

meet the requirements for a significant regulatory action under Executive Order 12866. Thus, it was not reviewed by OMB.

#### *Regulatory Flexibility Act*

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

#### *Paperwork Reduction Act*

This rule does not create any new, or affect any existing, collections, and therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

#### List of Subjects

##### *20 CFR Part 404*

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

##### *20 CFR Part 416*

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

Dated: February 4, 2010.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we amend subpart U of part 404 and subpart F of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

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

##### **Subpart U—[Amended]**

■ 1. The authority citation for subpart U of part 404 is revised to read as follows:

**Authority:** Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 2. Amend § 404.2060 by revising the first sentence to read as follows:

##### **§ 404.2060 Transfer of accumulated benefit payments.**

A representative payee who has conserved or invested benefit payments

shall transfer these funds and the interest earned from the invested funds to either a successor payee, to the beneficiary, or to us, as we will specify. \* \* \*

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

##### **Subpart F—[Amended]**

■ 3. The authority citation for subpart F of part 416 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 4. Amend § 416.660 by revising the first sentence to read as follows:

##### **§ 416.660 Transfer of accumulated benefit payments.**

A representative payee who has conserved or invested benefit payments shall transfer these funds and the interest earned from the invested funds to either a successor payee, to the beneficiary, or to us, as we will specify. \* \* \*

[FR Doc. 2010-3380 Filed 2-19-10; 8:45 am]

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#### **SOCIAL SECURITY ADMINISTRATION**

##### **20 CFR Part 416**

[Docket No. SSA-2008-0051]

RIN 0960-AF97

#### **Exclusion of Certain Military Pay From Deemed Income and Resources**

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** We are revising our rules to clarify that, for Supplemental Security Income (SSI) purposes, we do not consider any combat-related military pay as income when we determine whether spouses and children of members of the uniformed services are eligible for SSI. The rules also clarify that we do not consider combat-related military pay as income when we determine the spouse's or child's proper payment amount. These rules also provide that, when we determine whether spouses and children are eligible for SSI, we do not consider retroactive payments of certain military pay as resources for 9 months following receipt. These final rules protect spouses and children of members of the uniformed services from a reduction in, or loss of, benefits because their spouse or parent serves in a combat zone.

**DATES:** This final rule will be effective March 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Eric Skidmore, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 597-1833. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Version**

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

##### **Background**

The SSI program provides a minimum income level for aged, blind, and disabled persons who do not have income or resources above levels specified in the Social Security Act (the Act). The Act generally requires that when we determine a person's eligibility for, and amount of, SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household and, in the case of a child under the age of 18, an ineligible parent living in the same household (and the spouse of such a parent). Section 1614(f) of the Act, 42 U.S.C. 1382c(f). We use the term "deeming" to refer to the process of considering part of an ineligible spouse's or parent's income and resources to be the person's own income and resources.

Although a member of the uniformed services on active duty is unlikely to apply or be eligible for SSI benefits, some members of the uniformed services have spouses or children who receive or may apply for SSI benefits. For purposes of deeming, the Act provides that a spouse or parent who is absent from the household solely because of a duty assignment as a member of the Armed Forces generally will be treated as if he or she were living in the household. Section 1614(f)(4) of the Act, 42 U.S.C. 1382c(f)(4). Therefore, we generally deem income and resources of the member of the uniformed services to his or her spouse or child when determining the spouse's or child's eligibility for, and amount of, SSI benefits. Because we consider the member of the uniformed services as part of the household, we do not treat his or her military pay as unearned income from a source outside of the household.

Although we generally deem income of a member of the uniformed services

to his or her spouse or child, the Act excludes from income certain kinds of pay that members of the uniformed services may receive. Section 1612(b)(20) of the Act, 42 U.S.C. 1382a(b)(20). In particular, we exclude from income special pay received pursuant to 37 U.S.C. 310. Members of the uniformed services are eligible for special pay during months in which they are subject to hostile fire or certain other dangerous conditions specified in 37 U.S.C. 310. Our current regulations implementing section 1612(b)(20) of the Act exclude "hostile fire pay" received under 37 U.S.C. 310 from income and from deeming to spouses and children. 20 CFR 416.1124(c)(19) and 416.1161(a)(23). We are replacing the term "hostile fire pay" in these sections of our rules with the term "special pay" to clarify that we exclude from income all special pay that a member of the uniformed services received pursuant to 37 U.S.C. 310.

We are also adding a new paragraph to our rules on deeming of income to spouses and children that excludes from deeming additional types of combat-related pay beyond special pay under 37 U.S.C. 310. The Act allows us to waive the deeming of income and resources to a spouse or child when we determine that deeming would be inequitable. Section 1614(f) of the Act, 42 U.S.C. 1382c(f). Effective October 1, 2002, we issued instructions under this statutory authority to exclude from a spouse's or child's deemed income any additional pay that members of the uniformed services received because they were deployed to or served in a combat zone. We determined that it would be inequitable to deem that pay as income and reduce a family member's benefits or potentially render the family member ineligible for SSI. We are now incorporating this exclusion and the definition of the term "combat zone" in our SSI rules.

We are also revising our rules on deeming of resources to spouses and children to exclude retroactive payments of certain kinds of military pay for 9 months following receipt. Congress has retroactively and permanently increased the amount of special pay under 37 U.S.C. 310 and the family separation allowance under 37 U.S.C. 427. Pursuant to section 1614(f) of the Act, we issued instructions excluding retroactive payments of the increase in special pay received after September 2002 from a spouse's or child's deemed resources for a period of 9 months following the month of receipt. Our instructions similarly excluded retroactive payments of the family separation allowance that a

member of the uniformed services received as a result of deployment to or service in a combat zone. We determined that it would be inequitable to apply the usual resource deeming rules to these retroactive payments in recognition of the hardships experienced and sacrifices made by members of the uniformed services and their families. We are now revising our SSI rules to incorporate these exclusions.

Finally, we are revising the punctuation at the conclusion of § 416.1161(a)(25), (a)(26), and (a)(27). We are also clarifying some of the language in § 416.1202(a) and (b)(1) and reorganizing portions of § 416.1202(b)(1) to make that section easier to understand. We are making these changes solely to improve the clarity of these rules, and these changes have no substantive effect on our policies or procedures.

#### Explanation of Changes

We are amending the regulations in 20 CFR, part 416, subparts K and L, to reflect the changes discussed above. In summary, we are:

1. Revising § 416.1124(c)(19) and § 416.1161(a)(23) to replace the term "hostile fire pay" with the term "special pay." We are making this technical clarification to conform the regulatory language to the statutory language in section 1612(b)(20) of the Act.
2. Amending § 416.1160(d) to add a definition of the term "combat zone."
3. Amending § 416.1161 by adding new paragraph (a)(28) to exclude from income deemed from an ineligible spouse or parent any additional increment in pay, other than any increase in basic pay (e.g., annual pay raises, promotions), if:
  - The spouse or parent received the additional pay as a result of deployment to or service in a combat zone; and
  - The spouse or parent was not receiving the additional pay immediately prior to deployment to or service in a combat zone.
4. Revising the punctuation at the conclusion of paragraphs (a)(25), (a)(26), and (a)(27) of § 416.1161.
5. Revising paragraphs (a) and (b)(1) of § 416.1202 to exclude from resources deemed from an ineligible spouse or parent (or spouse of a parent), for 9 months following the month of receipt, the unspent portion of any retroactive payment of:
  - Special pay the ineligible spouse or parent received from one of the uniformed services pursuant to 37 U.S.C. 310; and
  - Family separation allowance the ineligible spouse or parent received

from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone.

6. Clarifying some language in paragraphs (a) and (b)(1) of § 416.1202, and reorganizing portions of paragraph (b)(1).

#### Public Comments

In the notice of proposed rulemaking we published at 74 FR 27727 (June 11, 2009), we provided the public with a 60-day period in which to comment on the proposed changes. That comment period ended on August 10, 2009. We did not receive any comments on the proposed changes. We are changing our rules exactly as we proposed in the notice of proposed rulemaking.

#### Regulatory Procedures

##### *Executive Order 12866*

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

##### *Regulatory Flexibility Act*

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

##### *Paperwork Reduction Act*

These final rules impose no reporting or recordkeeping requirements subject to OMB clearance.

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

#### List of Subjects in 20 CFR Part 416

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

Dated: November 9, 2009.

**Michael J. Astrue,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we amend subparts K and L of part 416 of chapter III of title 20 Code of Federal Regulations as set forth below:

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

**Subpart K—[Amended]**

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Amend § 416.1124 by revising paragraph (c)(19) to read as follows:

**§ 416.1124 Unearned income we do not count.**

\* \* \* \* \*

(c) \* \* \*

(19) Special pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

\* \* \* \* \*

■ 3. Amend § 416.1160 by adding the definition of “Combat zone” in paragraph (d) to read as follows:

**§ 416.1160 What is deeming of income?**

\* \* \* \* \*

(d) \* \* \*

*Combat zone* means

(i) Any area the President of the United States designates by Executive Order under 26 U.S.C. 112 as an area in which Armed Forces of the United States are or have engaged in combat;

(ii) A qualified hazardous duty area (QHDA) Congress designates be treated in the same manner as an area designated by the President under 26 U.S.C. 112, provided the member of the uniformed services serving in this area is entitled to special pay under 37 U.S.C. 310; or

(iii) An area where the Secretary of Defense or his or her designated representative has certified that Armed Forces members provide direct support for military operations in an area designated by the President under 26 U.S.C. 112 or a QHDA, provided the member of the uniformed services serving in the area certified by the Secretary of Defense or his or her designated representative is entitled to special pay under 37 U.S.C. 310.

\* \* \* \* \*

■ 4. Amend § 416.1161 as follows:

■ a. Amend paragraph (a)(23) by removing the words “Hostile fire pay” and adding the words “Special pay” in their place;

■ b. Remove the word “and” at the end of paragraph (a)(25);

■ c. Remove the period at the end of paragraph (a)(26) and add a semicolon in its place;

■ d. Remove the period at the end of paragraph (a)(27) and add “; and” in its place; and

■ e. Add paragraph (a)(28) to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(28) Any additional increment in pay, other than any increase in basic pay, received while serving as a member of the uniformed services, if—

(i) Your ineligible spouse or parent received the pay as a result of deployment to or service in a combat zone; and

(ii) Your ineligible spouse or parent was not receiving the additional pay immediately prior to deployment to or service in a combat zone.

\* \* \* \* \*

**Subpart L—[Amended]**

■ 5. The authority citation for subpart L of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 6. In § 416.1202:

■ a. Revise the second sentence and remove the third sentence of paragraph (a);

■ b. Add new paragraphs (a)(1), (a)(2), and (a)(3); and

■ c. Revise paragraph (b)(1).

The additions and revisions read as follows:

**§ 416.1202 Deeming of resources.**

(a) \* \* \* In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(1) Pension funds that the ineligible spouse may have. *Pension funds* are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(2) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible spouse received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(3) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible spouse received from one

of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a combat zone (as defined in § 416.1160(d)).

(b) \* \* \*

(1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, we will deem to that child any resources, not otherwise excluded under this subpart, of his or her ineligible parent who is living in the same household with him or her (as described in § 416.1851). We also will deem to the child the resources of his or her ineligible stepparent. As used in this section, the term “parent” means the natural or adoptive parent of a child, and the term “stepparent” means the spouse (as defined in § 416.1806) of such natural or adoptive parent who is living in the same household with the child and parent. We will deem to a child the resources of his or her parent and stepparent whether or not those resources are available to him or her.

We will deem to a child the resources of his or her parent and stepparent only to the extent that those resources exceed the resource limits described in § 416.1205. (If the child is living with only one parent, we apply the resource limit for an individual. If the child is living with both parents, or the child is living with one parent and a stepparent, we apply the resource limit for an individual and spouse.) We will not deem to a child the resources of his or her parent or stepparent if the child is excepted from deeming under paragraph (b)(2) of this section. In addition to the exclusions listed in § 416.1210, we also exclude the following items:

(i) Pension funds of an ineligible parent (or stepparent). *Pension funds* are defined as funds held in IRAs, as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed persons, sometimes referred to as Keogh plans);

(ii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of special pay an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 310; and

(iii) For 9 months beginning with the month following the month of receipt, the unspent portion of any retroactive payment of family separation allowance an ineligible parent (or stepparent) received from one of the uniformed services pursuant to 37 U.S.C. 427 as a result of deployment to or service in a

combat zone (as defined in § 416.1160(d)).

\* \* \* \* \*

[FR Doc. 2010-3383 Filed 2-19-10; 8:45 am]

BILLING CODE 4191-02-P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 558

[Docket No. FDA-2010-N-0002]

#### New Animal Drugs for Use in Animal Feeds; Bacitracin Zinc; Nicarbazine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original abbreviated new animal drug application (ANADA) filed by Alpharma, Inc. The ANADA provides for use of single-ingredient Type A medicated articles containing bacitracin zinc and nicarbazine to make two-way combination drug Type C medicated feeds for broiler chickens.

**DATES:** This rule is effective February 22, 2010.

**FOR FURTHER INFORMATION CONTACT:** John K. Harshman, Center for Veterinary Medicine (HFV-170), Food and Drug Administration, 7500 Standish Pl.,

Rockville, MD 20855, 240-276-8197, e-mail: [john.harshman@fda.hhs.gov](mailto:john.harshman@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Alpharma, Inc., 440 Rte. 22, Bridgewater, NJ 08807, filed ANADA 200-478 for use of ALBAC 50 (bacitracin zinc) and NICARB (nicarbazine) single-ingredient Type A medicated articles to make two-way combination drug Type C medicated feeds for broiler chickens. Alpharma, Inc.'s, ANADA 200-478 is approved as a generic copy of NADA 141-146, sponsored by Phibro Animal Health, for combination use of BACIFERM (bacitracin zinc) and NICARB. The application is approved as of January 21, 2010, and the regulations are amended in 21 CFR 558.366 to reflect the approval.

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

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

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

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

#### § 558.366 [Amended]

■ 2. In § 558.366, in the table in paragraph (d), in the "Nicarbazine in grams per ton" column, in the entry for "113.5 (0.0125 pct.)" under the "Combination in grams per ton" column, in the entry for "Bacitracin zinc 4 to 50," add "046573" in numeral sequence under the "Sponsor" column.

Dated: February 17, 2010.

**William T. Flynn,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 2010-3328 Filed 2-19-10; 8:45 am]

BILLING CODE 4160-01-S