

than 0.13 inch. The service bulletin does not describe procedures for installation of cable spacers in that area. Therefore, we have determined that "cable spacers" should be removed from the requirements of paragraph (a)(2)(ii) of Table 1 of that AD.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains December 14, 2004.

### § 39.13 [Corrected]

■ On page 64842, in Table 1, paragraph (a)(2)(ii) of AD 2004–22–25 is corrected to read as follows:

\* \* \* \* \*

TABLE 1.—CLEARANCE BETWEEN WIRE BUNDLES AND CARGO LINER STANDOFFS

| If the clearance between the—                     | Is—                                                                    | Then—                                                                                                                                       |
|---------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| (i) Wire bundles and cargo liner standoff         | 0.25 inch or more<br>Between 0.13 and 0.25 inch<br>Less than 0.13 inch | No further action is required by this AD.<br>Install sleeving and lacing tape.<br>Install sleeving, lacing tape, cable spacers, and straps. |
| (ii) Power feeder cables and cargo liner standoff | 0.13 inch or more<br>less than 0.13 inch                               | No further action is required by this AD.<br>Install sleeving, lacing tape, and straps.                                                     |

\* \* \* \* \*

Issued in Renton, Washington, on December 22, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–28666 Filed 12–30–04; 8:45 am]

BILLING CODE 4910–13–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 408 and 416

[Regulations No. 4, 8, and 16]

RIN 0960–AG06

#### Expanded Authority for Cross-Program Recovery of Benefit Overpayments

**AGENCY:** Social Security Administration.

**ACTION:** Final rules with request for comment.

**SUMMARY:** To implement part of the Social Security Protection Act of 2004 (SSPA), we are revising our rules on the recovery of overpayments incurred under one of our programs from benefits payable to the overpaid individual under other programs we administer. Provisions of the SSPA expand the authority for cross-program recovery of overpayments made in our various programs. Implementation of these regulatory revisions when they become effective will yield significant program savings.

Although we are issuing these rules as final rules, we are also requesting comments on certain material changes from the proposed rules we previously published concerning expanded cross-program recovery. These changes would allow us to use cross-program recovery if: an individual is no longer receiving benefits under a particular program but is making regular monthly installments to refund an overpayment previously

received under that program; or an individual is receiving monthly payments under a particular program and we are recovering a previous overpayment made under that program by adjusting the amount of those monthly benefits. We will not implement these changes before we consider comments which we receive by the date provided below and publish a document in the **Federal Register**. If we determine that any further changes in these sections are warranted, we will publish revised rules. See "Additional Changes" in the **SUPPLEMENTARY INFORMATION** section for further discussion.

**DATES:** These rules are effective January 3, 2005. We invite public comments on §§ 404.530(b), 408.930(b), and 416.572(b). To be sure that we consider your comments on these changes, we must receive them by February 2, 2005.

**ADDRESSES:** You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or the Federal eRulemaking Portal at <http://www.regulations.gov>; e-mail to [regulations@ssa.gov](mailto:regulations@ssa.gov); telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs> or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

#### 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>. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

#### FOR FURTHER INFORMATION CONTACT:

Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609. 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:

##### Background

Section 210 of the SSPA, Public Law 108–203, enacted on March 2, 2004, significantly expands our ability to recover overpayments made in one of our programs from benefits payable to the overpaid individual under other programs we administer. These programs are Social Security benefits under title II of the Social Security Act (the Act), Special Veterans Benefits (SVB) under title VIII of the Act and Supplemental Security Income (SSI) benefits under title XVI of the Act.

Prior to enactment of the SSPA, sections 808, 1147 and 1147A of the Act allowed cross-program adjustment to recover overpayments as follows:

- We could withhold no more than 10 percent of any title II benefit payment (*i.e.*, a current monthly payment and a past-due payment) to recover an SSI overpayment, if the person is not currently eligible for SSI;
- We could withhold any title II benefit payment to recover an SVB overpayment, if the person is not qualified for SVB;

- We could withhold no more than 10 percent of any SVB payment to recover an SSI overpayment, if the person is not currently eligible for SSI;

- We could withhold any SVB payment to recover a title II overpayment, if the person is not currently receiving title II benefits.

The Act did not allow us to withhold SSI payments to recover title II or SVB overpayments.

Section 210 of the SSPA repealed section 1147A and cross-program recovery provisions in section 808 of the Act and amended section 1147 to expand our cross-program recovery authority to allow recovery of an overpayment occurring under any of these programs from benefits or payments due in any other of these programs at a rate not to exceed 10 percent of the monthly benefit. It allows for unlimited withholding of past-due benefits in one program to recover an overpayment paid under another program. It also allows for cross-program recovery even if the individual is entitled under the program in which the overpayment was made.

#### Explanation of Changes

We are changing the regulations in 20 CFR parts 404, 408 and 416 to reflect the expanded cross-program recovery authority.

Currently, part 404 has no provisions permitting cross-program recovery. In part 404, we are adding new §§ 404.530, .535, .540, and .545, which parallel existing regulations at §§ 408.930 through 408.933, to include the expanded authority to recover title II overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income (as defined in the regulation) to recover a title II overpayment;

- We may withhold no more than 10 percent of current monthly SVB payments to recover a title II overpayment;

- We may withhold up to 100 percent of SSI and SVB past-due payments to recover a title II overpayment.

We are changing §§ 408.930 through 408.933 to reflect the expanded authority to recover title VIII overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income to recover an SVB overpayment;

- We may withhold no more than 10 percent of current monthly title II benefits to recover an SVB overpayment;

- We may withhold up to 100 percent of title II and SSI past-due payments to recover an SVB overpayment.

We are changing the regulations at § 416.570 to delete obsolete information. We are changing the regulations at § 416.572 and adding §§ 416.573, .574, and .575 to reflect the expanded authority to recover title XVI overpayments as follows:

- We may withhold no more than 10 percent of current monthly title II benefits to recover an SSI overpayment;

- We may withhold no more than 10 percent of current monthly SVB payments to recover an SSI overpayment;

- We may withhold up to 100 percent of title II and SVB past-due payments to recover an SSI overpayment.

The new sections follow the same structure as the existing regulations at §§ 408.930 through 408.933. We believe that this format is easy for members of the public to understand. We are removing the title II example from § 416.572 because the example illustrated how we applied the 10 percent limit to past-due title II benefits. Under the new law, this limitation no longer applies. We are removing the title VIII example from § 416.572 because we have added a cross-reference to the title VIII regulations that explain how title VIII benefits are computed.

We are removing from the SVB and SSI regulations the provisions that preclude cross-program recovery when the overpaid person is currently eligible for payment under the program from which we made the overpayment. The amended statute does not contain that restriction. As revised, § 416.572(b) also states that if we are already recovering an overpayment from title II benefits, the maximum amount which may be withheld from title XVI monthly benefits is the lesser of the person's title XVI benefit for that month or 10 percent of the person's total income for that month, not including the title II income used to compute the title XVI benefit.

Like the current regulations in 20 CFR part 408, subpart I, and part 416, subpart E, the final regulations for each program require that, before we impose cross-program recovery, we will notify the overpaid person of the proposed action and allow the overpaid person an opportunity to pay the remaining balance of the overpayment debt, to request review of the status of the debt, to request waiver of recovery, and to request recovery of the debt from current monthly benefits at a different rate than that stated in the notice. We will not begin cross-program recovery from current monthly benefits until 30 calendar days have elapsed after the

date of the notice. If within that time period the person requests review of the debt, waiver of recovery of the debt, or reduction of the rate of recovery from current monthly benefits stated in the notice, we will not take any action to reduce current monthly benefits before we notify the debtor of our determination on the request. As permitted by section 1147(b)(2)(A) of the Act, the regulations provide that, if we find that the overpaid person or that person's spouse was involved in willful misrepresentation or concealment of material information in connection with the overpayment, we can withhold the entire amount of the current monthly benefit.

Following the discussion of our responses to public comments, we address changes that we made in §§ 404.530(b), 408.930(b) and 416.572(b) from the versions published in the notice of proposed rulemaking. See below under the heading *Additional Changes*.

#### Public Comments

On August 24, 2004, we published proposed rules in the **Federal Register** at 69 FR 51962 and provided a 30-day period for interested parties to comment. We received comments from six organizations. Because some of the comments received are quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the significant issues raised by the commenters that are within the scope of the proposed rules.

*Comment:* Four organizations commented that the terms "willful misrepresentation" and "concealment of material fact" are not defined adequately in these regulations. They also commented that the actions of a recipient's spouse do not always reflect the intentions of the recipient and the recipient may not even be aware of his or her spouse's actions. Concerns were expressed that imposition of the 100 percent withholding could adversely affect innocent spouses and that the 100 percent withholding would be imposed improperly or without appropriate development to make a determination of willful misrepresentation or concealment of material information.

*Response:* The concepts of willful misrepresentation and concealment of material information for the purpose of cross-program recovery are not new. Since 2000, we have applied the same policy and procedures regarding willful misrepresentation and concealment of material information for cross-program recovery purposes as we apply when we collect SSI overpayments from monthly SSI benefits under section 1631(b) of the

Act and 20 CFR 416.571. The new regulations continue this practice under the expanded cross-program recovery authorized by section 210 of the SSPA. The new regulations include cross-references to the definition of the term "concealment of material information" in other regulations. Also, our operating instructions provide more detailed definitions and examples to guide SSA staff in determining whether willful misrepresentation or concealment of material information occurred.

In order to determine a person's continuing eligibility for SSI and the amount payable, we need to have accurate information about his or her spouse's income, living arrangements and resources. If the person is overpaid because the spouse willfully misrepresented or concealed material information, we think it is our stewardship duty to apply the 100 percent collection rule when appropriate. Our field offices have detailed instructions regarding the process for imposing 100 percent withholding due to willful misrepresentation or concealment of material information in connection with an overpayment. Whenever we propose to collect at the 100 percent rate, the person will be notified and have the opportunity to protest before we would take this action. We would take all factors into consideration before imposing 100 percent withholding. Moreover, an overpaid person whose spouse caused the overpayment may request that we waive collection, and we will grant waiver to a person who is without fault and satisfies the other waiver criteria.

*Comment:* Three organizations stated that we should include in the notices described in §§ 404.540, 408.932 and 416.574 the same information about the cause of the overpayment and the overpaid amount that we include in the initial notice of overpayment. They state that the information should be included because they feel a person cannot adequately identify or question an overpayment without more information. Two of the organizations also suggested that the notice advise the person that waiver can be requested at any time.

*Response:* After considering the comments, we decided not to adopt the suggested changes regarding information about the causes and original amount of the overpayment. The new notice described in §§ 404.540, 408.932 and 416.574 will show the balance of the overpayment at the time we send the notice. The initial notice of overpayment previously sent to the overpaid individual includes information such as the beginning

balance of the overpayment, the cause of the overpayment, and the monthly amounts received compared to the monthly amounts that the person should have received for each month of the overpaid period. We include the more detailed information in initial notices of overpayment because those notices give overpaid individuals the right to request appeal of the fact or amount of the overpayment. To exercise that right, the overpaid individual needs to know specifically the overpayment amount, when the overpayment occurred, how the overpayment was calculated, and why the overpayment occurred.

The notices described in §§ 404.540, 408.932 and 416.574 are sent to the overpaid individual after the individual has had the opportunity to appeal the initial overpayment determination. At the time that this additional notice is sent, the individual has either appealed the initial overpayment determination and received our decision or has chosen not to appeal and the time to appeal the overpayment determination has expired. Accordingly, the detailed information about the overpayment is not required in the new notice regarding cross-program recovery in order to afford the individual due process of law on the decision to collect the overpayment balance by cross-program recovery. Under the new regulation, the overpaid individual would have the right to have us review whether he or she still owes all or part of the overpayment balance. For example, the individual may have evidence that he or she refunded all or part of the balance or that we previously waived collection. We believe that the new notice of cross-program recovery gives sufficient information about the overpayment for the individual to determine whether to ask for such review.

In addition, it is our long-held policy to provide the detailed information on the amount of the initial overpayment and the cause of the overpayment in the initial overpayment notice. We do not repeat that information with each subsequent overpayment-related notice that we send. In subsequent notices to overpaid individuals, we invite them to ask for more information if they want to know more detail. To make it easier for overpaid individuals to obtain additional information, we provide in our subsequent notices contact information, such as the Agency's national toll-free telephone number and the address and telephone number of the local office that is closest to them. We will include this contact information in the new notices described in §§ 404.540, 408.932, and

416.574. When overpaid persons ask for more information, we provide them with the details contained in our records, including why the overpayment occurred, when it occurred, and how we calculated the overpayment.

As to the suggestion that the notice advise that waiver can be requested at any time, the new notices described in §§ 404.540, 408.932 and 416.574 will advise that waiver may be requested at any time.

*Comment:* One organization raised a concern about cross-program recovery of overpayments from monthly title XVI benefits, claiming that "[t]itle XVI beneficiaries are presumed to be unable to afford to repay overpayments under the law" and "[t]hey need only prove lack of fault in causing the overpayment to receive a waiver." The comment states that SSA should include this information in the notices that propose recovery from title XVI payments.

*Response:* This comment is based on an apparent misunderstanding of our existing regulations. A title XVI recipient does not have to show only that he or she is without fault to have overpayment recovery waived. In addition, the individual must demonstrate that recovery would defeat the purpose of title XVI, be against equity and good conscience, or impede efficient or effective administration of the program. Our regulation at 20 CFR 416.553(a) states that recovery defeats the purpose of the SSI program "if the individual's income and resources are needed for ordinary and necessary living expenses." This explanation is included in our notice language about waiver. Section 416.553(b) explains the alternative criteria that meet the requirement described in § 416.553(a). Nowhere does the regulation say that a title XVI recipient is automatically deemed to meet the criteria for "defeat the purpose" of the SSI program.

*Comment:* Two organizations asserted that there are problems in the administration of our programs that cause overpayments; specifically, timely processing of reports of work activity and earned income which potentially affect eligibility or benefit amounts.

*Response:* Overpayments and underpayments of benefits occur for many reasons. We take our responsibility for stewardship of the programs that we administer very seriously, which is why we constantly track our payment accuracy and strive to minimize overpayments and to determine eligibility and process claims timely. In addition, we are pursuing several initiatives that address both the causes of overpayments and the timely processing of reports affecting

eligibility. Regardless of the reasons for overpayments, we are responsible for recovering as much of the overpaid money as possible consistent with the law.

*Comment:* One organization suggested that special language be added to the regulations to protect the health and welfare of individuals when they are receiving medical assistance in either a nursing facility, state institution or a home and community-based setting. They are concerned about the impact cross-program recovery “will have on these individuals because it will reduce their countable income which Medicaid cannot supplement and then the provider will not receive full reimbursement.”

*Response:* The comment is not clear regarding the impact that cross-program recovery would have on the individuals described in the comment, and the organization does not specify the change(s) in the regulations that the organization wants. The Agency assumes that the organization wants special arrangements in the regulations that would apply while the overpaid person receives the medical assistance described in the comment. Such a change is not necessary because appropriate arrangements are already available in the rules governing waiver of recovery and recovering at a rate that is less than 10 percent of the current monthly benefits. Therefore, this suggestion is not being implemented since a special rule is not required to cover this situation. The general rules for overpayment recovery take into consideration a person's financial circumstances.

#### **Additional Changes**

Upon further review and consideration, we have deleted from §§ 404.530(b), 408.930(b) and 416.572(b), as published on August 24, 2004, the provisions that would exclude certain types of cases from cross-program recovery. Under one of the exclusions, we would not apply cross-program recovery when the overpaid person is no longer eligible for payment under the program where the overpayment occurred but is refunding that overpayment voluntarily by making monthly installment payments. Under the other exclusion, we would not recover an overpayment in one program by adjusting benefits payable under another program when we already are adjusting those benefits to recover an overpayment of benefits within that program.

As amended by section 210 of the SSPA, section 1147 of the Act permits us to apply cross-program recovery in

both situations described above. By eliminating these exclusions from paragraph (b) of §§ 404.530, 408.930, and 416.572, we believe that we will fulfill our stewardship responsibilities regarding the programs more effectively. For example, if an individual is not eligible for SSI benefits and is refunding an SSI overpayment by making monthly installment payments, we would be able to recover the SSI overpayment balance by cross-program recovery against a title II past-due benefit. Cross-program recovery is a more efficient and reliable collection method than collection by installment payments. This approach is consistent with our policy under amended section 1147 of the Act to apply cross-program recovery in addition to adjusting benefits payable under the program in which the overpayment was made. Moreover, if an individual incurred both an SSI overpayment and a title II overpayment, we would be able to recover both the title II overpayment and the title XVI overpayment simultaneously from the title II benefits. For example, if we are collecting a title II overpayment by title II benefit adjustment and a large title II underpayment becomes payable, we could collect the title II overpayment balance from that underpayment and apply any remaining title II past-due benefits to the SSI overpayment.

Because these are material changes from the proposed rule, we have decided to offer an additional opportunity for public comment before we implement them.

In addition to the changes described above, we made a few non-substantive clarifying revisions in §§ 404.535(b), 408.931(b), and 416.573(b).

#### **Regulatory Procedures**

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act rulemaking procedures specified in 5 U.S.C. 553 in the development of regulations. Subject to certain exceptions, 5 U.S.C. 553(d) requires that an agency publish a final rule at least 30 days before the rule becomes effective. Except for the changes in paragraph (b) of §§ 404.530, 408.930, and 416.572 discussed above, we find “good cause” under 5 U.S.C. 553(d)(3) for applying these regulations immediately. Waiting an additional 30 days would delay for no legitimate reason collection of overpayments made under titles II, VIII and XVI of the Act under the expanded authority for cross-program recovery. Such delay would be unnecessary and contrary to the public interest. There is a significant public interest in recovering those

overpayments as soon as possible consistent with applicable law. We do not need 30 more days to prepare to begin implementing the expanded authority, and the regulations do not require any action by individuals or organizations to prepare for cross-program recovery.

#### *Executive Order 12866*

The Office of Management and Budget (OMB) has reviewed these rules in accordance with Executive Order 12866, as amended by Executive Order 13258. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

#### *Regulatory Flexibility Act*

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

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (PRA) says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in § 408.932(c), (d) and (e) of these final rules. The OMB control number for this collection is 0960-0692, expiring 11/30/2007.

(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; 96.006, Supplemental Security Income; and 96.020, Special Benefits for Certain World War II Veterans)

#### **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 408*

Administrative practice and procedure, Aged; Reporting and recordkeeping requirements, Social Security; Special Veterans benefits, Veterans.

##### *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 24, 2004.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending subpart F of part 404, subpart I of part 408 and subpart E of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

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

##### **Subpart F—[Amended]**

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

**Authority:** Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3720A.

■ 2. Sections 404.530, 404.535, 404.540 and 404.545 are added to read as follows:

##### **§ 404.530 Are title VIII and title XVI benefits subject to adjustment to recover title II overpayments?**

(a) *Definitions.* (1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title II overpayments from benefits payable to you under title VIII and title XVI of the Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the amount of title VIII or title XVI benefits you actually would receive. For title VIII benefits, it includes your monthly benefit and any past-due benefits after any reduction by the amount of income for the month as described in §§ 408.505 through 408.515 of this chapter. For title XVI benefits, it includes your monthly benefit and any past-due benefits as described in § 416.420 of this chapter.

(b) *When may we collect title II overpayments using cross-program recovery?* We may use cross-program recovery to collect a title II overpayment you owe when benefits are payable to you under title VIII, title XVI, or both.

##### **§ 404.535 How much will we withhold from your title VIII and title XVI benefits to recover a title II overpayment?**

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month under title VIII and title XVI by withholding the lesser of the amount of the entire overpayment balance or:

(i) 10 percent of the monthly title VIII benefits payable for that month and

(ii) in the case of title XVI benefits, an amount no greater than the lesser of the benefit payable for that month or an amount equal to 10 percent of your income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II benefits and excluding income excluded pursuant to §§ 416.1112 and 416.1124 of this chapter).

(2) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 404.508 to similar requests about withholding from title II benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title VIII and title XVI benefits payable to you. We will not collect at a lesser rate. (See § 416.571 of this chapter for what we mean by concealment of material information.)

##### **§ 404.540 Will you receive notice of our intention to apply cross-program recovery?**

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title VIII or title XVI benefits (see § 404.535);

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 404.535(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

##### **§ 404.545 When will we begin cross-program recovery from current monthly benefits?**

(a) We will begin collecting the overpayment balance from your title VIII or title XVI current monthly benefits or payments by cross-program recovery no sooner than 30 calendar

days after the date of the notice described in § 404.540. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery from your current monthly benefits until we determine the amount we will withhold. This paragraph does not apply when § 404.535(d) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing. See §§ 404.506 through 404.512.

#### **PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

##### **Subpart I—[Amended]**

■ 3. The authority citation for subpart I of part 408 is revised to read as follows:

**Authority:** Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a)(5), 1008, and 1320b–17); 31 U.S.C. 3720A.

■ 4. Section 408.930 is revised to read as follows:

##### **§ 408.930 Are title II and title XVI benefits subject to adjustment to recover title VIII overpayments?**

(a) *Definitions.* (1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title VIII overpayments from benefits payable to you under title II or title XVI of the Social Security Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the amount of title II or title XVI benefits you actually would receive. For title II benefits, it includes your monthly benefit and your past-due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter. For title XVI benefits, it includes your monthly benefit and your past-due benefits as described in § 416.420 of this chapter.

(b) *When may we collect title VIII overpayments using cross-program recovery?* We may use cross-program recovery to collect a title VIII

overpayment you owe when benefits are payable to you under title II, title XVI, or both.

■ 5. Section 408.931 is revised to read as follows:

**§ 408.931 How much will we withhold from your title II and title XVI benefits to recover a title VIII overpayment?**

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month under title II and title XVI by withholding the lesser of the amount of the entire overpayment balance or:

(i) 10 percent of the monthly title II benefits payable for that month and

(ii) in the case of title XVI benefits, an amount no greater than the lesser of the benefit payable for that month or an amount equal to 10 percent of your income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II benefits and excluding income excluded pursuant to §§ 416.1112 and 416.1124 of this chapter).

(2) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 408.923 to similar requests about withholding from title VIII benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title II benefits and title XVI benefits payable to you. We will not collect at a lesser rate. (See § 408.923 for what we mean by concealment of material information.)

■ 6. Section 408.932 is revised to read as follows:

**§ 408.932 Will you receive notice of our intention to apply cross-program recovery?**

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title II or title XVI benefits (see § 408.931(b));

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 408.931(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

■ 7. Section 408.933 is revised to read as follows:

**§ 408.933 When will we begin cross-program recovery from your current monthly benefits?**

(a) We will begin collecting the overpayment balance by cross-program recovery from your title II and title XVI current monthly benefits no sooner than 30 calendar days after the date of the notice described in § 408.932. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery from your current monthly benefits.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery from your current monthly benefits until we determine the amount we will withhold. This paragraph does not apply when § 408.931(d) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing. See §§ 408.910 through 408.914.

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

**Subpart E—[Amended]**

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

**Authority:** Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

■ 9. Section 416.570 is revised to read as follows:

**§ 416.570 Adjustment—general rule.**

When a recipient has been overpaid, the overpayment has not been refunded, and waiver of adjustment or recovery is not applicable, any payment due the overpaid recipient or his or her eligible spouse (or recovery from the estate of either or both when either or both die before adjustment is completed) is adjusted for recovery of the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 416.571 from the benefit payable to the individual except that, when the overpayment results from the disposition of resources as provided by §§ 416.1240(b) and 416.1244, the overpayment will be recovered by withholding any payments due the overpaid recipient or his or her eligible spouse before any further payment is made. Absent a specific request from the person from whom recovery is sought, no overpayment made under title XVIII of the Act will be recovered by adjusting SSI benefits. In no case shall an overpayment of SSI benefits be adjusted against title XVIII benefits. No funds properly deposited into a dedicated account (see §§ 416.546 and 416.640(e)) can be used to repay an overpayment while the overpaid individual remains subject to the provisions of those sections.

■ 10. Section 416.572 is revised and sections 416.573, 416.574 and 416.575 are added to read as follows:

**§ 416.572 Are title II and title VIII benefits subject to adjustment to recover title XVI overpayments?**

(a) *Definitions.* (1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title XVI overpayments from benefits payable to you under title II or title VIII of the Social Security Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the amount of title II or title VIII benefits you actually would receive. For title II benefits, it includes your monthly benefit and your past-due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter. For title VIII benefits, it includes your monthly benefit and any past-due benefits after any reduction by the amount of income for the month as described in §§ 408.505 through 408.510 of this chapter.

(b) *When may we collect title XVI overpayments using cross-program recovery?* We may use cross-program recovery to collect a title XVI

overpayment you owe when benefits are payable to you under title II, title VIII, or both.

**§ 416.573 How much will we withhold from your title II and title VIII benefits to recover a title XVI overpayment?**

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month by withholding the lesser of the amount of the entire overpayment balance or 10 percent of the monthly title II benefits and monthly title VIII benefits payable to you in the month.

(2) If we are already recovering a title II, title VIII or title XVI overpayment from your monthly title II benefit, we will figure your monthly withholding from title XVI payments (as described in § 416.571) without including your title II benefits in your total countable income.

(3) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 416.571 to similar requests about withholding from title XVI benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title II benefits and title VIII benefits payable to you. We will not collect at a lesser rate. (See § 416.571 for what we mean by concealment of material information.)

**§ 416.574 Will you receive notice of our intention to apply cross-program recovery?**

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title II or title VIII benefits (see § 416.573);

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current

monthly benefits (the notice will not include this information if § 416.573(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

**§ 416.575 When will we begin cross-program recovery from your current monthly benefits?**

(a) We will begin collecting the overpayment balance by cross-program recovery from your current monthly title II and title VIII benefits no sooner than 30 calendar days after the date of the notice described in § 416.574. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount from your current monthly benefits than the amount stated in the notice, we will not begin cross-program recovery until we determine the amount we will withhold. This paragraph does not apply when § 416.573(d) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing. See §§ 416.550 through 416.556.

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 27**

[USCG-2003-15486]

RIN 1625-AA73

**Civil Monetary Penalties—Adjustments for Inflation; Correction**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations published in the **Federal Register** on December 23, 2003. The regulations related to inflation adjustments in fines and other civil monetary penalties that

are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

**DATES:** Effective on January 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Spears, Office of Standards Evaluation and Development, Coast Guard, telephone 202-267-1099.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Coast Guard published a final rule in the **Federal Register** of December 23, 2003 (68 FR 74189). The final rule was authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended ("the statute"; see 28 U.S.C. 2641 note), and promulgated under a "good cause" exception to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), because the Coast Guard found good cause to dispense with the usual notice and comment requirements due to the lack of discretion rulemakers can exercise under the statute. One of the amendments made by the final rule revised 33 CFR 27.3 and its accompanying Table 1, "Civil Monetary Penalty Inflation Adjustments."

**Need for Correction**

As published, the final rule inadvertently contained some potentially misleading language and omitted certain fines or penalties that, pursuant to the statute, required inclusion.

**List of Subjects in 33 CFR Part 27**

Marine safety, Oil pollution, Penalties, Vessels, Waterways.

■ Accordingly, 33 CFR part 27 is corrected by making the following correcting amendments:

**PART 27—CIVIL MONETARY PENALTIES ADMINISTERED BY THE COAST GUARD**

■ 1. The authority citation for part 27 continues to read as follows:

**Authority:** Secs. 1-6, Pub. L. 101-410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Pub. L. 104-134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

**§ 27.1 [Removed]**

■ 2. Remove § 27.1.

■ 3. Revise § 27.3 to read as follows:

**§ 27.3 Penalty Table.**

Table 1 lists sections of the United States Code that authorize civil monetary penalties for laws administered by the Coast Guard. These penalties are assessable in either civil judicial or administrative proceedings. Table 1 is periodically amended to