PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA [AMENDED]

■ Accordingly, the interim final rule amending 7 CFR part 993 which was published at 74 FR 46310 on September 9, 2009, is adopted as a final rule, without change.

Dated: January 5, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–163 Filed 1–8–10; 8:45 am]

BILLING CODE 3410–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA 2008–0034]

RIN 0960–AG66

Technical Revisions to the Supplemental Security Income (SSI) Regulations on Income and Resources

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are amending our Supplemental Security Income (SSI) regulations by making technical revisions to our rules on income and resources. Many of these revisions reflect legislative changes found in the Consolidated Appropriations Act of 2001 (CAA), the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), an amendment to the National Flood Insurance Act of 1968 (NFIA), the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), and the Social Security Protection Act of 2004 (SSPA). We are also amending our SSI rules to extend the home exclusion to beneficiaries who, because of domestic abuse, leave a home that had otherwise been an excludable resource. Finally, we are updating our "conditional-payment" rule to eliminate the liquid-resource requirement as a prerequisite to receiving conditional-benefit payments.

DATES: These final rules are effective on February 10, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Gonzalez, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7961, for information about this notice. 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.*

Explanation of Changes

We are revising and making final the rules we proposed in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on December 9, 2008 (73 FR 74663). These conforming changes revise our regulations to reflect legislation enacted during the past several years and to address two policy concerns.

Background

The primary goal of the SSI program is to ensure a minimum level of income to people who are aged 65 or older, blind, or disabled, and who have limited income and resources. The law provides that SSI payments can be made only to people who have income and resources below specified amounts. Therefore, income and resources are major factors in deciding SSI eligibility and the amount of any SSI payments.

The Changes We Are Making in These Final Rules

We discuss below the changes we are making in these final rules. We have grouped the changes by the policy areas affected.

Statutory Employees

Statutory employees are certain independent contractors, including agent-drivers or commission-drivers, certain full-time life insurance salespersons, home workers, and traveling or city salespersons. Social Security Act (Act) at 210(j)(3) (42 U.S.C. 410(j)(3)). We are revising section 416.1110(b) to update the definition of net earnings from self-employment to include the earnings of statutory employees, as provided under section 519 of the CAA, which amended section 1612(a)(1) of the Act (42 U.S.C. 1382a(a)(1)). *See* Public Law 106–554, app. A, 519 (Dec. 21, 2000). Previously, we treated statutory employees the same as employees for SSI eligibility and payment-amount purposes and considered their wages as earned income. After this change to the Act, we now treat statutory employees as self-employed individuals and count only their net earnings, deducting business expenses before calculating their income.

Exclusion of Child Tax Credit (CTC) From Income and Resources

We exclude from income the payment of a refundable CTC pursuant to the EGTRRA. Public Law 107–16, section 203, 115 Stat. 49 (June 7, 2001) (referring to Internal Revenue Code section 24, 26 U.S.C. 24). This exclusion, which was effective for SSI purposes for taxable years beginning on or after January 1, 2001, is not currently in our regulations. We also exclude the payment of a refundable CTC from resources for the 9 months following the month of receipt. Currently the resource exclusion is included under section 416.1236, titled "Exclusions from resources; provided by other statutes." This resource exclusion is now provided in the Act at 1613(a)(11) (42 U.S.C. 1382b(a)(11)), as amended by the SSPA, Public Law 108–203, 431 (Mar. 2, 2004). We are making the following revisions to conform to these changes:

- We are adding new paragraph (m) under the heading "V. *Other,*" in the appendix to subpart K to exclude from income a refundable CTC paid under section 24 of the Internal Revenue Code of 1986. This appendix section lists types of income excluded under the SSI program as provided by Federal laws other than the Act.
- We are amending section 416.1235 to correctly reflect that the exclusion for payment of a refundable CTC is now provided under the Act. This provision previously appeared in our rules at section 416.1236(a)(24) within a list of exclusions provided by other statutes. We are moving this exclusion to section 416.1235 but we are not making any substantive changes to it. Under this provision, a CTC payment is excluded from resources for SSI purposes during the month the payment is received and the following month for payments received before March 2, 2004, and for the 9 months following the month of receipt for payments received on or after March 2, 2004. We also are changing the title of this section to more accurately reflect its contents.
- We are adding new paragraph (v) to section 416.1210, which provides a list of general resources we do not count when determining SSI eligibility. This new paragraph excludes from resources the payment of a refundable CTC and includes a cross-reference to section 416.1235.
- We are removing from section 416.1236(a) former paragraph (24), which had excluded from resources the payment of a refundable CTC. As

described above, we are adding this exclusion to section 416.1235.

Exclusion of Flood Mitigation Payments From Income and Resources

Payments made for flood mitigation activities are not counted as income or resources when determining SSI eligibility and payment amounts. These exclusions are pursuant to an amendment to the NFIA of 1968. NFIA, section 1324, as amended by Public Law 109–64, section 1 (Jan. 7, 2005). We are making the following revisions to conform to these changes:

- We are adding new paragraph (n) under the heading "V. *Other,*" in the appendix to subpart K to exclude from income payments made for flood mitigation activities.
- We are adding new paragraph (24) to section 416.1236(a) to exclude from resources payments for flood mitigation activities.

Exclusion of Energy Employee Occupational Illness Medical Benefits and Compensation Payment From Income and Resources

Medical benefits and compensation payments made to energy employees because of occupational illnesses are not counted as income or resources for purposes of determining eligibility to receive, or for determining the amount of, certain Federal benefits, including SSI. These exclusions are provided under section 3646 of the Appendix to Public Law 106–398, which established the EEOICPA in October 2000. Public Law 106–398, section 1, app., title XXXVI (October 30, 2000) (section 1 adopting as Appendix H.R. 5408). We are making the following revisions to conform to these changes:

- We are adding new paragraph (o) under the heading "V. *Other,*" in the appendix to subpart K to exclude from income medical benefits and compensation payments made under the EEOICPA.
- We are adding new paragraph (25) to section 416.1236(a) to exclude from resources medical benefits and compensation payments made under the EEOICPA.

Home Exclusion to Victims of Domestic Abuse

An SSI applicant's or beneficiary's home and associated land are excluded from resources by section 1613(a)(1) of the Act. Regulations provide that the home is excluded so long as it serves as the principal place of residence, or the SSI applicant or beneficiary maintains an active intent to return to the residence. The home is also not counted as a resource, regardless of the intent to return, if the SSI applicant or beneficiary resides in an institution, and a spouse or dependent relative continues to maintain residence in the home during the period of institutionalization.

Advocacy groups have expressed concern regarding the counting of a home as a resource in instances where a victim of domestic abuse leaves the home and resides elsewhere. Currently, a victim fleeing from domestic abuse may return to a potentially dangerous home environment simply to avoid losing SSI because of an ownership interest in the home. We agree with these concerns and are amending our rules. We are adding new paragraph (d) to section 416.1212 to extend the home exclusion to victims of domestic abuse who flee an abusive situation, but maintain an ownership interest in an otherwise excluded home. This exclusion continues until the SSI applicant or beneficiary establishes a new principal place of residence or takes other action rendering the home no longer excludable.

Conditional Payments

An individual who meets all but the resource requirements for SSI may have little or nothing on which to live if most of his or her resources are non-liquid and difficult to convert to cash. Section 416.1240(a) contains an exception to our ordinary resource rules, which allows us to pay monthly SSI payments in certain circumstances when an SSI applicant or beneficiary possesses excess non-liquid resources. We can make "conditional payments" to give an SSI applicant or beneficiary some time in which to sell excess non-liquid resources and convert them to cash. We condition these payments on the SSI applicant's or beneficiary's written agreement to sell these non-liquid resources within 9 months for real property and within 3 months for all other non-liquid resources and repay the conditional payments with the proceeds.

Under current rules, we will not make conditional payments if the SSI applicant or beneficiary has countable liquid resources in excess of 3 times the monthly Federal Benefit Rate (FBR). The original purpose of the liquid-resource limit was to ensure that an SSI applicant or beneficiary truly needed the conditional-payment period. If an SSI applicant or beneficiary did not have liquid resources equal to 3 months worth of SSI payments, then we assumed that he or she had inadequate liquid resources to meet day-to-day expenses. However, if this SSI applicant or beneficiary had excess *non-liquid* resources, he or she could agree to dispose of those excess resources using the conditional-payment rule. Conversely, if an SSI applicant or beneficiary had liquid resources worth more than 3 times the FBR, then we assumed that he or she had adequate resources and did not need conditional payments.

When we established this rule over 30 years ago, 3 months worth of SSI payments was equal to only about 32% of the resource limit. Since then, the FBR has increased annually, and the resource limit has grown slowly or not at all. As of January 2009, 3 times the monthly FBR is more than the statutory limit on total resources and, therefore, has become meaningless. Accordingly, we are deleting the limitation on liquid resources in paragraph (a)(1) that was a prerequisite to receiving conditional-benefit payments to simplify our conditional-payments rule. We are also adding a technical cross-reference to paragraphs (a)(1) and (a)(2) in paragraphs (b) and (c) of section 416.1240, which was not included in the NPRM.

Public Comments

In the NPRM, we provided the public a 60-day period within which to comment on our proposed changes. That comment period ended on February 9, 2009. We received two comments, one from an individual and another from an organization, both of which indicated full agreement with our proposed changes. Therefore, we are publishing the text of the proposed rules substantively unchanged in these final rules, except we also have added the cross-reference noted above to paragraphs (b) and (c) of section 416.1240.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) determined that the proposed rules published on December 9, 2008 at 73 FR 74663, on which we base these final rules, met the criteria for a significant regulatory action under Executive Order 12866. Therefore, those proposed rules were subject to OMB review. We received no adverse comments on the proposed rules and are publishing these final rules substantively as proposed, with the exception noted above to add a cross-reference. Thus, OMB has waived further review of these rules.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. 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: January 5, 2010.

Michael J. Astrue,

Commissioner of Social Security.

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

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. Revise § 416.1110 paragraph (b) to read as follows:

§ 416.1110 What is earned income.

* * * * *

(b) *Net earnings from self-employment.* Net earnings from self-employment are your gross income from any trade or business that you operate, less allowable deductions for that trade or business. Net earnings also include your share of profit or loss in any partnership to which you belong. For taxable years beginning before January 1, 2001, net earnings from self-employment under the SSI program are the same net earnings that we would count under the social security retirement insurance program and that you would report on your Federal income tax return. (See § 404.1080 of this chapter.) For taxable years beginning on or after January 1, 2001, net earnings from self-employment under the SSI program will also include the earnings of statutory employees. In addition, for SSI purposes only, we consider statutory employees to be self-employed individuals. Statutory employees are agent or commission drivers, certain full-time life insurance salespersons, home workers, and traveling or city salespersons. (*See* § 404.1008 of this chapter for a more detailed description of these types of employees).

* * * * *

■ 3. Amend the appendix to subpart K of part 416 by adding new paragraphs (m), (n), and (o) under Part V to read as follows:

Appendix to Subpart K of Part 416—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

* * * * *

V. Other

* * * * *

(m) Payments of the refundable child tax credit made under section 24 of the Internal Revenue Code of 1986, pursuant to section 203 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16 (115 Stat. 49, 26 U.S.C. 24 note).

(n) Assistance provided for flood mitigation activities as provided under section 1324 of the National Flood Insurance Act of 1968, pursuant to section 1 of Public Law 109–64 (119 Stat. 1997, 42 U.S.C. 4031).

(o) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, pursuant to section 1 [Div. C, Title XXXVI section 3646] of Public Law 106–398 (114 Stat. 1654A–510, 42 U.S.C. 7385e).

Subpart L—[Amended]

■ 4. 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).

■ 5. Amend § 416.1210 by:

■ a. Adding a comma in the introductory sentence after "(and spouse, if any)";

■ b. Removing the word "and" from the end of paragraph (t);

■ c. Removing the period at the end of paragraph (u) and adding in its place "; and"; and

■ d. Adding a new paragraph (v) to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(v) Payment of a refundable child tax credit, as provided in § 416.1235.

■ 6. Amend § 416.1212 by:

■ a. Redesignating paragraphs (d) through (g) as (e) through (h) and adding a new paragraph (d) to read as set forth below;

■ b. In redesignated paragraph (e)(2)(ii), removing the reference to "paragraph (e)" and adding in its place a reference to "paragraph (f)";

■ c. In redesignated paragraph (e)(2)(iii), removing the reference to "paragraph (f)" and adding in its place a reference to "paragraph (g)"; and

■ d. In redesignated paragraph (f), removing the reference to "paragraph (d)(2)(ii) of this section" and adding in its place a reference to "paragraph (e)(2)(ii) of this section", and removing the reference to "paragraph (f)" and adding in its place a reference to "paragraph (g)".

§ 416.1212 Exclusion of the home.

* * * * *

(d) *If an individual leaves the principal place of residence due to domestic abuse.* If an individual moves out of his or her home without the intent to return, but is fleeing the home as a victim of domestic abuse, we will not count the home as a resource in determining the individual's eligibility to receive, or continue to receive, SSI payments. In that situation, we will consider the home to be the individual's principal place of residence until such time as the individual establishes a new principal place of residence or otherwise takes action rendering the home no longer excludable.

* * * * *

■ 7. Revise § 416.1235 to read as follows:

§ 416.1235 Exclusion of certain payments related to tax credits.

(a) In determining the resources of an individual (and spouse, if any), we exclude for the 9 months following the month of receipt the following funds received on or after March 2, 2004, the unspent portion of:

(1) Any payment of a refundable credit pursuant to section 32 of the Internal Revenue Code (relating to the earned income tax credit);

(2) Any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of the earned income tax credit); or

(3) Any payment of a refundable credit pursuant to section 24 of the Internal Revenue Code (relating to the child tax credit).

(b) Any unspent funds described in paragraph (a) of this section that are retained until the first moment of the tenth month following their receipt are countable as resources at that time.

(c) *Exception:* For any payments described in paragraph (a) of this section received before March 2, 2004, we will exclude for the month following the month of receipt the unspent portion of any such payment.

■ 8. Amend § 416.1236 by revising paragraph (a)(24) and adding a new paragraph (a)(25) to read as follows:

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) * * *

(24) Assistance provided for flood mitigation activities under section 1324 of the National Flood Insurance Act of 1968, pursuant to section 1 of Public Law 109–64 (119 Stat. 1997, 42 U.S.C. 4031).

(25) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, pursuant to section 1, app. [Div. C. Title XXXVI section 3646] of Public Law 106–398 (114 Stat. 1654A–510, 42 U.S.C. 7385e).

* * * * *

■ 9. Revise § 416.1240 to read as follows:

§ 416.1240 Disposition of Resources.

(a) Where the resources of an individual (and spouse, if any) are determined to exceed the limitations prescribed in § 416.1205, such individual (and spouse, if any) shall not be eligible for payment except under the conditions provided in this section. Payment will be made to an individual (and spouse, if any) if the individual agrees in writing to:

(1) Dispose of, at current market value, the nonliquid resources (as defined in § 416.1201(c)) in excess of the limitations prescribed in § 416.1205 within the time period specified in § 416.1242; and

(2) Repay any overpayments (as defined in § 416.1244) with the proceeds of such disposition.

(b) Payment made for the period during which the resources are being disposed of will be conditioned upon the disposition of those resources as prescribed in paragraphs (a)(1) and (a)(2) of this section. Any payments so made are (at the time of disposition) considered overpayments to the extent they would not have been paid had the disposition occurred at the beginning of the period for which such payments were made.

(c) If an individual fails to dispose of the resources as prescribed in paragraphs (a)(1) and (a)(2) of this section, regardless of the efforts he or she makes to dispose of them, the resources will be counted at their current market value and the individual will be ineligible due to excess resources. We will use the original estimate of current market value unless the individual submits evidence establishing a lower value (e.g., an estimate from a disinterested knowledgeable source).

[FR Doc. 2010–241 Filed 1–8–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2009–N–0665]

Implantation or Injectable Dosage Form New Animal Drugs; Hyaluronate Sodium

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 a supplemental new animal drug application (NADA) filed by Anika Therapeutics, Inc. The supplemental NADA provides for a revised human food safety warning for use of hyaluronate sodium injectable solution in horses.

DATES: This rule is effective January 11, 2010.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Anika Therapeutics, Inc., 236 W. Cummings Park, Woburn, MA 01801, filed a supplement to NADA 122–578 that provides for the veterinary prescription use of HYVISC (hyaluronate sodium) Sterile Injection in horses. The supplemental NADA provides for a revised human food safety warning on product labeling. The supplemental NADA is approved as of December 11, 2009, and the regulations are amended in 21 CFR 522.1145 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

FDA 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 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1145 [Amended]

■ 2. In paragraph (f)(3)(iii) of § 522.1145, remove the third sentence and in its place add "Do not use in horses intended for human consumption."

Dated: December 31, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–207 Filed 1–8–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2009–N–0665]

Implantation or Injectable Dosage Form New Animal Drugs; Florfenicol and Flunixin

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 new animal drug application (NADA) filed by Intervet, Inc. The NADA provides for veterinary prescription use of a combination injectable solution containing