

of Sanctuary designation, to a lease, permit, license, approval, other authorization or right is subject to the provisions of § 922.194 and § 922.49.

§ 922.194 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 933.192 (a) (1) through (2) if conducted in accordance with the scope, purpose, manner, terms and conditions of a State Permit *provided that*:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of § 922.49; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of § 922.49 of this part.

(b) If no State Permit is required to conduct an activity prohibited by § 922.192(a) (1) through (2) of this subpart, a person may conduct such activity if it is conducted in accordance with the scope, purpose, manner, terms and conditions of a Federal permit, *provided that* the person complies with the provisions of § 922.49 of this part.

(c) In instances where the conduct of an activity is prohibited by § 922.192(a) (1) through (2) of this subpart is not addressed under a State or other Federal lease, license, permit or other authorization, a person must obtain a Sanctuary permit from NOAA pursuant to § 922.48 of this part and the Programmatic Agreement in order to conduct the activity.

Appendix A to Subpart R of Part 922—Thunder Bay National Marine Sanctuary Boundary Coordinates

Note: Appendix A to subpart R will set forth the final Sanctuary boundary coordinates after consideration of comments received on the DEIS/MP.

Appendix B to Subpart R of Part 922—Minor Projects for Purposes of Section 922.192(a)(2)(iii)

Pursuant to R 322.1013 of part 325, Great Lakes Submerged Lands of Public Act 451, the Michigan Department of Environmental Quality (Department) issues permits for projects that are of a minor nature which are not controversial, which have minimal adverse environmental impacts, which will be constructed of clean, non-polluting materials, which do not impair the use of the adjacent bottomlands by the public, and which do not adversely affect riparian interests of adjacent owners. The following projects are minor projects:

(a) Noncommercial single piers, docks, and boat hoists which meet the following design criteria:

(i) Are of a length or size not greater than the length or size of similar structures in the vicinity and on the watercourse involved; and

(ii) Provide for the free littoral flow of water and drift material.

(b) Spring piles and pile clusters when their design and purpose is usual for such projects in the vicinity and on the watercourse involved.

(c) Seawalls, bulkheads, and other permanent revetment structures which meet all of the following purpose and design criteria:

(i) The proposed structure fulfills an identifiable need for erosion protection, bank stabilization, protection of uplands, or improvements on uplands;

(ii) The structure will be constructed of suitable materials free from pollutants, waste metal products, debris, or organic materials;

(iii) The structure is not more than 300 feet in length and is located in an area on the body of water where other similar structures already exist;

(iv) The placement of backfill or other fill associated with the construction does not exceed an average of 3 cubic yards per running foot along the shoreline and a maximum of 300 cubic yards; and

(v) The structure or any associated fill will not be placed in a wetland area or placed in any manner that impairs surface water flow into or out of any wetland area.

(d) Groins 50 feet or less in length, as measures from the toe to bluff, which meet all of the following criteria:

(i) The groin is low profile, with the lakeward end not more than 1 foot above the existing water level; and

(ii) The groin is placed at least ½ of the groin length from the adjacent property line or closer with written approval of the adjacent riparian.

(e) Filling for restoration of existing permitted fill, fills placed incidental to construction of other structures, and fills that do not exceed 300 cubic yards as a single and complete project, where the fill is of suitable material free from pollutants, waste metal products, debris, or organic materials.

(f) Dredging for the maintenance of previously dredged areas or dredging of not more than 300 cubic yards as a single and complete project when both of the following criteria are met:

(i) No reasonable expectation exists that the materials to be dredged are polluted; and

(ii) All dredging materials will be removed to an upland site exclusive of wetland areas.

(g) Structural repair of man-made structures, except as exempted by R 322.1008(3), when their design and purpose meet both of the following criteria:

(i) The repair does not alter the original use of a recently serviceable structure; and

(ii) The repair will not adversely affect public trust values or interests, including navigation and water quality.

(h) Fish and wildlife habitat structures which meet both of the following criteria:

(i) Are placed so the structures do not impede or create a navigational hazard; and

(ii) Are anchored to the bottomlands.

(i) Scientific structures such as staff gauges, water monitoring devices, water quality

testing devices, survey devices, and core sampling devices, if the structures do not impede or create a navigational hazard.

(j) Navigational aids which meet both of the following criteria:

(i) Are approved by the United States Coast Guard; and

(ii) Are approved under Act No. 303 of the Public Acts of 1967, as amended, being § 281.1001 et seq. of the Michigan Compiled Laws, and known as the Marine Safety Act.

(k) Extension of a project where work is being performed under a current permit and which will result in no damage to natural resources.

(l) A sand trap wall which meets all of the following criteria:

(i) The wall is 300 feet or less in length along the shoreline;

(ii) The wall does not extend more than 30 feet lakeward of the toe of bluff;

(iii) The wall if low profile, that is, it is not more than 1 foot above the existing water level; and

(iv) The wall is constructed of wood or steel or other non-polluting material.

(m) Physical removal of man-made structures or natural obstructions which meet all of the following criteria:

(i) The debris or spoils shall be removed to an upland site, not in a wetland, in a manner which will not allow erosion into public waters;

(ii) The shoreline and bottom contours shall be restored to an acceptable condition;

(iii) Upon completion of structure removal, the site does not constitute a safety or navigational hazard; and

(iv) Department staff shall consider fisheries and wildlife resource values when evaluating applications for natural obstruction removal.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960-AE67

Supplementary Security Income; Overpayment Recovery by Offset of Federal Income Tax Refund

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: These proposed regulations govern use of the Federal income tax refund offset program established under section 2653 of the Deficit Reduction Act of 1984, Pub. L. No. 98-369. They would permit the recovery of supplemental security income (SSI) overpayments through the withholding of amounts due to former SSI recipients as Federal income tax refunds. In these proposed rules, we reflect the provisions of the statute and explain the procedures that we will follow in referring SSI overpayments to the

Department of the Treasury for income tax refund offset (TRO).

DATES: To be sure your comments are considered, we must receive them no later than July 23, 1997.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, Maryland 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 may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-5121. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: Section 2653 of the Deficit Reduction Act of 1984, codified at 31 U.S.C. 3720A and 26 U.S.C. 6402(d), authorized the Secretary of the Treasury, upon receiving notice from a Federal agency that a named individual owes the agency a past-due, legally enforceable debt, to withhold all or a part of any income tax refund that is due to the debtor and pay the amount withheld to the agency. Section 2653 specifically precluded the use of these procedures to recover overpayments of Social Security benefits paid under title II of the Social Security Act (the Act). Under 31 U.S.C. 3720A, a Federal agency that is owed a past-due, legally enforceable debt by an individual may notify the Secretary of the Treasury of the debt in accordance with regulations issued by the Department of the Treasury. The applicable Treasury regulations are codified at 26 CFR 301.6402-6. Before an agency may refer a debt to Treasury, it must, under 31 U.S.C. 3720A, take the following actions: (1) Notify the debtor that the agency proposes to refer the debt for tax refund offset; (2) give the debtor at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; (3) consider all evidence the debtor presents in determining that all or a part of the debt is past-due and legally enforceable; and (4) satisfy any other conditions that the Secretary of the Treasury may prescribe to ensure that

the agency's findings are valid and that the agency has made reasonable efforts to obtain the payment of the debt.

Although section 2653 gave us the authority to use the TRO provisions to recover overpayments made to recipients of supplemental security income (SSI) payments under title XVI of the Act, we elected not to do so at that time because we did not think it appropriate to use a procedure we were precluded from using to recover title II overpayments to recover overpayments made under the needs-based title XVI program.

Section 5129 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) removed the restriction on using the TRO provisions to recover title II overpayments. Section 5129 added several additional conditions to the referral of title II overpayments for offset. These included: (1) The overpaid individual may not be currently entitled to Social Security benefits under title II of the Act; (2) the notice that we send to the overpaid individual concerning our intent to seek the offset must describe the conditions under which we are required to waive recovery of an overpayment under section 204(b) of the Act; and (3) if the overpaid individual requests that we waive recovery of the overpayment within the 60-day period allowed under the program for presenting evidence that the debt is not past due or not legally enforceable, we may not certify the overpayment to Treasury without first issuing a determination on the waiver request. We issued final regulations on October 21, 1991 (56 FR 52466) implementing these statutory changes.

Since that time, we have been modifying our computer systems to extend the TRO provisions to various subgroups of former title II program beneficiaries. We now have the necessary systems modifications in place to permit us to extend the TRO provisions to the title XVI program, as well. These title XVI rules closely follow the existing rules for the title II program, including the same conditions that the OBRA 90 legislation required for the title II program. That is, these rules provide that (1) The overpaid individual may not currently be eligible to receive SSI payments under title XVI of the Act; (2) the notice we send to the overpaid individual concerning our intent to seek offset must describe the conditions under which we are required to waive recovery of an overpayment under section 1631(b)(1)(B) of the Act; and (3) if the overpaid individual requests that we waive recovery of the overpayment within the 60-day period allowed under the program for

presenting evidence that the debt is not past due or legally enforceable, we may not certify the overpayment to Treasury without first issuing a determination on the waiver request.

Explanation of Changes to Regulations

We propose to add new §§ 416.580 through 416.586 to our regulations to explain our rules on recovery of title XVI overpayments through the withholding of amounts due to former SSI recipients as Federal income tax refunds. Section 416.580 would provide general information about the tax refund offset program and explain that we may pursue collection of an overpayment through this program if the overpaid individual is not eligible for benefits. This new regulatory section also explains that we will not initiate the tax refund offset to collect an overpayment more than 10 years after our right to collect the overpayment first accrued.

Section 416.581 would explain that, before we refer an overpayment to the Treasury Department, we will notify the overpaid individual of our intention to do so. This notice will advise the individual of the amount of the overpayment and the conditions under which we will waive recovery of an overpayment under section 1631(b)(1)(B) of the Act. The notice will also explain that unless, within 60 days from the date of our notice, the overpaid individual repays the overpayment, presents evidence that the overpayment is not past due or not legally enforceable, or requests a waiver of the overpayment, we will refer the overpayment to the Department of the Treasury to offset any tax refund payable to the overpaid individual. The notice additionally will advise the individual of the right to inspect and copy our records related to the overpayment.

Sections 416.582 and 416.583 would explain our procedures for reviewing and making findings when an overpaid individual submits evidence that an overpayment is not past due or not legally enforceable.

Section 416.584 would explain our procedures for the overpaid individual who wishes to review our records related to the overpayment.

Section 416.585 would explain that if, within 60 days after the date of our notice of intent to seek an offset, an individual presents evidence that the overpayment is not past due or not legally enforceable or asks us to waive collection of the overpayment, we will suspend our referral of the overpayment to the Department of the Treasury for offset until we issue written findings

that affirm that all or a part of the overpayment is past due and legally enforceable and, where appropriate, determine that waiver of the overpayment is unwarranted.

Section 416.586 would set out our intention, in cases where a tax refund is insufficient in a tax year to satisfy the amount of the overpayment, to continue to offset in succeeding years any amount of the overpayment that remains, as long as the remainder of the overpayment continues to meet the criteria for referral under the tax refund offset program in succeeding years. This differs from our title II rules on TRO which provide that, where a tax refund is insufficient to recover an overpayment in a given year, we will recertify the remainder for offset in the following year. This proposed section reflects the fact that the Department of the Treasury has the systems capability to retain the overpaid amount in their records for offset against future tax refunds the individual may be due. We are developing a separate proposed rule dealing with title II overpayments that will make this same change in the title II TRO rules.

We also propose to add to § 416.1403(a) a new paragraph (17) that would include in the list of administrative actions that are not initial determinations findings on whether we can collect an SSI overpayment by using the Federal income tax refund offset procedure. Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N of our regulations, and they are not subject to judicial review.

Electronic Version

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.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

In order to use the TRO provisions to recover title XVI overpayments from income tax refunds payable in 1998, the

final rules must be effective in early October 1997, so that we can begin notifying individuals that we propose to refer their overpayments to the Department of the Treasury for offset. Any delay in sending the notices and referring these debts to Treasury will result in lost program savings of up to \$6 million. For that reason, we are providing a 30-day (rather than the usual 60-day) public comment period. These proposed rules, which closely follow our existing TRO rules for the title II program and on which we received only minor public comments when promulgated in 1991, benefit the public while adequately safeguarding the rights of former SSI recipients by giving overpaid individuals the right to repay the amount, present evidence that the overpayment is not past due or not legally enforceable, or request us to waive collection of the overpayment, before referral to the Department of the Treasury is made. We will issue written findings affirming that all or part of the overpayment is past due and legally enforceable and, where appropriate, determine that waiver of the overpayment is unwarranted before making such a referral. In view of the above, we believe a 30-day comment period provides ample opportunity for the public to review and comment on these rules.

Regulatory Flexibility Act

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

Paperwork Reduction Act

These proposed regulations will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs: 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).

Approved: June 12, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Subparts E and N of Part 416 of Chapter III of Title 20 of the Code of

Federal Regulations are proposed to be amended to read as follows:

1. The authority citation for subpart E is revised to read as follows:

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

2. Sections 416.580, 416.581, 416.582, 416.583, 416.584, 416.585, and 416.586 are added to subpart E to read as follows:

§ 416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 416.580 through 416.586 of this subpart. These standards and procedures are authorized by the Deficit Reduction Act of 1984 [31 U.S.C. § 3720A], as implemented through Department of the Treasury regulations at 26 CFR 301.6402-6.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Secretary of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly supplemental security income benefits under title XVI of the Act. We will refer an overpayment to the Secretary of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

§ 416.581 Notice to overpaid individual.

A request for reduction of a Federal income tax refund will be made only after we determine that an amount is owed and past due and provide the overpaid individual with 60 calendar days written notice. Our notice of intent to collect an overpayment through Federal income tax refund offset will state:

(a) The amount of the overpayment;

(b) That unless, within 60 calendar days from the date of our notice, the overpaid individual repays the overpayment, sends evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or asks us to waive collection of the overpayment under section 1631(b)(1)(B) of the Act, we intend to seek collection of the

overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid individual as refunds of Federal income taxes by an amount equal to the amount of the overpayment;

(c) The conditions under which we will waive recovery of an overpayment under section 1631(b)(1)(B) of the Act;

(d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;

(e) That the overpaid individual has the right to inspect and copy our records related to the overpayment as determined by us and will be informed as to where and when the inspection and copying can be done after we receive notice from the overpaid individual that inspection and copying are requested.

§ 416.582 Review within SSA that an overpayment is past due and legally enforceable.

(a) *Notification by overpaid individual.* An overpaid individual who receives a notice as described in § 416.581 of this subpart has the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, the individual must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.

(b) *Submission of evidence.* The overpaid individual may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the Department of the Treasury, unless the overpaid individual, within this 60-day time period, has asked us to waive collection of the overpayment under section 1631(b)(1)(B) of the Act and we have not yet determined whether we can grant the waiver request. If the overpaid individual asks us to waive collection of the overpayment, we may ask that evidence to support the request be submitted to us.

(c) *Review of the Evidence.* After a timely submission of evidence by the overpaid individual, we will consider all available evidence related to the overpayment. We will make findings based on a review of the written record, unless we determine that the question of indebtedness cannot be resolved by a review of the documentary evidence.

§ 416.583 Findings by SSA.

(a) Following the review of the record, we will issue written findings which

include supporting rationale for the findings. Issuance of these findings concerning whether the overpayment or part of the overpayment is past due and legally enforceable is the final Agency action with respect to the past-due status and enforceability of the overpayment. If we make a determination that a waiver request cannot be granted, we will issue a written notice of this determination in accordance with the regulations in subpart E of this part. Our referral of the overpayment to the Department of the Treasury will not be suspended under § 416.585 of this subpart pending any further administrative review of the waiver request that the individual may seek.

(b) Copies of the findings described in paragraph (a) of this section will be distributed to the overpaid individual and the overpaid individual's attorney or other representative, if any.

(c) If the findings referred to in paragraph (a) of this section affirm that all or part of the overpayment is past due and legally enforceable and, if waiver is requested and we determine that the request cannot be granted, we will refer the overpayment to the Department of the Treasury. However, no referral will be made if, based on our review of the overpayment, we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine that waiver of our collection of the overpayment is appropriate.

§ 416.584 Review of our records related to the overpayment.

(a) *Notification by the overpaid individual.* An overpaid individual who intends to inspect or copy our records related to the overpayment as determined by us must notify us stating his or her intention to inspect or copy.

(b) *Our response.* In response to a notification by the overpaid individual as described in paragraph (a) of this section, we will notify the overpaid individual of the location and time when the overpaid individual may inspect or copy our records related to the overpayment. We may also, at our discretion, mail copies of the overpayment-related records to the overpaid individual.

§ 416.585 Suspension of offset.

If, within 60 days of the date of the notice described in § 416.581 of this subpart, the overpaid individual notifies us that he or she is exercising a right described in § 416.582(a) of this subpart and submits evidence pursuant to § 416.582(b) of this subpart or requests

a waiver under § 416.550 of this subpart, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

§ 416.586 Tax refund insufficient to cover amount of overpayment.

If a tax refund is insufficient to recover an overpayment in a given year, the case will remain with the Department of the Treasury for succeeding years, assuming that all criteria for certification are met at that time.

3. The authority citation for subpart N is revised to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

4. Section 416.1403 is amended by deleting the word "and" at the end of paragraph (a)(15), replacing the period at the end of paragraph (a)(16) with "and", and adding paragraph (a)(17) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(17) Findings on whether we can collect an overpayment by using the Federal income tax refund offset procedure. (See § 416.583).

* * * * *

[FR Doc. 97-16132 Filed 6-20-97; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 97N-0217]

Request for Comments on Development of Options to Encourage Animal Drug Approvals for Minor Species and for Minor Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments and suggestions relating to legislative and regulatory options to facilitate the approval of new animal