

meetings on the notice of proposed rulemaking, Commuter Operations and General Certification and Operations, published in the **Federal Register** on March 29, 1995 [59 FR 16230]. The purpose of these meetings is to provide an opportunity for the public to comment on the commuter proposal.

DATES: The meetings will be held on June 14 and June 21, 1995, from 9 am to 5 pm.

ADDRESSES: Meeting locations are as follows:

June 14—McCormick Place—East Building, 2301 S. Lake Shore Drive, Chicago, Ill. 60616, phone: (312) 791-5000.

June 21—Hacienda Hotel, 3950 Las Vegas Blvd. S., Las Vegas, Nevada 89119, phone: (702) 739-8911.

Persons unable to attend the meetings may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC-200), Docket No. 28154, 800 Independence Ave., NW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meetings on the commuter NPRM or questions regarding the logistics of the meeting should be directed to Linda Williams, Federal Aviation Administration, Office of Rulemaking (ARM-109), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-9685; fax (202) 267-5075.

Questions concerning the subject matter of the public meeting on the commuter NPRM should be directed to Katherine Hakala, Flight Standards Service (AFS-250), Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591. Telephone: (202) 267-8137.

SUPPLEMENTARY INFORMATION:

Background

The FAA will conduct two public meetings on the recently published commuter proposed rule. Comments from the public at this meeting should be directed specifically to the proposed rule. The notice of proposed rulemaking was published in the **Federal Register** on March 29, 1995. If adopted, the proposed rule would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those part 135 operators conducting scheduled passenger-carrying operations in airplanes that have a passenger-seating configuration of 10 to 30 seats and those conducting scheduled passenger-carrying

operations in turbojets regardless of seating configuration. The proposed rule would revise the requirements concerning operating certificates and operations specifications. The rule would also propose certain management officials for all operators under parts 121 and 135.

The closing date for comments on the proposal is June 27, 1995. To give the public an additional opportunity to comment on the proposed rule, the FAA is planning these public meetings. Because this additional opportunity to comment on the proposed rule is provided, the FAA does not intend to extend the closing date for comments on the NPRM.

Persons interested in obtaining a copy of the proposed commuter rule should contact Linda Williams at the address or telephone number provided in **FOR FURTHER INFORMATION CONTACT**.

Participation at the Public Meeting on the Commuter NPRM

Requests from persons who wish to present oral statements at the public meeting on the commuter NPRM should be received by the FAA no later than June 9, 1995. Such requests should be submitted to Linda Williams as listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Requests received after June 9 will be scheduled if time is available during the meeting; however, the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Public Meeting Procedures

The following procedures are established to facilitate the public meeting on the commuter NPRM:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:00 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual

will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket No. 28154). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the proposed NPRM may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the commuter NPRM is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. FAA officials will, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA when deliberations begin concerning whether to adopt any or all of the proposed rules.

10. The meeting is designed to solicit public views and more complete information on the proposed rule. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC, on May 26, 1995.

Chris A. Cristie,

Director of Rulemaking.

[FR Doc. 95-13483 Filed 5-30-95; 11:57 am]

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SOCIAL SECURITY ADMINISTRATION**20 CFR Parts 404 and 410**

RIN 0960-AD99

Overpayment Appeal and Waiver Rights

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: In these proposed regulations we address the rights of individuals regarding overpayment and waiver determinations in the Social Security and Black Lung benefits programs by stating policy established as a result of a series of court decisions, beginning with the 1974 court decision in *Buffington, et al. v. Weinberger* and including the Supreme Court decision in *Califano v. Yamasaki*. The effect of these proposed regulations is to codify these additional rights for overpaid individuals established in these court decisions.

DATES: Comments must be submitted on or before August 1, 1995.

ADDRESSES: Submit your comments as follows: (1) Telefax to (410) 966-2830, (2) mail them to the Social Security Administration, P.O. Box 1585, Baltimore, MD 21235, (3) send by E-mail to "regulations@ssa.gov", or (4) deliver them to 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. You may inspect the comments received also 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 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: Lois Berg, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1713 for information about these rules.

SUPPLEMENTARY INFORMATION**Background**

Section 204(b) of the Social Security Act (the Act) provides that the Commissioner of Social Security (the Commissioner) shall not recover an Old-Age, Survivors, and Disability Insurance (OASDI) overpayment from any individual who is without fault in causing the overpayment if recovery

from that individual would "defeat the purpose" of title II of the Act or be "against equity and good conscience." Sections 205(a) and 1102(a) of the Act authorize the issuance of regulations regarding our overpayment recovery policies.

Sections 411(b) and 426(a) of the Black Lung Benefits Act (30 U.S.C. 921(b) and 936(a)), authorize the Commissioner to issue regulations to administer the provisions of the Black Lung benefit program. The provisions for recovery of an overpayment from an individual under the Black Lung benefit program (Part B) regulations generally parallel the regulations of the OASDI programs.

On October 22, 1974, the U.S. District Court for the Western District of Washington in *Buffington, et al. v. Weinberger*, No. 734-73C2, stopped the Social Security Administration (SSA) from recovering overpaid Social Security benefits without first giving each member of the plaintiff class adequate written notice of the overpayment determination and the right to a pre-recoupment hearing.

The court ordered that the written notice must include:

- A statement of the alleged overpayment, an explanation of the basis for the overpayment and SSA's proposed action to recover the overpayment;
- A statement of the individual's right to a pre-recoupment hearing;
- Instructions and forms for requesting a pre-recoupment hearing;
- An explanation that if the individual did not request a pre-recoupment hearing within 30 days of the date of mailing of the overpayment notice, it would be presumed that the individual waived his/her right to the hearing and recovery of the alleged overpayment would begin;
- A statement of any other administrative relief available (i.e., reconsideration of the fact and/or amount of overpayment and waiver of recovery of the overpayment); and
- A statement that an SSA office would help the individual complete and submit forms for appeal or waiver requests.

The court also ordered the following:

1. SSA had to restore all benefits withheld from the named plaintiffs pending an opportunity for a pre-recoupment hearing.
2. Each individual had to be given the opportunity to examine his/her claims file at least 5 days prior to the date of the pre-recoupment hearing.
3. The pre-recoupment hearing had to be conducted by an SSA employee who had no prior knowledge of the events

leading to the overpayment determination and the decision to recover the overpayment.

4. At the hearing, the individual had to be given the opportunity to:

- Appear personally, testify, and cross-examine any witnesses;
- Be represented by an attorney or other representative; and
- Submit documents for consideration at the hearing;

The court did not require that a transcript be made of the hearing.

5. After the hearing, SSA had to issue a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision and advising of the individual's right to appeal the decision.

In accordance with the court order, SSA began to issue overpayment notices containing all of the aforementioned information and to offer pre-recoupment hearings to all class members.

On June 20, 1979, the Supreme Court held in *Califano v. Yamasaki*, 442 U.S. 682 (1979), that individuals who file a written request for waiver are entitled to the opportunity for a pre-recoupment oral hearing, but those who request only reconsideration are not so entitled. Thereafter, SSA applied revised overpayment notice and pre-recoupment hearing procedures to all individuals determined to be overpaid under the title II or Black Lung benefit programs. On July 31, 1981, the *Buffington* court required SSA to schedule pre-recoupment hearings automatically for individuals whose request for waiver of overpayment recovery could not be approved after initial paper review. On February 10, 1983, the *Buffington* court approved procedures developed by SSA in response to the 1981 decree whereby pre-recoupment hearings would be scheduled automatically but ordered SSA to schedule the hearings through a written notice to the claimant. The scheduling letter had to contain the date, time and place of the hearing; the procedure for reviewing the claims file before the hearing; the procedure for seeking a change in the scheduled date, time, and/or place; and all other information necessary to fully inform the claimant about the pre-recoupment hearing. SSA began to schedule automatically pre-recoupment hearings in writing in April 1983. The court also retained jurisdiction over the matter and prohibited any changes in the overpayment procedures it had approved without prior notification of plaintiffs' counsel and prior approval from the court.

In its order of October 19, 1987, the *Buffington* court approved SSA's plan to transfer waiver decisionmaking authority for Retirement and Survivors Insurance overpayments from the processing centers to the field offices. SSA implemented this change in July 1988.

On April 13, 1994, the *Buffington* court approved a stipulation modifying the court's injunction in this matter. Under the stipulation, plaintiffs agree to withdraw counsel notification and court approval requirements for future changes to SSA overpayment policies. In return, SSA agreed to promulgate a Social Security Ruling (SSR) and then proposed regulations embodying the overpayment requirements set forth in *Yamasaki*, above. SSA published the SSR on July 11, 1994 (59 FR 35378), and is publishing these proposed regulations to fulfill its commitments under the stipulation.

Current Regulations

Our current regulations do not address the adequate notice, face-to-face oral hearing, or appeal step issues noted above. However, SSA has been complying with the court orders described above through program instructions approved by the *Buffington* court.

Regulations Changes

We are restating in regulations the policies enunciated in the court decisions and established in our program instructions. The proposed regulations provide when an overpayment is discovered, we notify the individual immediately. The notice includes:

- The overpayment amount and how and when it occurred;
- A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;
- The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;
- An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the individual is receiving another type of payment from SSA (language about cross-program recovery is not included in notices sent to individuals in jurisdictions where this recovery option is not available; currently, cross-program recovery is not available to residents of New York and Pennsylvania);

- An explanation of the right to request waiver of adjustment or recovery and the automatic scheduling of a file review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;

- An explanation of the right to request reconsideration of the fact and/or amount of the overpayment determination;

- Instructions about the availability of forms for requesting reconsideration and waiver;

- An explanation that if the individual does not request waiver or reconsideration within 30 days of the date of the overpayment notice, adjustment or recovery of the overpayment will begin;

- A statement that an SSA office will help the individual complete and submit forms for appeal or waiver requests; and

- A statement that the individual should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments or cross-program adjustment is wanted.

Form SSA-3105 (Important Information About Your Appeal and Waiver Rights) is included with each overpayment notice. The SSA-3105 further explains the pre-recoupment review process and contains a tear-off form which the individual may complete and return to SSA if he/she wants reconsideration and/or waiver.

The proposed regulations also provide that to ensure meaningful opportunity to contest the correctness of an overpayment determination and/or establish entitlement to waiver, the date on which full refund is due and, if appropriate, the date on which adjustment will begin must be at least 30 days after the date of the overpayment notice. If the individual responds within 30 days after the date of the overpayment notice, SSA must take action to ensure that benefit payments are not interrupted. Any time waiver is requested, SSA stops adjustment or recovery.

When waiver is requested, the individual gives SSA information (usually on Form SSA-632-BK (Request for Waiver of Overpayment Recovery or Change in Repayment Rate)) to support his/her contention that he/she is without fault in causing the overpayment and that recovery would either cause financial hardship or be inequitable. That information, along with supporting documentation, is reviewed to determine if waiver can be approved.

If waiver cannot be approved after this review, the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference.

At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

Although the individual may be represented at the personal conference, he/she must also be present. This requirement is consistent with the Supreme Court's reasoning in *Califano v. Yamasaki*. In *Yamasaki*, the Court concluded that written review could not satisfy SSA's obligation to make an accurate waiver determination, because an evaluation of fault requires an evaluation of all pertinent circumstances, such as the recipient's intelligence, and physical and mental condition. The court said, "We do not see how these can be evaluated absent personal contact between the recipient and the person who decides his case." *Id.* at 698.

SSA will provide suitable private space for the personal conference. However, if the individual cannot come to the conference site for a legitimate reason (e.g., he/she is incapacitated), SSA personnel will travel as far as necessary to conduct the conference.

At the personal conference, the individual is given the opportunity to:

- Appear personally, testify, cross-examine any witnesses, and make arguments;
- Be represented by an attorney or other representative, although the individual must be present at the conference; and
- Submit documents for consideration by the decisionmaker. At the personal conference, the decisionmaker:
 - Tells the individual that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver

decision is based only on the evidence or information presented or reviewed at the conference;

- Ascertain the role and identity of everyone present;
- Indicates whether or not the individual reviewed the claims file;
- Explains the provisions of law and regulations applicable to the issue;
- Briefly summarizes the evidence already in file which will be considered;
- Ascertain from the individual whether the information presented is correct and whether he/she fully understands it;
- Allows the individual and the individual's representative, if any, to present the individual's case;
- Secures updated financial information and verification, if necessary;
- Allows each witness to present information and allows the individual and the individual's representative to question each witness;
- Ascertain whether there is any further evidence to be presented;
- Reminds the individual of any evidence promised by the individual which has not been presented;
- Lets the individual and the individual's representative, if any, present any proposed summary or closing statement;
- Explains that a decision will be made and the individual will be notified in writing; and
- Explains further appeal rights in the event the decision is adverse to the individual.

SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision. If waiver is denied, adjustment or recovery of the overpayment begins even if the individual appeals.

If it appears that the waiver cannot be approved, and the individual declines a personal conference or fails to appear for a second scheduled personal conference, a decision regarding the waiver will be made based on the written evidence of record. Reconsideration is then the next step in the appeals process.

The proposed regulations also state that although a personal conference decision on the waiver issue is an initial determination, when an individual is appealing an initial determination of waiver denial based on a personal conference, the first appeal step is an Administrative Law Judge (ALJ) hearing, bypassing the reconsideration which generally follows initial determinations.

We provide that the appeal goes directly to an ALJ hearing in this situation because a reconsideration is a review of the written evidence and would be less comprehensive in scope than the preceding personal conference.

However, where an individual is appealing an initial determination of waiver denial based solely on a review of the written evidence rather than a personal conference (i.e., the individual chose to forego the personal conference) the first appeal step is a reconsideration.

Additionally, an individual may concurrently appeal the substantive determination that the overpayment occurred and request waiver of recovery of the overpayment. We provide that when the substantive determination is upheld on reconsideration and the waiver is denied, even if it is denied solely on the basis of a review of the written evidence, the next step in the appeal process for both determinations is an ALJ hearing.

In addition to revising the regulations to codify the policy established in these court decisions, we are also removing references to title XVIII from §§ 404.502a and 404.506. These references address Medicare overpayment situations, which fall within the purview of the Health Care Financing Administration (HCFA). Prior to becoming a separate agency, SSA was responsible for both the social security cash benefit program and the Medicare program. Consequently, HCFA has historically relied on many of SSA's regulations that addressed similar situations under titles II and XVIII of the Act. The recoupment of overpayments has been one of these situations. However, as differences in the two programs have increased, the applicability of SSA regulations to Medicare overpayment situations has diminished. As a result, HCFA is in the process of promulgating its own regulations with regard to Medicare overpayments. Therefore, we are removing the references to title XVIII from the regulations text of these proposed regulations. However, until HCFA's regulations are published as final, the to-be-superseded SSA procedures will continue to apply to title XVIII (Medicare) overpayments.

Regulatory Procedures

Executive Order 12866

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

Paperwork Reduction Act of 1980

These proposed regulations impose no new reporting or recordkeeping requirements which are subject to review by OMB.

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. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance: Program Nos. 93.802, Social Security—Disability Insurance; 93.803, Social Security—Retirement Insurance; 93.805, Social Security—Survivors Insurance; and 93.806, Special Benefits for Disabled Coal Miners)

List of Subjects

20 CFR Part 404

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

20 CFR Part 410

Administrative practice and procedure; Black lung benefits; Death benefits; Disability benefits; Miners; Reporting and recordkeeping requirements.

Dated: May 23, 1995.

Approved:

Shirley Chater,

Commissioner of Social Security.

For the reasons set out in the preamble, Parts 404 and 410 of Chapter III of Title 20 of the Code of Federal Regulations are proposed to be amended as follows.

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

Subpart F—[Amended]

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

Authority: Secs. 204(a)–(d), 205(a), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 404(a)–(d), 405(a), and 1302.

2. Section 404.502a is revised to read as follows:

§ 404.502a Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, and we seek

adjustment or recovery of the overpayment, the individual from whom we are seeking adjustment or recovery is immediately notified. The notice includes:

(a) The overpayment amount and how and when it occurred;

(b) A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;

(c) The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;

(d) An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the individual is receiving another type of payment from SSA (language about cross-program recovery is not included in notices sent to individuals in jurisdictions where this recovery option is not available);

(e) An explanation of the right to request waiver of adjustment or recovery and the automatic scheduling of a file review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;

(f) An explanation of the right to request reconsideration of the fact and/or amount of the overpayment determination;

(g) Instructions about the availability of forms for requesting reconsideration and waiver;

(h) An explanation that if the individual does not request waiver or reconsideration within 30 days of the date of the overpayment notice, adjustment or recovery of the overpayment will begin;

(i) A statement that an SSA office will help the individual complete and submit forms for appeal or waiver requests; and

(j) A statement that the individual receiving the notice should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments or cross-program adjustment is wanted.

3. Section 404.506 is revised to read as follows:

§ 404.506 When waiver may be applied and how to process the request.

(a) Section 204(b) of the Act provides that there shall be no adjustment or recovery in any case where an overpayment under title II has been made to an individual who is without fault if adjustment or recovery would

either defeat the purpose of title II of the Act, or be against equity and good conscience.

(b) If an individual requests waiver of adjustment or recovery of a title II overpayment within 30 days after receiving a notice of overpayment that contains the information in § 404.502a, no adjustment or recovery action will be taken until after the initial waiver determination is made. If the individual requests waiver more than 30 days after receiving the notice of overpayment, SSA will stop any adjustment or recovery actions until after the initial waiver determination is made.

(c) When waiver is requested, the individual gives SSA information to support his/her contention that he/she is without fault in causing the overpayment (see § 404.507) and that adjustment or recovery would either defeat the purpose of title II of the Act (see § 404.508) or be against equity and good conscience (see § 404.509). That information, along with supporting documentation, is reviewed to determine if waiver can be approved. If waiver cannot be approved after this review, the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference.

(d) At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

(e) At the personal conference, the individual is given the opportunity to:

(1) Appear personally, testify, cross-examine any witnesses, and make arguments;

(2) Be represented by an attorney or other representative (see § 404.1700), although the individual must be present at the conference; and

(3) Submit documents for consideration by the decisionmaker.

(f) At the personal conference, the decisionmaker:

(1) Tells the individual that the decisionmaker was not previously

involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;

(2) Ascertain the role and identity of everyone present;

(3) Indicates whether or not the individual reviewed the claims file;

(4) Explains the provisions of law and regulations applicable to the issue;

(5) Briefly summarizes the evidence already in file which will be considered;

(6) Ascertain from the individual whether the information presented is correct and whether he/she fully understands it;

(7) Allows the individual and the individual's representative, if any, to present the individual's case;

(8) Secures updated financial information and verification, if necessary;

(9) Allows each witness to present information and allows the individual and the individual's representative to question each witness;

(10) Ascertain whether there is any further evidence to be presented;

(11) Reminds the individual of any evidence promised by the individual which has not been presented;

(12) Lets the individual and the individual's representative, if any, present any proposed summary or closing statement;

(13) Explains that a decision will be made and the individual will be notified in writing; and

(14) Explains repayment options and further appeal rights in the event the decision is adverse to the individual.

(g) SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision. If waiver is denied, adjustment or recovery of the overpayment begins even if the individual appeals.

(h) If it appears that the waiver cannot be approved, and the individual declines a personal conference or fails to appear for a second scheduled personal conference, a decision regarding the waiver will be made based on the written evidence of record. Reconsideration is then the next step in the appeals process (but see § 404.930(a)(7)).

Subpart J—[Amended]

4. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)–(h), 221(d), and 1102 of the Social Security

Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405(a), (b), and (d)-(h), 421(d), and 1302; sec. 5 of Pub. L. 97-455, 96 Stat. 2500; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

5. Section 404.907 is revised to read as follows:

§ 404.907 Reconsideration-general.

If you are dissatisfied with the initial determination, reconsideration is the first step in the administrative review process that we provide, except that we provide the opportunity for a hearing before an administrative law judge as the first step for those situations described in § 404.930(a)(6) and (a)(7), where you appeal an initial determination denying your request for waiver of adjustment or recovery of an overpayment (see § 404.506). If you are dissatisfied with our reconsidered determination, you may request a hearing before an administrative law judge.

6. Section 404.930 is amended by removing the word "or" at the end of (a)(4) and the period at the end of (a)(5), and adding a semicolon in its place and adding (a)(6) and (a)(7) as follows:

§ 404.930 Availability of a hearing before an administrative law judge.

(a) * * *

(6) An initial determination denying waiver of adjustment or recovery of an overpayment based on a personal conference (see § 404.506); or

(7) An initial determination denying waiver of adjustment or recovery of an overpayment based on a review of the written evidence of record (see § 404.506), and the determination was made concurrent with, or subsequent to, our reconsideration determination regarding the underlying overpayment but before an ALJ holds a hearing.

* * * * *

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969—)

Subpart E—[Amended]

7. The authority citation for subpart E of part 410 is revised to read as follows:

Authority: Secs. 411(a), 412(a) and (b), 413(b), 426(a), and 508 of the Federal Mine Health and Safety Act of 1969, as amended; 30 U.S.C. 921(a), 922(a) and (b), 923(b), 936(a), and 957; sec 410.565 also issued under sec. 3, 80 Stat. 309, 31 U.S.C. 952, unless otherwise noted.

8. Section 410.561 is revised to read as follows:

§ 410.561 Notice of right to waiver consideration.

When we seek adjustment or recovery of an overpayment, the individual from whom we are seeking adjustment or recovery is immediately notified. The notice includes:

(a) The overpayment amount and how and when it occurred;

(b) A request for full, immediate refund, unless the overpayment can be withheld from the next month's benefit;

(c) The proposed adjustment of benefits if refund is not received within 30 days after the date of the notice and adjustment of benefits is available;

(d) An explanation of the availability of a different rate of withholding when full withholding is proposed, installment payments when refund is requested and adjustment is not currently available, and/or cross-program recovery when refund is requested and the individual is receiving another type of payment from SSA (language about cross-program recovery is not included in notices sent to individuals in jurisdictions where this recovery option is not available);

(e) An explanation of the right to request waiver of adjustment or recovery and the automatic scheduling of a file review and pre-recoupment hearing (commonly referred to as a personal conference) if a request for waiver cannot be approved after initial paper review;

(f) An explanation of the right to request reconsideration of the fact and/or amount of the overpayment determination;

(g) Instructions about the availability of forms for requesting reconsideration and waiver;

(h) An explanation that if the individual does not request waiver or reconsideration within 30 days of the date of the overpayment notice, adjustment or recovery of the overpayment will begin;

(i) A statement that an SSA office will help the individual complete and submit forms for appeal or waiver requests; and

(j) A statement that the individual receiving the notice should notify SSA promptly if reconsideration, waiver, a lesser rate of withholding, repayment by installments or cross-program adjustment is wanted.

9. Section 410.561a is revised to read as follows:

§ 410.561a When waiver may be applied and how to process the request.

(a) There shall be no adjustment or recovery in any case where an overpayment under part B of title IV of the Act has been made to an individual

who is without fault if adjustment or recovery would either defeat the purpose of title IV of the Act, or be against equity and good conscience.

(b) If an individual requests waiver of adjustment or recovery of an overpayment made under part B of title IV within 30 days after receiving a notice of overpayment that contains the information in § 410.561, no adjustment or recovery action will be taken until after the initial waiver determination is made. If the individual requests waiver more than 30 days after receiving the notice of overpayment, SSA will stop any adjustment or recovery actions until after the initial waiver determination is made.

(c) When waiver is requested, the individual gives SSA information to support his/her contention that he/she is without fault in causing the overpayment (see § 410.561b), and that adjustment or recovery would either defeat the purposes of this subpart (see § 410.561c) or be against equity and good conscience (see § 410.561d). That information, along with supporting documentation, is reviewed to determine if waiver can be approved. If waiver cannot be approved after this review, the individual is notified in writing and given the dates, times and place of the file review and personal conference; the procedure for reviewing the claims file prior to the personal conference; the procedure for seeking a change in the scheduled dates, times, and/or place; and all other information necessary to fully inform the individual about the personal conference. The file review is always scheduled at least 5 days before the personal conference.

(d) At the file review, the individual and the individual's representative have the right to review the claims file and applicable law and regulations with the decisionmaker or another SSA representative who is prepared to answer questions. We will provide copies of material related to the overpayment and/or waiver from the claims file or pertinent sections of the law or regulations that are requested by the individual or the individual's representative.

(e) At the personal conference, the individual is given the opportunity to:

(1) Appear personally, testify, cross-examine any witnesses, and make arguments;

(2) Be represented by an attorney or other representative (see § 410.684), although the individual must be present at the conference; and

(3) Submit documents for consideration by the decisionmaker.

(f) At the personal conference, the decisionmaker:

(1) Tells the individual that the decisionmaker was not previously involved in the issue under review, that the waiver decision is solely the decisionmaker's, and that the waiver decision is based only on the evidence or information presented or reviewed at the conference;

(2) Ascertains the role and identity of everyone present;

(3) Indicates whether or not the individual reviewed the claims file;

(4) Explains the provisions of law and regulations applicable to the issue;

(5) Briefly summarizes the evidence already in file which will be considered;

(6) Ascertains from the individual whether the information presented is correct and whether he/she fully understands it;

(7) Allows the individual and the individual's representative, if any, to present the individual's case;

(8) Secures updated financial information and verification, if necessary;

(9) Allows each witness to present information and allows the individual and the individual's representative to question each witness;

(10) Ascertains whether there is any further evidence to be presented;

(11) Reminds the individual of any evidence promised by the individual which has not been presented;

(12) Lets the individual and the individual's representative, if any, present any proposed summary or closing statement;

(13) Explains that a decision will be made and the individual will be notified in writing; and

(14) Explains repayment options and further appeal rights in the event the decision is adverse to the individual.

(g) SSA issues a written decision to the individual (and his/her representative, if any) specifying the findings of fact and conclusions in support of the decision to approve or deny waiver and advising of the individual's right to appeal the decision. If waiver is denied, adjustment or recovery of the overpayment begins even if the individual appeals.

(h) If it appears that the waiver cannot be approved, and the individual declines a personal conference or fails to appear for a second scheduled personal conference, a decision regarding the waiver will be made based on the written evidence of record. Reconsideration is then the next step in the appeals process (but see § 410.630(c)).

Subpart F—[Amended]

10. The authority citation for subpart F of part 410 is revised to read as follows:

Authority: Secs. 413(b), 426(a), 507, and 508 of the Federal Mine Health and Safety Act of 1969, as amended; 30 U.S.C. 923(b), 936(a), 956, and 957.

11. Section 410.623 is revised to read as follows:

§ 410.623 Reconsideration; right to reconsideration.

(a) We shall reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by or for the party to the initial determination (see § 410.610). We shall also reconsider an initial determination if a written request for reconsideration is filed, as provided in § 410.624, by an individual as a widow, child, parent, brother, sister, or representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by such determination.

(b) Reconsideration is the first step in the administrative review process that we provide for an individual dissatisfied with the initial determination, except that we provide the opportunity for a hearing before an administrative law judge as the first step for those situations described in § 410.630 (b) and (c), where an individual appeals an initial determination denying waiver of adjustment or recovery of an overpayment (see § 410.561a).

12. Section 410.630 is revised to read as follows:

§ 410.630 Hearing; right to hearing.

An individual referred to in §§ 410.632 or 410.633 who has filed a written request for a hearing under the provisions in § 410.631 has a right to a hearing if:

(a) An initial determination and reconsideration of the determination have been made by the Social Security Administration concerning a matter designated in § 410.610;

(b) An initial determination denying waiver of adjustment or recovery of an overpayment based on a personal conference has been made by the Social Security Administration (see § 410.561a); or

(c) An initial determination denying waiver of adjustment or recovery of an overpayment based on a review of the written evidence of record has been made by the Social Security Administration (see § 410.561a) and the determination was made concurrent

with, or subsequent to, our reconsideration determination regarding the underlying overpayment but before an ALJ holds a hearing.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC59-2-6942b; NC55-1-6497b; NC54-1-6496b: FRL-5207-4]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Basic Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the state implementation plan (SIP) revisions submitted on May 19, 1994, January 17, 1992, September 24, 1992, and August 5, 1994, by the State of North Carolina, through the North Carolina Department of Environmental Management. This revision modifies the implementation of a basic motor vehicle inspection and maintenance (I/M) program in the areas of Charlotte, Raleigh/Durham, and Winston-Salem, North Carolina. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 3, 1995.

ADDRESSES: Written comments on this action should be addressed to: Benjamin Franco at the EPA Regional office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The