet all the basic requirements listed in § 416.202. You must give us any information we request and show us necessary documents or other evidence to prove that you meet these requirements. We determine your eligibility for each month on the basis of your countable income in that month. You continue to be eligible unless you lose your eligibility because you no longer meet the basic requirements or because of one of the reasons given in §§ 416.210 through 416.214.

§ 416.201 [Amended]

3. Section 416.201 is amended by redesignating the definition "calendar quarter" to § 416.1101 and by placing it in alphabetical order.

4. In § 416.203, paragraph (b) is revised to read as follows:

§ 416.203 Initial determinations of SSI eligibility.

* * * * *

(b) *How we determine your eligibility for SSI benefits.* We determine that you are eligible for SSI benefits for a given month if you meet the requirements in § 416.202 in that month. However, we usually determine the amount of your SSI benefits for that month based on your income in an earlier month (see § 416.420). Thus, it is possible for you to meet the eligibility requirements in the given month but receive no benefit payment for that month.

5. In § 416.204, paragraph (c) is revised to read as follows:

§ 416.204 Redeterminations of SSI eligibility.

* * * * *

(c) *The period for which a redetermination applies:* (1) The first redetermination applies to—

(i) The month in which we make the redetermination;

(ii) All the months after the month of first eligibility; and

(iii) Future months until the second redetermination.

(2) All other redeterminations apply to—

(i) The month in which we make the redetermination;

(ii) All the months that came after the last time we made a redetermination; and

(iii) Future months until the next redetermination.

(3) If we made two redeterminations which cover the same month, the later redetermination is the one we apply to that month.

Subpart D—Amount of Benefits

6. The authority citation for Subpart D of Part 416 is revised to read as follows:

Authority: secs. 1102, 1611, 1612, 1617, and 1631 of the Social Security Act as amended; 49 Stat. 647 as amended, 86 Stat. 1466, 86 Stat. 1468, 86 Stat. 1475, (42 U.S.C. 1302, 1382, 1382a, and 1383); Sec. 211 of Pub. L. 93-66, Sec. 182 of Pub. L. 97-248, 96 Stat. 404.

7. Section 416.410 is revised to read as follows:

§ 416.410 Amount of benefits; eligible individual.

The benefit under this part for an eligible individual who does not have an eligible spouse, who is not in a certain kind of institution (see § 416.414), and who is not a qualified individual (as defined in § 416.221), shall be payable at the rate of $314.00 per month beginning January 1, 1984 (however, see § 416.405 with respect to cost-of-living increases), reduced by the amount of such individual's countable income (defined in § 416.1104) as explained in § 416.420.

8. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple neither of whom is in a certain kind of institution (see § 416.414) or is a qualified individual (as defined in § 416.221), shall be payable at the rate of $472.00 per month beginning January 1, 1984 (however, see § 416.405 with respect to cost-of-living increases), reduced by the amount of countable income (defined in § 416.1104) as explained in § 416.420.

9. Section 416.413 is revised to read as follows:

§ 416.413 Amount of benefits; qualified individual.

The benefit under this part for a qualified individual (defined in § 416.221) is payable at the rate for an eligible individual or eligible couple plus an increment for each essential person (defined in § 416.222) in the household, reduced by the amount of countable income of the eligible individual or eligible couple as explained in § 416.420. Beginning January 1, 1984, the amount of the increment is $157.00 per month and this increases when the Federal benefit rate increases (as explained in § 416.405).

10. In § 416.414, paragraph (b) is revised to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

* * * * *

(b) *The benefit rates are—*

(1) *Eligible individual.* The benefit rate for an eligible individual with no eligible spouse is $25 per month. The benefit payment is figured by subtracting the eligible individual's countable income (see Subpart K) from the benefit rate as explained in § 416.420.

(2) *Eligible couple both in medical care facilities.* The benefit rate for a couple is $50 per month. The benefit payment is figured by subtracting the couple's countable income (see Subpart K) from the benefit rate as explained in § 416.420.

(3) *Eligible couple with one spouse in a medical care facility.* The couple's benefit rate equals:

(i) $25 per month for the spouse in the medical care facility; plus

(ii) the benefit rate for an eligible individual (see § 416.410) for the spouse who is not in the medical care facility. The benefit payment for each spouse is figured by subtracting each individual's own countable income in the appropriate month (see § 416.420) from his or her portion of the benefit rate shown in paragraphs (b)(3), (i), and (ii).

* * * * *

11. Section 416.420 is revised to read as follows:

§ 416.420 Determination of benefits; general.

Benefits shall be determined for each month. The amount of the monthly payment will be computed by reducing the benefit rate (see §§ 416.410, 416.412, 416.413, and 416.414) by the amount of countable income as figured under the rules in Subpart K of this part. The appropriate month's countable income to be used to determine how much your benefit payment will be for the current month (the month for which a benefit is payable) will be determined as follows:

(a) *General rule.* We 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. However, if you have been receiving an SSI benefit and receiving 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). Mr. X's countable income in July is used to determine the benefit amount for September.

Example 2. 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.

(b) *Exceptions to the general rule—*

(1) *First month of eligibility or eligibility after a month of ineligibility.* We use your countable income in the current month to determine your benefit amount for the first month you are eligible for SSI benefits or for the first month you become eligible for SSI benefits after at least a month of ineligibility. Your payment for such month will be prorated according to the number of days in the month that you are eligible beginning with the date of your application or the date on which you attain (or reattain) eligibility, whichever is later.

Example: Mrs. Y applies for SSI benefits in September. We use Mrs. Y's countable income in September to determine the amount of her benefit for September. The same would be true if Mrs. Y had been ineligible for SSI benefits in August and again became eligible for such benefits in September.

(2) *Second month of initial eligibility or eligibility after a month of ineligibility.* We use your countable income in the first month prior to the current month to determine how much your benefit amount will be for the current month when the current month is the second month of initial eligibility or the second month following at least a month of ineligibility. However, if you have been receiving both 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 December.

Example: Mrs. Y was initially eligible for SSI benefits in September. Her benefit amount for October will be based on her countable income in September (first prior month).

(3) *Third month of initial eligibility or eligibility after a month of ineligibility.* We use your countable income according to the rule set out in paragraph (a) of this section to determine how much your benefit amount will be for the third month of initial eligibility or the third month after at least a month of ineligibility.

Example: Mrs. Y was initially eligible for SSI benefits in September. Her benefit amount for November will be based on her countable income in September (second prior month).

(c) *Payment of benefits.* See Subpart E of this part for the rules on payments and the minimum monthly benefit (as explained in § 416.503).

§ 416.422 [Removed]

12. Section 416.422 is removed.

§ 416.424 [Removed]

13. Section 416.424 is removed.

14. Section 416.426 is revised to read as follows:

§ 416.426 Change in status involving an individual; ineligibility occurs.

Whenever benefits are suspended or terminated for an individual because of ineligibility, no benefit is payable for that month.

15. Section 416.432 is revised to read as follows:

§ 416.432 Change in status involving a couple; eligibility continues.

When there is a change in status involving only the living arrangements (for example, institutionalization or a different household arrangement) of one or both members of an eligible couple and eligibility continues, benefit amounts will be redetermined. Benefit rates and payment amounts will be consistent with §§ 416.410, 416.412, 416.413, and 416.414 and Subpart E, as applicable. Where the change of status involves the formation or dissolution of an eligible couple (for example, marriage, divorce, living apart more than 6 months), a redetermination of the benefit amount shall be made for the months subsequent to the month of such formation or dissolution of the couple in accordance with the following rules:

(a) When one member of a couple lives in the household of another and receives support and maintenance in-kind from that person, and the other member of the couple is neither in the household of another receiving support and maintenance, nor subject to the $25 Federal benefit rate (§ 416.414), the benefit rate for the couple shall be consistent with § 416.412 or § 416.413, as appropriate. The benefit amount payable to the member of the couple living in the household of another shall be one-third of the amount of the monthly benefit due the couple minus the value of in-kind support and maintenance received by that individual, which will not exceed one-sixth of the benefit rate for a couple. The benefit amount to the remaining member of the couple shall be two-thirds of the amount of the monthly benefit due the couple. This division of the couple's monthly benefit applies for months for which the in-kind support and maintenance received by the member of the couple in the household of another (valued at the maximum of one-sixth of the benefit rate for a couple) is used to compute the monthly benefit amount (see § 416.420).

(b) When only one member of a couple is subject to the $25 Federal benefit rate (see § 416.414), the rate of payment to that member shall be $25 less his or her appropriate countable income (see § 416.420), computed as though he or she were an eligible individual with no spouse. The benefit payment to the other member of the couple will be at the benefit rate for an eligible individual with no spouse (see §§ 416.410 or 416.413, as appropriate, and § 416.420) less his or her appropriate countable income.

(c) When there is a dissolution of an eligible couple and each member of the couple becomes an eligible individual the benefit amount for each person shall be determined individually for each month beginning with the first month after the dissolution. This shall be done by determining the applicable benefit rate for an eligible individual with no eligible spouse according to §§ 416.410 or 416.413 and 416.414 and applying § 416.420(a). See § 416.1147a for the applicable income rules where in-kind support and maintenance is involved.

(d) When two eligible individuals become an eligible couple the benefit amount will be determined for the couple beginning with the first month following the month of the change. This shall be done by determining which benefit rate to use for an eligible couple and applying the requirements in §§ 416.420(a) and 416.432 (a) and (b).

16. Section 416.435 is revised to read as follows:

§ 416.435 Change in status involving a couple; ineligibility occurs.

Whenever benefits are suspended or terminated for both members of a couple because of ineligibility, no benefits are payable for that month. However, when benefits are suspended or terminated for one member of a couple because of ineligibility for a month, the member who remains eligible assumes the eligibility status of an eligible individual without an eligible spouse for such month and the benefit rate and payment amount will be determined as an eligibile individual for the month.

Subpart E—Payment of Benefits, Overpayments, and Underpayments

17. The authority citation for Subpart E of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1614, 1631, 1633, 86 Stat. 1465, 1466, 1473, 1475, 1476, 1477, 1478, (42 U.S.C. 1302, 1381, 1381a, 1382, 1382c, 1383, 1383b).

18. Section 416.501 is revised to read as follows:

§ 416.501 Payment of benefits: General.

Payment of SSI benefits will be made for the month of initial eligibility and each subsequent month provided all requirements for eligibility (see § 416.202) and payment (see § 416.420) are met. In the month the individual first meets all eligibility requirements and the month in which an individual re-establishes eligibility after at least a month of ineligibility, benefits are paid for such a month beginning with the date in the month on which the individual meets all eligibility requirements. In some months, while the factors of eligibility based on the current month may be established, it is possible to receive no payment for that month if the factors of eligibility for payment are not met. Payment of benefits may not be made for any period that precedes the date on which an application is filed or, if later, the date all conditions for eligibility and payment are met. It is possible for a couple to become eligible in the same month but as of different dates and receive different payment amounts for that month if they file their applications on different dates or if they meet the necessary requirements (for example, age) on different dates.

19. Section 416.502 is revised to read as follows:

§ 416.502 Manner of payment.

For the month an individual first meets all eligibility requirements or re-establishes eligibility after a month of ineligibility, an SSI check will be issued on or after the day of the month on which the individual becomes eligible or re-eligible to receive benefits. In all other months, a check will be issued at the beginning of each month and represents payment for that month. Unless otherwise indicated, the monthly amount for an eligible couple will be divided equally and paid in separate checks to each individual.

20. Section 416.503 is revised to read as follows:

§ 416.503 Minimum monthly benefit amount.

If you receive an SSI benefit that does not include a State supplement the minimum monthly SSI benefit amount payable is $1. When an SSI benefit amount of less than $1 is payable, the benefit amount will be increased to $1. If you receive an SSI benefit that does include a State supplement and the SSI benefit amount is less than $1 but when added to the State supplement exceeds $1, the SSI benefit amount will not be increased to $1. Rather, we pay the actual amount of the SSI benefit plus the State supplement.

§ 416.520 [Amended]

21. In § 416.520, paragraph (b)(2) is amended by changing the cross reference "§§ 416.203 through 416.205" at the end of the paragraph to "Subpart P".

§ 416.531 [Removed]

22. Section 416.531 is removed.

§ 416.532 [Amended]

23. In § 416.532, paragraph (b) is amended by changing the cross reference "§ 416.242" in the parenthetical phrase to read "§ 416.221".

24. Section 416.536 is revised to read as follows:

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed an application (where required) for benefits and met all conditions of eligibility for benefits. An underpayment, including any amounts of State supplementary payments which are due and administered by the Social Security Administration, is:

(a) Nonpayment, where payment for a month was due but was not made; or

(b) Payment of less than the amount due for any month.

§ 416.537 [Amended]

25. In § 416.537, paragraph (b)(1) is amended by changing the cross reference "§ 416.951" to "§ 416.931", and paragraph (b)(2) is amended by changing the cross reference "§ 416.713" to "§ 416.724".

26. Section 416.538 is revised to read as follows:

§ 416.538 Amount of underpayment or overpayment.

The amount of an underpayment or overpayment is the difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period. An overpayment or underpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month the initial determination of overpayment or underpayment is made. With respect to the period established, there can be no underpayment to a recipient or his eligible spouse if more than the correct amount payable under title XVI of the Social Security Act has been paid (whether or not adjustment or recovery of any overpayment for that period has been waived under the provisions of §§ 416.550–416.555) a subsequent initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that the basis of the prior overpayment remains the same. Where an apparent overpayment has been detected but determination of the overpayment has not been made (see § 416.558(a)), a determination and payment of an underpayment which is otherwise due cannot be delayed unless a determination with respect to the apparent overpayment can be made before the close of the month following the month in which the underpaid amount was discovered. Further, any underpayment amount apparently due the surviving eligible spouse on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient under section 1631(e) of the Act (see § 416.537(b)(2)).

27. In § 416.553, paragraph (b) is revised as follows: (The introductory paragraph is repeated for reader convenience.)

§ 416.553 Waiver of adjustment or recovery—defeat the purpose of the supplemental security income program.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery of the overpayment would defeat the purpose of the supplemental Security income program.

* * * * *

(b) *Alternative criteria for individuals currently eligible for SSI benefits.* We consider an individual or couple currently eligible for SSI benefits to have met the test in paragraph (a) of this section if the individual's or couple's current monthly income (that is, the income upon which the individual's or couple's eligibility for the current month is determined) does not exceed—

(1) the applicable Federal monthly benefit rate for the month in which the determination of waiver is made (see Subpart D of this part); plus

(2) The $20 monthly general income exclusion described in §§ 416.1112(c)(3) and 416.1124(c)(10); plus

(3) The monthly earned income exclusion described in § 416.1112(c)(4); plus

(4) The applicable State supplementary payment, if any (see Subpart T of this part) for the month in which determination of waiver is made. For those SSI recipients whose income exceeds these criteria, we follow the general rule in paragraph (a) of this section.

Subpart G—Reports Required

28. The authority citation for Subpart G of Part 416 continues to read as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act as amended; sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended; 86 Stat. 1466, 1468, 1470, 1471, and 1475; 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383.

§ 416.714 [Amended]

29. In § 416.714, paragraph (a) is amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the second sentence.

§ 416.726 [Amended]

30. In § 416.726, paragraphs (a) and (b) are amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the first sentence of each and by removing the examples in each paragraph.

§ 416.728 [Amended]

31. In § 416.728, paragraphs (a) and (b) are amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the first sentence of each and by removing the examples in each paragraph.

§ 416.730 [Amended]

32. In § 416.730, paragraph (a) is amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the second sentence.

33. In § 416.730, paragraph (b) is amended by removing the words "30 days after the calendar quarter" and adding the words "10 days after the close of the month" in lieu thereof in the first sentence.

Subpart K—Income

34. The authority citation for Subpart K of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act as amended; sec. 211 of Pub. L. 93–66; 49 Stat. 647, as amended; 86 Stat. 1466, 1468, 1470, 1471, and 1475; 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383. Sec. 202 of Pub. L. 96–265, 94 Stat. 449; 42 U.S.C. 1382c.

35. Section 416.1100 is revised to read as follows:

§ 416.1100 Income and SSI eligibility.

You are eligible for supplemental security income (SSI) benefits if you are an aged, blind, or disabled person who meets the requirements described in Subpart B and who has limited income and resources. Thus, the amount of income you have is a major factor in deciding whether you are eligible for SSI benefits and the amount of your benefit. We count income on a monthly basis. Generally, the more income you have the less your benefit will be. If you have too much income, you are not eligible for a benefit. However, we do not count all of your income to determine your eligibility and benefit amount. We explain in the following sections how we treat your income for the SSI program. These rules apply to the Federal benefit and to any optional State supplement paid by us on behalf of a State (§ 416.2025) except as noted in Subpart T and in the Federal-State agreements with individual States. While this subpart explains how we count income, Subpart D of these regulations explains how we determine your benefits, including the provision that we generally use countable income in a prior month to determine how much your benefit amount will be for a month in which you are eligible (§ 416.420).

36. In § 416.1101, the definitions are amended as follows: "Calendar quarter" is added; "child" is amended by removing the cross reference to § 416.1050 and adding § 416.1856 in lieu thereof; "Federal benefit rate" is revised and "Spouse" is amended by removing the cross reference to §§ 416.1001

through 416.1041 and adding §§ 416.1806 and 416.1811 in lieu thereof.

§ 416.1101 Definition of terms.

As used in this subpart—

"Calendar quarter" means a period of three full calendar months beginning with January, April, July, or October.

* * * * *

"Federal benefit rate" means the monthly payment rate for an eligible individual or couple. It is the figure from which we substract countable income to find out how much your Federal SSI benefit should be. The Federal benefit rate does not include the rate for any State supplement paid by us on behalf of a State.

* * * * *

§ 416.110 [Amended]

37. In § 416.1110(b), the last sentence is amended by removing the cross reference to § 404.1050 and adding § 404.1080 in lieu thereof.

38. In § 416.1111, the second sentence in paragraph (a) is amended by removing the words "calendar quarter" and adding the word "month" in lieu thereof and paragraph (b) is revised to read as follows:

§ 416.1111 How we count earned income.

* * * * *

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. However, we divide the total of these earnings equally among the months in the taxable year to get your earnings for each month. For example, if your net earnings for a taxable year are $2,400, we consider that you received $200 in each month. If you have net losses from self-employment, we divide them over the taxable year in the same way, and we deduct them only from your other earned income.

* * * * *

39. In § 416.1112, the third sentence in paragraph (a) is amended by removing the words "in the calendar quarter" and adding the words "in the month" in lieu thereof and paragraphs (c) (1), (2) and (3) are revised to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) *Other earned income we do not count.* We do not count as earned income—

(1) Up to $10 of earned income in a month if it is infrequent or irregular; that is, if you receive it only once in a calendar quarter from a single source or if you cannot reasonably expect it. If the total amount of your infrequent or irregular earned income for a month exceeds $10, we cannot use this exclusion;

(2) Up to $400 per month but not more than $1,620 in a calendar year, if you are a blind or disabled child who is a student regularly attending school as described in § 416.1861;

(3) Any portion of the $20 monthly exclusion in § 416.1124(c)(10) which has not been excluded from your unearned income in that same month;

* * * * *

§ 416.1123 [Amended]

40. In § 416.1123, the second sentence is amended by removing the words "calendar quarter" and adding the word "month" in lieu thereof and in paragraph (d) the third sentence is amended by removing the word "quarter" and adding the word "month" in lieu thereof.

41. In § 416.1124, paragraph (a) is amended by removing the word "you" in the first sentence and adding the word "your" in lieu thereof and by removing the words "in the calendar quarter" and adding the words "in the month" in lieu thereof in the third sentence and by removing the amount "$60" and adding "$20" in the last sentence in lieu thereof and paragraphs (c)(6) and (c)(12) are revised to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) *Other unearned income we do not count.* We do not count as unearned income—

* * * * *

(6) Up to $20 of unearned income in a month if it is infrequent or irregular; that is, if you receive a type of income listed in § 416.1121 only once during a calendar quarter from a single source or if you cannot reasonably expect it. If the total amount of infrequent or irregular unearned income in a month exceeds $20, we cannot use this exclusion;

* * * * *

(12) The first $20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of another (see § 416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility. The $20 exclusion does not apply to a benefit based on need that is totally or partially funded by the Federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions is excluded totally from income as described in § 416.1124(c)(2). If you have less than $20 of unearned income in a month and you have earned income in that month, we will use the rest of the $20 exclusion to reduce the amount of your countable earned income; and

* * * * *

42. In § 416.1130, paragraph (a) is revised to read as follows:

§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) the Federal benefit rate that applies for the purpose of valuing in-kind support and maintenance is the rate for the month in which you receive the in-kind support and maintenance.

Example: Joe 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 by reason of the fact that he lives in the household of a son who provides both food and shelter (in-kind support and maintenance). When the SSI benefit rate is increased in January, his SSI benefit for that month is based on the value of the in-kind support and maintenance he received in November (measured as one-third of the Federal benefit rate for November).

* * * * *

§ 416.1131 [Amended]

43. In § 416.1131, paragraph (a) is amended by removing the words "reduce the Federal benefit rate by one-third" and adding the words "count one-third of the Federal benefit rate as additional income," in lieu thereof and paragraph (b) is amended by removing the words "is a flat reduction of the Federal benefit rate. It".

§ 416.1132 [Amended]

44. In § 416.1132, paragraph (b)(1) is amended by removing the cross reference § 416.1005 and adding § 416.1806 in lieu thereof.

§ 416.1140 [Amended]

45. In § 416.1140, paragraph (a)(1) is amended by removing the last sentence.

§ 416.1146 [Removed]

46. Section 416.1146 is removed.

47. In § 416.1147 all cross-references to § 416.231 are removed and § 416.211(b) is added in lieu thereof and paragraph

(a) is amended by removing the cross reference § 416.1040 and adding § 416.1830 in lieu thereof, and (c) is revised to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

* * * * *

(c) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals. This begins with the first calendar month one of you is in the medical institution. The one living in another person's household is eligible at an eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the rate described in § 416.414(b)(1).

* * * * *

48. Section 416.1147a is added to read as follows:

§ 416.1147a Income rules in change-of-status situations involving in-kind support and maintenance.

(a) *General.* This section explains the rules for determining countable income, including in-kind support and maintenance, when eligible individuals become an eligible couple or when an eligible couple becomes eligible individuals. Generally, under retrospective monthly accounting, income in a prior month, including in-kind support and maintenance, affects benefit amounts for a current month. The prior month may be the first or second month prior to the current month (as explained in § 416.420(a)) and the rules in this section apply when a change-of-status becomes effective between the prior month and the current month.

(b) *Eligible individuals become an eligible couple.* If you and your spouse have been eligible individuals and become an eligible couple, we combine the earned and unearned income each of you had as an eligible individual in the prior month. If either or both of you received in-kind support and maintenance, we include its value as income. This may be one-third of the Federal benefit rate that applied in the prior month for one or both of you who lived in the household of another. It may be the presumed maximum value (one-third of the Federal benefit rate plus $20 as explained in § 416.1140) for one or both of you as appropriate. It may also be a combination of the two if each of you received income in one of these forms. We also include income deemed to either or both of you in the prior month.

(c) *Eligible couple becomes one or two eligible individuals.* If you are an eligible individual in the current month but were a member of an eligible couple in the prior month, we determine your countable income in the prior month separately from that of your spouse. We determine the value of any in-kind support and maintenance you and your spouse received in the prior month using the rules contained in § 416.1147. For example, if both of you lived in the household of another and the one-third reduction applied, each of you would have income equal to one-sixth of the Federal benefit rate for a couple. Also, for example, if you received in-kind support and maintenance and the presumed maximum value applied, you would have income equal to one-sixth of the Federal benefit rate for a couple, plus $10. We divide any other income you had as an eligible couple according to who owned the income. If ownership of jointly owned income cannot be determined, we allocate one-half of it to you.

§ 416.1148 [Amended]

49. In § 416.1148 the first sentence of paragraph (b)(2) is amended by removing "21" and adding "18".

50. In § 416.1149, paragraphs (c)(1) and (c)(2)(ii) are revised to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) *Rules for temporary absence in certain circumstances.*

(1) If you enter a medical care facility that receives Medicaid payments for your care (as described in § 416.211(b)) with the intention of returning to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month you enter or leave the facility. During any full calendar month you are in the medical care facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider food or shelter provided during a medical confinement to be income.

(2) * * *

(ii) However, if you are a child under age 18, and your permanent living arrangement is with an ineligible parent or essential person (§ 416.222), we follow the rules in § 416.1148(b)(2). When you reach age 18, or if you are under age 18 and deeming does not apply, we consider the circumstances of your permanent living arrangement to value any in-kind support and maintenance you receive.

51. Section 416.1160 is amended by adding paragraph (a)(3) to read as follows:

§ 416.1160 What is deeming.

(a) *General.* * * *

(3) We deem income to determine whether you are eligible for a benefit and to determine the amount of your benefit. However, we consider this income in different months for each purpose.

(i) *Eligibility.* We consider how much income your ineligible spouse, ineligible parent, or essential person has in the current month that is deemed to you to determine whether you are eligible for SSI benefits for that month.

(ii) *Amount of benefit.* We consider the income of your ineligible spouse, ineligible parent or essential person in the second month prior to the current month to determine your benefit amount for the current month. *Exceptions:* (A) To determine your benefit amount for the first month you are eligible or for a month after you have been ineligible for at least a month, we use the same countable income that we use to determine your eligibility. In the following month (the second month) we use the same countable income that we used in the preceding month to determine your benefit amount. (B) To determine the amount of your benefit in the current month, if there are certain changes in your situation which we list below, we use only your own countable income in a prior month, excluding any income deemed to you in that month from an ineligible spouse or parent. These changes are the death of your spouse or parent, your attainment of age 18, or your becoming subject to the $25 Federal benefit rate (§ 416.211(b)). (C) To determine the amount of your benefit for the current month, we do not use income deemed from your essential person beginning with the month you can no longer qualify for the essential person increment (§ 416.413). We use only your own countable income in a prior month to determine the amount of your benefit for the current month.

* * * * *

52. In § 416.1161, revise paragraph (c) to read as follows. The introductory paragraph is shown for reader convenience.

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

The first step in deeming is determining how much income your ineligible spouse, ineligible parent, or essential person has. We do not always include all of their income when we determine how much income to deem. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or parent we must determine the amount of income of any ineligible children in the household.

* * * * *

(c) *For an ineligible child.* Although we do not deem any income to you from an ineligible child, we reduce his or her allocation if the ineligible child has income (see § 416.1163(b)(2)). For this purpose, we do not include any of the child's income listed in paragraph (a) of this section. In addition, if the ineligible child is a student (see § 416.1861), we exclude any of the child's earned income up to $400 a month but not more than $1,620 per year.

53. In § 416.1163, paragraphs (b)(1), (c), and (d) are revised to read as follows. Paragraphs (e) and (f) are added to read as follows. The introductory paragraph is shown for reader convenience.

§ 416.1163 How we deem income to you from your ineligible spouse.

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order:

* * * * *

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. *Exception:* We do not allocate for children who are receiving public income-maintenance payments (see § 416.1142(a)).

(1) The allocation for each ineligible child is one-half of the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in § 416.1160(a)(3)(ii) applies.

* * * * *

(c) *Determining your eligibility for SSI.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than one-half of the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than one-half of the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple.

(d) *Determining your SSI benefit.* (1) In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (c) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(a)(3)(ii) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

(2) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the lesser of the amount computed under the rules in paragraph (c)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate.

(e) *Special rules for couples when a change in status occurs.* We have special rules to determine how to deem your spouse's income to you when there is a change in your situation.

(1) *Ineligible spouse becomes eligible.* If your ineligible spouse becomes eligible for SSI benefits, we treat both of you as newly eligible. Therefore, your eligibility and benefit amount for the first month you are an eligible couple will be based on your income in that month. In the second month, your benefit amount will also be based on your income in the first month.

(2) *Spouses separate or divorce.* If you separate from your ineligible spouse or your marriage to an ineligible spouse ends by divorce, we do not deem your ineligible spouse's income to you to determine your eligibility for benefits beginning with the first month following the event. If you remain eligible, we determine your benefit amount by following the rule in paragraph (d) of this section provided deeming from your spouse applied in the prior month.

(3) *Eligible individual begins living with an ineligible spouse.* If you begin to live with your ineligible spouse, we deem your ineligible spouse's income to you in the first month thereafter to determine whether you continue to be eligible for SSI benefits. If you continue to be eligible, we follow the rule in § 416.420(a) to determine your benefit amount.

(4) *Ineligible spouse dies.* If your ineligible spouse dies, we do not deem your spouse's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(5) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible spouse's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(f) *Examples.* These examples show how we deem income from an ineligible spouse to an eligible individual in cases which do not involve any of the exceptions in § 416.1160(a)(3)(ii). The Federal benefit rates used are those effective January 1, 1984.

Example 1. In September 1984, Ted, an aged individual, lives with his ineligible spouse, Alice, and their ineligible child, Mike. Ted has a Federal benefit rate of $314 per month. Alice receives $252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike $157 (one-half the September Federal benefit rate for an eligible individual). We subtract the $157 allocation from Alice's $252 unearned income, leaving $95. Since Alice's $95 remaining income is not more than $157, which is one-half the September Federal benefit rate for an eligible individual, we do not deem any income to Ted. Instead, we compare only Ted's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Ted's own countable income is less than his Federal benefit rate, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Alice, in July and subtract this income from the appropriate Federal benefit rate for September.

Example 2. In September 1984, George, a disabled individual, lives with his ineligible spouse, Ellen, and ineligible child, Christine. George and Christine have no income. Ellen has earned income of $401 a month and unearned income of $252 a month. Before we deem any income, we allocate $157 to Christine. We take the $157 allocation from Ellen's $252 unearned income, leaving $95 in unearned income. Since Ellen's total remaining income ($95 unearned plus $401 earned) is more than $157, which is one-half the September Federal benefit rate for an eligible individual, we compute the combined countable income as we do for a couple. We apply the $20 general income exclusion to the unearned income, reducing it further to $75. We then apply the earned income exclusion ($65 plus one-half the remainder) to Ellen's earned income of $401, leaving $168. We combine the $75 countable unearned income and $168 countable earned income, and compare it ($243) with the $472 September Federal benefit rate for a couple, and determine that George is eligible. Since George is eligible, we determine the amount of his benefit by substracting his countable income in July (inculding any deemed from Ellen) from September's Federal benefit rate for a couple.

Example 3. In September 1984, Joe, a disabled individual, lives with his ineligible spouse, Mary, who earns $201 per month. Joe receives a pension (unearned income) of $100 a month. Since Mary's income is greater than $157, which is one-half of the September Federal benefit rate for an eligible individual, we deem all of her income to be available to both Joe and Mary and compute the combined countable income for the couple. We apply the $20 general income exclusion to Joe's $100 unearned income, leaving $80. Then we apply the earned income exclusion ($65 plus one-half of the remainder) to Mary's $201, leaving $68. This gives the couple total countable income of $148. This is less than the $472 September Federal benefit rate for a couple, so Joe is eligible based on deeming. Since he is eligible, we determine the amount of his benefit based on his income (including any deemed from Mary) in July.

54. Section 416.1165 is revised to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent.

If you are a child under age 18 living with one or both of your parents, we follow the rules in paragraphs (a) through (d) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (e) of this section. The rules in paragraph (f) of this section apply to changes in your family situation.

(a) *Determining your ineligible parent's income.* We first determine how much current monthly earned and unearned income your ineligible parents have, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Allocations for your ineligible parents.* We next deduct allocations for your parents. These vary depending on the type of income they have. We do not allocate for a parent who is receiving public income-maintenance payments (see § 416.1142(a)).

(1) *All parental income is earned.* If your parents have only earned income, we allocate $85 (the sum of the $20 general income exclusion and the $65 earned income exclusion) plus—

(i) Double the Federal benefit rate for the month for a couple if both parents live with you; or

(ii) Double the Federal benefit rate for the month for an individual if only one parent lives with you.

(2) *All parental income is unearned.* If your parents have only unearned income, we allocate $20 (the amount of the general income exclusion) plus—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(3) *Parental income is both earned and unearned.* If your parents have both earned and unearned income, we allocate for them as follows. We first deduct $20 from their combined unearned income. If they have less than $20 in unearned income we subtract the balance of the $20 from their combined earned income. Next, we subtract $65 plus one-half the remainder of their earned income. We total the remaining earned and unearned income, and subtract—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(d)(1) *When you are the only eligible child.* If you are the only eligible child in the household, we deem any of your parents' current monthly income that remains to be your unearned income. We combine it with your own unearned income and apply the exclusions in § 416.1124 to determine your countable unearned income in the month. We add this to any countable earned income you may have and subtract the total from the Federal benefit rate for an individual to determine whether you are eligible for benefits.

(2) *When you are not the only eligible child.* If your parents have more than one eligible child in the household, we divide the parental income to be deemed equally among the eligible children.

(3) *When one child's income makes that child ineligible.* We do not deem more income to an eligible child than the amount which, when combined with the child's own income, reduces his or her SSI benefit to zero. (For purposes of this paragraph, an SSI benefit includes any federally administered State supplement.) If the share of parental income that would be deemed to a child makes that child ineligible (reduces the amount to zero) because that child has other countable income, we deem any remaining parental income to other eligible children in the household in the manner described in paragraph(d) (2) and (3) of this section.

(e) *Determining your SSI benefit.* In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible parents' income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(a)(3)(ii) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility) we deem your ineligible parents' income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible parents' income in that month to determine whether you are eligible for a benefit but we again use your countable income (including any that was deemed to you) in the first month to determine the amount of your benefit.

(f) *Special rules for a change in status.* We have special rules to begin or stop deeming your ineligible parents' income to you when a change in your family situation occurs.

(1) *Ineligible parent becomes eligible.* If your ineligible parent becomes eligible for SSI benefits, there will be no income to deem from that parent to you to determine your eligibility for SSI benefits beginning with the month your parent becomes eligible. However, to

determine your benefit amount, we follow the rule in § 416.420.

(2) *Eligible parent becomes ineligible.* If your eligible parent becomes ineligible, we deem your parent's income to you in the first month of the parent's ineligibility to determine whether you continue to be eligible for SSI benefits. However, if you continue to be eligible, in order to determine your benefit amount, we follow the regular rule of counting your income in the second month prior to the current month.

(3) *Ineligible parent dies.* If your ineligible parent dies, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(a)(3)(ii)(B)). However, if you live with two ineligible parents, and one dies, we continue to deem income from the surviving parent.

(4) *Ineligible parent and you no longer live in the same household.* If your ineligible parent and you no longer live in the same household, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the first month following the month in which one of you leaves. However (if you continue to be eligible), to determine your benefit amount we follow the rule in § 416.420 of counting your income including income deemed from your parent in the second month prior to the current month.

(5) *Ineligible parent and you begin living in the same household.* If your ineligible parent and you begin living in the same household, we consider that parent's income to determine whether you continue to be eligible for SSI benefits beginning with the month following the month of change. However (if you continue to be eligible), to determine your benefit amount, we follow the rule in § 416.420 of counting your income in the second month prior to the current month.

(6) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent.

(7) *You attain age 18.* In the month following the month in which you attain age 18 and thereafter, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits. In determining your benefit amount beginning with the month following your attainment of age 18, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(a)(3)(ii)(B)). Your income for the current and subsequent months must include any income in the form of cash or in-kind support and maintenance provided by your parents. If you attain age 18 and stop living in the same household with your ineligible parent, these rules take precedence over paragraph (b)(4) of this section which requires continued use of deemed income in the benefit computation for 2 months following the month of change.

(g) *Examples.* These examples show how we deem an ineligible parent's income to an eligible child when none of the exceptions in § 416.1160(a)(3)(ii) applies. The Federal benefit rates are those effective January 1, 1984.

Example 1. Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $265 per month and his father earns $915 per month. Henry and his brother have no income. First, we allocate $157 for Henry's brother from the unearned income of $265. This leaves $108 in unearned income. Since the remaining parental income is both earned and unearned, we reduce the unearned income further by $20, leaving $88. We then reduce the $915 of earned income by $65 plus one-half of the remainder, leaving $425. From the total remaining income of $513, we subtract $472 (the Federal benefit rate for a couple), as the allocation for the parents, leaving $41 to be deemed as Henry's unearned income. We then apply Henry's $20 general income exclusion which reduces his countable income to $21. Since that amount is less than the $314 Federal benefit rate for an individual, Henry is eligible. We determine his benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives $404 a month in unearned income. Since all the mother's income is unearned, the amount we allocate for her needs is $334 (the $314 Federal benefit rate for an individual, plus the $20 general income exclusion). After subtracting this allocation from her $404, we divide the remaining $70 equally between the two children ($35 each) as unearned income. We then apply the $20 general income exclusion leaving each child with $15 countable income. The $15 income is less than the $314 Federal benefit rate for an individual, so the children are eligible. We determine each child's benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

55. Section 416.1166 is amended by revising paragraphs (c), (d), and (e) to read as follows. The introductory paragraph is repeated for reader convenience.

§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child. For the purpose of this section, SSI benefits include any federally administered State supplement. We then follow the rules in § 416.1165(d) to determine the child's eligibility for SSI benefits and in § 416.1165(e) to determine the benefit amount.

* * * * *

(c) *Determining your eligibility for SSI benefits and benefit amount.* We then follow the rules in § 416.1163(c) to find out if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow (d) below to determine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in § 416.1163(d).

(d) *Determining your child's eligibility and amount of benefits.* (1) If you are eligible for SSI benefits after your spouse's income has been deemed to you, we do not deem any income to your child. To determine the child's eligibility, we subtract the child's own countable income without deeming from the benefit rate for an individual.

(2) If you are not eligible for SSI benefits after your ineligible spouse's income has been deemed to you, we deem to your eligible child any of your spouse's income which was not used to reduce your SSI benefits to zero.

(e) *Examples.* These examples show how we deem income to an eligible individual and an eligible child in the same household. The Federal benefit rates used are those effective January 1, 1984.

Example 1. Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns $605 per month. We determine Mary's eligibility first. Since John's income is more than $157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire $605 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the $605 by the $20 general income exclusion, and then by the earned income exclusion of $65 plus one-half the remainder. This leaves John and Mary with $260 in countable income. The $260 countable income is less than the $472 Federal benefit rate for a couple, so Mary is eligible; therefore, there is no income to be deemed to Peter.

Example 2. Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns $1,065 a month. Since Dora's income is more than $157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire $1,065 as earned income available to Al and Dora as a couple. We reduce this income by the $20 general income exclusion and then by $65 plus one-half the remainder (earned income exclusion), leaving $490 in countable income. Al is ineligible because the couple's $490 countable income exceeds the $472 Federal benefit rate for a couple. Since Al is ineligible, we deem to Jeff $18, the amount of income over and above the amount which causes Al to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the $18 deemed to Jeff as unearned income, and we apply the $20 general income exclusion, reducing Jeff's countable income to zero. Jeff is eligible.

56. Section 416.1167 is revised to read as follows:

§ 416.1167 Temporary absences and deeming rules.

(a) *General.* A temporary absence, for the purpose of deeming, occurs when you or your ineligible spouse or parent or an ineligible child leaves the household but intends to, and does, return in the same month or the month immediately following. If the absence is temporary, we continue to consider the person a member of the household.

(b) *Child away at school.* If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider you temporarily absent from your parents' household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income (or resources) to you. Being subject to parental control affects deeming to you only if you are away at school.

57. In § 416.1168, paragraph (a) is amended by adding the word "are" after "you" in the second sentence, paragraph (b) is revised, and paragraph (c) is added to read as follows:

§ 416.1168 How we deem income to you from your essential person.

* * * * *

(b) *Determining your eligibility for an SSI benefit.* We apply the exclusions to which you are entitled under §§ 416.1112 and 416.1124 to your earned income and to your unearned income which includes any income deemed from your essential person. After combining the remaining amounts of countable income, we compare the total with the Federal benefit rate for a qualified individual (see § 416.413) to determine whether you are eligible for an SSI benefit.

(c) *Determining your SSI benefit amount.* We determine your SSI benefit amount in the same way that we determine your eligibility. However, in following the procedure in paragraphs (a) and (b) of this section we use your essential person's income that we deemed to you in the second month prior to the current month. *Exception:* Beginning with the month in which you no longer have your essential person, we do not use any of the income deemed to you from that essential person in a prior month to determine the amount of your benefit (see § 416.1160(a)(3)(ii)(C)). We use only your own countable income in a prior month.

58. Section 416.1169 is revised to read as follows:

§ 416.1169 When we stop deeming income from an essential person.

If including the income deemed to you from your essential person causes you to be ineligible for an SSI benefit, you are no longer considered to have that essential person whose income makes you ineligible. To determine your eligibility for that month we deduct only your own countable income from your Federal benefit rate. However, other deeming rules may then apply as follows:

(a) *Essential person is your spouse.* If the person who was your essential person is your ineligible spouse, we apply the deeming rules in § 416.1163 beginning with the month that the income of your essential person is no longer deemed to you.

(b) *Essential person is your parent.* If you are a child under age 18, and the person who was your essential person is your ineligible parent, we apply the deeming rules in § 416.1165 beginning with the month that the income of your essential person is no longer deemed to you.

§ 416.1182 [Amended]

59. In § 416.1182, the introductory paragraph is amended by removing the word "quarter" and adding the word "month" in lieu thereof.

Subpart L—Resources and Exclusions

60. The authority citation for Subpart L of Part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f), and 1631(d) of the Social Security Act, as amended; 49 Stat. 647 as amended, 86 Stat. 1465, 1466, 1468, 1470, 1473; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f), and 1383(d), unless otherwise noted.

§ 416.1232 [Amended]

61. In § 416.1232, the last sentence in paragraph (a) is amended by removing the word "quarter" and adding the word "month" in lieu thereof, and the last sentence of paragraph (b) is amended by removing the word "quarter" and adding the word "month" in lieu thereof.

Subpart T—State Supplementation Provisions; Agreement; Payments

62. The authority citation for Subpart T is revised to read as follows:

Authority: Secs. 1102, 1601, 1616, 1631, and 1634 of the Social Security Act as amended; sec. 401 of Pub. L. 92-603 as amended, sec. 212 of Pub. L. 93-66, sec. 8 of Pub. L. 93-223, secs. 1 and 2 of Pub. L. 93-335; 49 Stat. 647 as amended, 86 Stat. 1465, 1474, 1475, 1478, and 1485, 87 Stat. 155 and 956, 88 Stat. 291; 42 U.S.C. 1302, 1381, 1382e, 1383, 1383c, 1383e nts, 1382 nt (7 U.S.C. 2012 nts) Pub. L. 97-51, 97-85, 97-92, and 97-161.

§ 416.2020 [Amended]

63. In § 416.2020, paragraph (c) is amended by adding a period after the word "month" and removing the following words "i.e., $3 per quarter".

64. In § 416.2030, a new paragraph (c) is added to read as follows:

§ 416.2030 Optional supplementation: Variations in payments.

* * * * *

(c) *Effective month of State supplementary payment category.* The State supplementary payment category which applies in the current month will be used to determine the State payment level in that month. This rule applies even if the countable income in a prior month is used to determine the amount of State supplementary payment.

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