fuels (principally propane) as incidental by-products of the refining process. Several commenters recommended that DOE modify the rule to provide that at least 10 percent of a covered person's refinery yield of petroleum products must be composed of alternative fuels before that person would be deemed to have a ''substantial portion'' of its business involved in the production of alternative fuels. Other commenters urged DOE to adopt a definition of ''substantial portion'' that would be the same as the ''principal business'' criterion used in section 501(a)(2) for defining other categories of alternative fuel providers.

A few of the commenters recommended that DOE adopt a percentage of gross revenue derived from the sale of alternative fuels as the basis for the definition of ''substantial portion.'' They pointed out that gross revenue is the measure used for determining whether other alternative fuel providers are ''covered persons'' because their ''principal business'' is in alternative fuels. In their view, if gross revenue can be used to determine whether an entity's principal business involves alternative fuels, it also should be used for determining whether a petroleum producer or importer has a substantial portion of its business in the production of alternative fuels.

After carefully reviewing all of the comments received on this issue, DOE thinks that a percentage of gross revenue derived from the sale of alternative fuels may be a better measure of an entity's involvement in the alternative fuels business than is the percentage of refinery yield of petroleum products included in the proposed rule's definition of ''substantial portion.'' As pointed out by some commenters, a gross revenue measure can be applied to all producers and importers of petroleum, unlike the percent of refinery yield criterion which focuses solely on refining operations.

Despite the lack of comprehensive, publicly available information about petroleum producers' and importers' revenue sources on a product-by-product basis, DOE has been able to collect enough information about their sales of alternative fuels to frame a possible definition of ''substantial portion'' based on percent of gross revenue derived from alternative fuels.

One option DOE is considering is whether to define ''substantial portion'' to mean that at least 30 percent of the annual gross revenue of a covered person is derived from the sale of alternative fuels. This percentage of gross revenue appears to be an appropriate gross revenue threshold for two reasons. First, available information shows that major U.S. energy producing companies historically derive at least 30 percent of their annual gross revenue from the sale of alternative fuels.[1] Major energy producers are typically consolidated or integrated companies that are involved in oil and gas exploration, oil and gas production or importing, petroleum refining and marketing, transportation of products, other energy operations (coal, nuclear and other energy) and nonenergy businesses (primarily chemicals). Second, this definition would exclude from the class of covered persons subject to the vehicle acquisition requirements those refiners who produce alternative fuels only as an incidental by-product of the refining process. Refiners are typically involved only in petroleum refining and marketing operations.

DOE also believes this gross revenue percentage comports with the terms of section 501(a)(2) of the Act, 42 U.S.C. 13251(a)(2). If the term ''substantial portion'' were defined to include a percentage of gross revenue derived from alternative fuels that was higher than 30 percent, the distinction in the Act between ''substantial portion'' which applies to covered petroleum producers and importers (section 501(a)(2)(C)) and ''principal business'' which applies to other alternative fuel providers (section 501(a)(2) (A) and (B)) would be rendered meaningless. As noted in the preamble to the notice of proposed rulemaking, alternative fuels constitute an entity's ''principal business'' if the entity derives a plurality of its gross revenue from sales of alternative fuels, and a plurality may be less than 50 percent. 60 FR 10978. Therefore, DOE believes that 30 percent of gross revenue from alternative fuels may constitute a reasonable basis for the definition of ''substantial portion.''

This possible interpretation of ''substantial portion'' also appears to be consistent with the underlying intent of Congress with regard to petroleum-related entities. That intent was to apply the alternative fueled vehicle acquisition requirements only to major energy producers and importers.[2]

DOE requests comments from interested members of the public on this possible option for defining ''substantial portion'' or any alternative options they would like DOE to consider. DOE is particularly interested in receiving data or analysis that are relevant to this issue.

Thomas J. Gross,

Deputy Assistant Secretary for Transportation Technologies, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 95–19688 Filed 8–8–95; 8:45 am]

BILLING CODE 6450–01–P

[1] Sources used were: Energy Information Administration's *Performance Profiles of Major Energy Producers,* 1993 (DOE/EIA–0206); Moody's 1994 Industrial Manual; 1995 U.S.A. Oil Industry Directory; and Standard & Poor's 1994 Register—Corporations.

[2] The conference report on the Energy Policy Act of 1992 states that ''the intent of section 501(a)(1) is not to cover all affiliates or divisions of the many large energy companies which have some, but not all, of their corporate units engaged in alternative fuels operations. For example, the oil and gas production affiliate or division of a major energy company described in 501(a)(1)(C) would be covered; so might a propane pipeline unit or a natural gas processing division, if the ''substantially engaged'' test is met. But an oil tanker division, a gasoline marketing affiliate, or a petrochemical unit whose major operations are the production of plastics, for example, would not be covered * * *.'' H.R. Rep. 1018, 102d Cong., 2d Sess. 387 (1992).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 944

[Docket No. 950609150–5150–01]

RIN 0648–AI06

Jade Collection in the Monterey Bay National Marine Sanctuary

AGENCY: Sanctuaries and Reserve Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow small-scale, non-intrusive collection of jade from the Sanctuary. This advance notice of proposed rulemaking (ANPR) discusses the reasons NOAA is considering authorizing jade collection in the MBNMS, and, if it is determined to proceed with rulemaking to allow jade collection, the possible restrictions NOAA might place on such collection to ensure that Sanctuary resources or qualities would not be adversely impacted. NOAA is issuing this ANPR specifically to invite advice, recommendations, information and other comments from interested parties on whether to allow jade collection in

the MBNMS and, if so, what restrictions might be necessary.

DATES: Comments must be received by September 8, 1995.

ADDRESSES: Comments should be sent to Scott Kathey, Monterey Bay National Marine Sanctuary office, 299 Foam Street, Suite D, Monterey, California, 93940, or Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same addresses.

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251 or Elizabeth Moore at (301) 713–3141.

SUPPLEMENTARY INFORMATION: In recognition of the national significance of the unique marine environment centered around Monterey Bay, California, the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) was designated on September 18, 1992. SRD issued final regulations, effective January, 1993, to implement the Sanctuary designation (15 CFR Part 944). The MBNMS regulations at 15 CFR 944.5(a) prohibit a relatively narrow range of activities and thus makes it unlawful for any person to conduct them or cause them to be conducted.

The leasing, exploration, development or production of oil or gas in the Sanctuary is statutorily prohibited (Section 2203 of Pub. L. 102–587). As such, the final MBNMS implementing regulations absolutely prohibited exploration, production or development of oil, gas or minerals in the MBNMS (57 FR 43310, 43315–43317; 15 CFR 944.5(a)(1)). Further, the regulations and Designation Document (the constitution for the Sanctuary) prohibit NOAA from issuing a permit or other approval for this activity in the Sanctuary (15 CFR 944.5(h); Designation Document, Article V).

There is a region within the Sanctuary known as the Jade Cove area. Jade Cove consists of a series of small coves located south of Big Sur, near the town of Gorda. Jade (also called nephrite) occurs in veins in the serpentine bedrock formation, extending down the cliffs and into the seabed. The area is very dynamic, subject to strong waves and tides, which erode the veins and sometimes free the jade. Jade is found primarily as pebbles or larger stones on the shore and seabed, and as revealed deposits in the seafloor.

For a number of years prior to the designation of the MBNMS, tourists and local residents routinely visited the Jade Cove area to explore for and collect pieces of the naturally occurring jade. Even prior to the designation of the MBNMS, extraction of minerals from State submerged lands was prohibited by State law, unless permitted by the State. The National Forest Service also prohibits the removal without a lease of any rocks or minerals within the Los Padres National Forest, which abuts the inshore boundary of the Sanctuary in the Jade Cove area.

NOAA is considering amending the regulations for the MBNMS to allow small-scale, non-intrusive collection of jade from the Sanctuary. NOAA is considering this action for a variety of reasons, foremost of which is that preliminary indications suggest that small scale, non-intrusive collection of loose pieces of jade may not destroy, cause the loss of, or injure resources or qualities of the MBNMS. Further, the MBNMS Sanctuary Advisory Council (Council) has recommended to SRD that the regulations be amended to allow jade collection. The Council has devoted several of its meetings to obtain information and public testimony, and convened a work group to review this issue. There has also been consistent public support for the proposed course of action.

It may be possible to allow people to ''beach comb'' or dive for loose pieces of jade, much like what already occurs in this Sanctuary for items such as driftwood, without any resulting harm to Sanctuary resources or qualities. Jade is a non-living resource of the MBNMS. *See* 15 CFR 944.3. However, allowing small-scale, non-intrusive collection of small pieces already loose (''in float'') and that would otherwise naturally disintegrate or be washed out to sea would not seem to pose a risk of harm to this resource. Further, it appears that collection of loose pieces of jade from the Sanctuary could be conducted without creating a risk of harm to other Sanctuary resources or qualities or the MBNMS ecosystem. NOAA will likely limit collection to hand picking pebbles or small stones already ''in float'' and devoid of any marine life, including algae and benthic organisms. If collection were allowed, no tools would be permitted that could injure Sanctuary resources or qualities, such as wedges, crowbars, picks, chisels and other tools used for digging, excavating, boring, breaking, prying, drilling, piercing, scraping, wedging, or other intrusive activities. No vehicles, winches, carts or other removal equipment would be permitted to be used in the Sanctuary to collect jade. However, NOAA may consider allowing the use of lift bags to float loose submerged jade to the shore. Any regulatory exception for the small-scale, non-intrusive collection of loose pieces of jade would not extend to oil or gas. As indicated earlier, there is a statutory prohibition against leasing, exploration, development, or production of oil or gas in the Sanctuary.

The prohibition against permitting or otherwise approving the exploration, development, or production of oil, gas, or minerals in the Sanctuary is a term of the Designation Document. Therefore, to allow small-scale, non-intrusive jade collection in the Sanctuary NOAA must comply with the procedures for altering a term of designation for a National Marine Sanctuary. As provided by section 304(a)(4) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(4), the terms of designation may be modified only by the same procedures by which the original designation is made. Designations of National Marine Sanctuaries are governed by sections 303 and 304 of the NMSA, 16 U.S.C. §§ 1433, 1434. Section 304 requires the preparation of an environmental impact statement, state consultation, at least one public hearing, and gubernatorial non-objection to the proposal as it pertains to state waters within the Sanctuary.

Although NOAA is considering providing a limited exception for small-scale, non-intrusive jade collection from the regulatory prohibition against exploring for, producing or developing oil, gas or minerals, any jade collection that alters the seabed of the Sanctuary (e.g., digging into the seabed) would remain subject to the prohibition against alteration of the seabed (15 CFR 944.5(a)(5)). NOAA would not allow jade collection that alters the seabed of the Sanctuary. Further, any collection in California State waters would require a State permit because of the State's prohibitions against taking minerals from State submerged lands and disturbing State subsurface lands.

NOAA is seeking advice, recommendations, information and other comments, with reasons, on whether NOAA should amend the MBNMS regulations to allow small-scale, non-intrusive jade collection in the MBNMS. If NOAA allows jade collection, comments are requested on: (1) whether collection should be limited to loose pebbles or small stones; (2) whether the use of tools should be permitted to collect jade from the Sanctuary; (3) whether there should be limits on the amount of jade allowed to be taken from the Sanctuary and, if so, what limits; (4) what conditions or restrictions should be placed on jade collection; and (5) any other information

or other comments that may be pertinent to this issue.

Executive Order 12866

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

List of Subjects in 15 CFR Part 944

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

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: June 9, 1995.

David Evans,

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

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

BILLING CODE 3510–08–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AD82

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

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 13735 of the Omnibus Reconciliation Act of 1993 (OBRA 1993). This statutory provision amends the Social Security Act (the Act) and requires that the new benefit rate, as increased by a cost-of-living adjustment (COLA), be used in determining the value of the statutory one-third reduction and the regulatory presumed maximum value for the computation of Federal supplemental security income (SSI) benefit payments for the first 2 months for which the COLA is in effect. These rules will provide that we will value the statutory one-third reduction and the regulatory presumed maximum value using the benefit rate as increased by a COLA to determine the amount of in-kind support and maintenance received by an individual which is to be counted for those months. This will preclude a decrease in the benefit amount the third month after a COLA, a situation which occurred under the present regulations. The legislation is effective for benefits paid for months after calendar year 1994.

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

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

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

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

SUPPLEMENTARY INFORMATION: Under retrospective monthly accounting (RMA), an individual's current SSI benefit amount is usually determined based upon the individual's income in the second preceding month (''budget month'') before the current month. For example, January's SSI benefit amount is based on the individual's November income. In some instances, an individual receives income in the form of in-kind support and maintenance and it is counted using the value of the one-third reduction (VTR) or the presumed maximum value (PMV) rule. Under the law prior to the effective date of section 13735 of Public Law 103–66, the VTR and the PMV were based on the applicable benefit rates in effect in the ''budget month.'' Because of RMA principles, when an annual COLA to the SSI benefit rate became effective in January, we used the VTR/PMV amount from November of the previous year to determine the individual's benefit for January if an individual had in-kind support and maintenance in the ''budget month.'' For example, in figuring an individual's January 1994 benefit, we used November 1993 as the ''budget month.'' Thus, in a computation using the VTR, we would subtract the 1993 VTR amount of $144.66 from the 1994 benefit rate of $446.00, giving the individual an SSI benefit of $301.34. February's benefit amount would also be computed using the new benefit rate and the 1993 VTR amount. However, in computing March's benefit amount, we used the benefit rate of $446.00 less the January 1994 VTR amount of $148.66, resulting in an SSI benefit amount of $297.34. Thus, the individual's January and February payments exceeded the March payment because of the increased amount of the new VTR used when January was the ''budget month.'' Notices were then released to these individuals notifying them of the decrease in their March payment. This was confusing to SSI recipients because their payment amounts increased and then decreased even if there is no change in their living arrangements.

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

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

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