

sell, a prohibited species harvested in the EEZ, as specified in § 670.23(a).

(h) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a coral reef resource.

(i) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

§ 670.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 670.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 670.20 Fishing year.

The fishing year for coral reef resources begins on January 1 and ends on December 31.

§ 670.21 Harvest limitations.

No person may fish for or possess a prohibited species in or from the EEZ. The taking of a prohibited species in the EEZ as incidental catch will not be considered unlawful possession of a prohibited species provided it is returned immediately to the sea in the general area of fishing.

§ 670.22 Gear restrictions.

(a) An explosive may not be used to harvest a coral reef resource in the EEZ. Dynamite or a similar explosive substance may not be possessed on board a vessel that possesses a coral reef resource in or from the EEZ.

(b) No person may use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ.

(c) A coral reef resource in the EEZ may be harvested only with a hand-held dip net or slurp gun, or by hand in a manner that does not injure or destroy a coral reef resource or its habitat. For the purposes of § 670.7(f) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber.

§ 670.23 Restrictions on sale or purchase.

(a) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a prohibited species harvested in the EEZ.

(b) Effective March 1, 1996, a prohibited species that is sold or exchanged, or offered for sale or exchange, in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the EEZ unless it is accompanied by documentation

showing that it was harvested elsewhere. Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel, or the name and address of the individual, harvesting the prohibited species;

(3) The port and date of landing the prohibited species; and

(4) A statement signed by the person selling or exchanging, or offering for sale or exchange, the prohibited species attesting that, to the best of his or her knowledge, information, and belief, such prohibited species was harvested other than in the EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 670.24 Specifically authorized activities.

The Regional Director may authorize the harvest and possession of a prohibited species in or from the EEZ for a scientific, educational, or restoration purpose and may authorize activities otherwise prohibited by the regulations in this part for the acquisition of information and data.

[FR Doc. 95-28882 Filed 11-24-95; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 498

RIN 0960-AE33

Social Security Programs: Fraud and Abuse; Establishment of New Part 498 to Address Civil Monetary Penalties, Assessments and Exclusions

AGENCY: Office of the Inspector General (OTG), SSA.

ACTION: Final rule.

SUMMARY: This final rule establishes a new part 498, which will serve as a repository for the Social Security Administration's existing civil monetary penalty authorities and which will reflect and implement new civil monetary penalty authorities provided under the Social Security Independence and Program Improvements Act of 1994. In the first phase of this process, the Social Security Administration in this final rule will relocate its existing regulations for misuse of Social Security program words, letters, symbols, and emblems to part 498. In addition, the existing regulations will be updated in this final rule to reflect nondiscretionary changes made by the Social Security

Independence and Program Improvements Act of 1994.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Judith A. Kidwell, Office of the Inspector General, (410) 965-9750 or Glenn Sklar, Office of the General Counsel, (410) 965-6247.

SUPPLEMENTARY INFORMATION:

Background

Section 101 of Public Law (Pub. L.) 103-296, the Social Security Independence and Program Improvements Act of 1994 (SSIIPIA), established the Social Security Administration (SSA) as an independent agency in the Executive Branch effective March 31, 1995. Previously, SSA had been a component of the Department of Health and Human Services (HHS).

In creating an independent SSA, the SSIIPIA also established an independent Office of the Inspector General (OIG) within SSA, and authorized the Commissioner of Social Security (Commissioner) to delegate authority to impose certain civil monetary penalties (CMPs). In order to properly reflect its delegated authority with respect to CMPs, the OIG is establishing 20 CFR part 498. This part will: (1) Incorporate existing CMP authorities for misuse of Social Security program words, letters, symbols, and emblems which had previously been located in 42 CFR part 1003; (2) establish a new location for newly designated and future CMP provisions; (3) set forth the basis for any OIG penalty authorities and the factors to be considered in determining penalty amounts; and (4) detail the hearing process to be utilized in the imposition of these CMP provisions.

New Authorities for SSA Inspector General

Section 1129 of the Social Security Act

Section 206(b) of the SSIIPIA provided expanded authority for SSA to impose CMPs and assessments against persons who make false statements or representations for use in determining any initial or continuing right to or amount of benefit payments under title II or title XVI of the Social Security Act (the Act), if such person knew or should have known that the statement was false, misleading or omitted a material fact. Section 206(b) of the SSIIPIA added section 1129 to the Act, effective October 1, 1994, and section 108 of the SSIIPIA made additional conforming amendments effective March 31, 1995. This section 1129 authority to impose CMPs, including the authority to issue implementing rules, was delegated to

the Inspector General (IG) of Social Security by the Commissioner on June 28, 1995. Because the regulations implementing section 1129 will involve discretionary issues they will be developed in a separate notice of proposed rulemaking. We have reserved certain sections in this final rule to accommodate the regulations reflecting and implementing section 1129 and will finalize them after we have received and considered public comments.

Section 1140 of the Social Security Act

The SSIPIA also includes several changes to section 1140 of the Act that require us to alter the scope and content of the existing misuse of program words, letters, symbols, and emblems penalty regulations currently located at 42 CFR 1003. Specifically, section 312 of the SSIPIA amended section 1140 of the Act by adding several provisions which broaden existing deterrents against misleading mailings and advertisements directly involving the SSA. Section 312 of the SSIPIA: (1) Broadened the list of prohibited words, symbols and acronyms subject to a violation; (2) revised the standard of conduct for determining a violation; (3) exempted any State agency (or any instrumentality or political subdivision of the State) from the prohibited use of these program words, letters, symbols, or emblems where such use serves to identify these entities; (4) specifically defined a violation in regard to mailings; (5) eliminated the annual penalty cap of \$100,000; (6) eliminated the use of a disclaimer as a defense to a violation under this provision; and (7) repealed the provision that required a formal declination to be obtained from the Department of Justice before pursuing a CMP case under section 1140 of the Act.

Section 312 of the SSIPIA also includes a prohibition against reproducing, reprinting, or distributing forms, applications, or other publications of the SSA for a fee, unless the person has obtained written authorization in accordance with regulations prescribed by the Commissioner. These regulations will involve discretionary issues and will be published in a separate notice of proposed rulemaking.

Hearing Process

The Act mandates that all individuals subject to the imposition of a CMP be provided with the opportunity for a hearing. We are reserving 20 CFR 498.200 *et seq.* to address the CMP hearing process which will be developed at a future date.

The Handling of Dual Violations

The SSA/OIG and the HHS/OIG may make separate and independent determinations in regard to violations of section 1140 of the Act and impose separate CMPs against individuals, entities or organizations who make prohibited use of both the SSA and HHS program words, letters, symbols, or emblems in the same advertisement or solicitation.

Regulatory Procedures

Waiver of Proposed Rulemaking

When developing our regulations, we follow the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553. The APA provides an exception to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures in this case. Good cause exists because this rulemaking reflects the statutory amendments to section 1140 of the Act, with no issues of policy discretion. Therefore, opportunity for prior comment is unnecessary and we are issuing these changes to our regulations as a final rule.

Waiver of 30-Day Delay in Effective Date

We find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, the only substantive changes we are making merely reflect legislation and involve no discretionary policy. Thus, we find that it is in the public interest to make this rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis consistent with Pub. L. 96-354, the Regulatory Flexibility Act, unless the IG certifies that a regulation will not have a significant economic impact on a substantial number of small business entities. While some sanctions and penalties

provided for under the Act may have an impact on small entities, it is the nature of the violation and not the size of the entity that will result in an action by the OIG. In either case, we do not anticipate that a substantial number of small entities will be significantly affected by this revised rulemaking. Therefore, we have concluded, and the IG certifies, that a regulatory flexibility analysis is not required for this final rule.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

(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 Program)

List of Subjects in 20 CFR Part 498

Administrative practice and procedure, Fraud, Penalties.

Approved: October 10, 1995.

June Gibbs Brown,

Inspector General.

20 CFR chapter III is amended by adding part 498 to read as follows:

PART 498—CIVIL MONETARY PENALTIES, ASSESSMENTS AND RECOMMENDED EXCLUSIONS

Sec.	
498.100	Basis and purpose.
498.101	Definitions.
498.102	Basis for civil monetary penalties.
498.103	Amount of penalty.
498.104	[Reserved]
498.105	[Reserved]
498.106	Determinations regarding the amount or scope of penalties.
498.107	[Reserved]
498.108	Penalty not exclusive.
498.109	Notice of proposed determination.
498.110	Failure to request a hearing.
498.114–498.125	[Reserved]
498.126	Settlement.
498.127	Judicial review.
498.128	Collection of penalty.
498.129	[Reserved]
498.132	Limitations.
498.200	[Reserved]

Authority: Secs. 702(a)(5) and 1140 of the Social Security Act (42 U.S.C. 902(a)(5) and 1320b–10).

§ 498.100 Basis and purpose.

(a) *Basis.* This part implements section 1140 of the Social Security Act (42 U.S.C. 1320b–10).

(b) *Purpose.* This part provides for the imposition of civil monetary penalties against persons who—

(1) [Reserved]

(2) Misuse certain Social Security program words, letters, symbols, and emblems.

§ 498.101 Definitions.

As used in this part:

Agency means the Social Security Administration.

Commissioner means the Commissioner of Social Security or his or her designees.

Department means the U.S. Department of Health and Human Services.

General Counsel means the General Counsel of the Social Security Administration or his or her designees.

Inspector General means the Inspector General of the Social Security Administration or his or her designees.

Penalty means the amount described in § 498.103 and includes the plural of that term.

Person means an individual, organization, agency, or other entity.

Respondent means the person upon whom the Commissioner or the Inspector General has imposed, or intends to impose, a penalty.

Secretary means the Secretary of the U.S. Department of Health and Human Services or his or her designees.

SSA means the Social Security Administration.

SSI means Supplemental Security Income.

§ 498.102 Basis for civil monetary penalties.

(a) [Reserved]

(b) The Office of the Inspector General may impose a penalty against any person whom it determines in accordance with this part has made use of certain Social Security program words, letters, symbols, or emblems in such a manner that they knew or should have known would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that an advertisement or other item was authorized, approved, or endorsed by the Social Security Administration, or that such person has some connection with, or authorization from, the Social Security Administration.

(1) Civil monetary penalties may be imposed for misuse, as set forth in § 498.102(b), of—

(i) The words "Social Security," "Social Security Account," "Social Security Administration," "Social Security System," "Supplemental Security Income Program," or any combination or variation of such words; or

(ii) The letters "SSA," or "SSI," or any other combination or variation of such letters; or

(iii) A symbol or emblem of the Social Security Administration (including the design of, or a reasonable facsimile of

the design of, the Social Security card, the check used for payment of benefits under title II, or envelopes or other stationery used by the Social Security Administration), or any other combination or variation of such symbols or emblems.

(2) Civil monetary penalties will not be imposed against any agency or instrumentality of a State, or political subdivision of a State, that makes use of any symbol or emblem, or any words or letters which identify that agency or instrumentality of the State or political subdivision.

(c) The use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs, or any other agency or instrumentality of the United States Government, will not be considered as a defense in determining a violation of section 1140 of the Social Security Act.

§ 498.103 Amount of penalty.

(a) [Reserved]

(b) Under section § 498.102(b), the Office of the Inspector General may impose a penalty of not more than \$5,000 for each violation resulting from the misuse of Social Security Administration program words, letters, symbols, or emblems relating to printed media, and a penalty of not more than \$25,000 in the case of such misuse related to a broadcast or telecast.

(c) For purposes of paragraph (b) of this section, a violation is defined as—

(1) In the case of a direct mailing solicitation or advertisement, each separate piece of mail which contains one or more program words, letters, symbols, or emblems related to a determination under § 498.102(b); and

(2) In the case of a broadcast or telecast, each airing of a single commercial or solicitation related to a determination under § 498.102(b).

§ 498.104 [Reserved]**§ 498.105 [Reserved]****§ 498.106 Determinations regarding the amount or scope of penalties.**

(a) [Reserved]

(b) In determining the amount of any penalty in accordance with § 498.103(b), the Office of the Inspector General will take into account—

(1) The nature and objective of the advertisement, solicitation, or other communication, and the circumstances under which they were presented;

(2) The frequency and scope of the violation, and whether a specific segment of the population was targeted;

(3) The prior history of the individual, organization, or entity in their

willingness or refusal to comply with informal requests to correct violations;

(4) The history of prior offenses of the individual, organization, or entity in their misuse of program words, letters, symbols, and emblems;

(5) The financial condition of the individual or entity; and

(6) Such other matters as justice may require.

(c) In cases brought under section 1140 of the Social Security Act, the use of a disclaimer of affiliation with the United States Government, the Social Security Administration or its programs will not be considered as a mitigating factor in determining the amount of a penalty in accordance with § 498.106.

§ 498.107 [Reserved]**§ 498.108 Penalties not exclusive.**

Penalties imposed under this part are in addition to any other penalties prescribed by law.

§ 498.109 Notice of proposed determination.

(a) If the Office of the Inspector General seeks to impose a penalty, it will serve written notice of the intent to take such action. The notice will include:

(1) Reference to the statutory basis for the penalty;

(2) A description of the incident(s) with respect to which the penalty is proposed;

(3) The amount of the proposed penalty;

(4) Any circumstances described in § 498.106 that were considered when determining the amount of the proposed penalty; and

(5) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing, and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty without right of appeal.

(b) Any person upon whom the Office of the Inspector General intends the imposition of a penalty may request a hearing on such proposed penalty.

(c) If the respondent fails to exercise the respondent's right to a hearing, within the time permitted under this section, any penalty becomes final.

§ 498.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 498.109, the Office of the Inspector General may seek the proposed penalty, or any less severe penalty. The Office of the Inspector General will notify the respondent by certified mail, return receipt requested, of any penalty that

has been imposed and of the means by which the respondent may satisfy the amount owed.

§§ 498.114–498.125 [Reserved]

§ 498.126 Settlement.

The Inspector General has exclusive authority to settle any issues or case, without the consent of the administrative law judge or the Commissioner, at any time prior to a final determination. Thereafter, the Commissioner or his or her designee has such exclusive authority.

§ 498.127 Judicial review.

Section 1140 of the Social Security Act authorizes judicial review of a penalty that has become final. Judicial review may be sought by a respondent only in regard to a penalty with respect to which the respondent requested a hearing under § 498.200ff of this part, unless the failure or neglect to urge such objection is excused by the court because of extraordinary circumstances.

§ 498.128 Collection of penalty.

(a) Once a determination has become final, collection of any penalty will be the responsibility of the Commissioner or his or her designee.

(b) [Reserved]

(c) In cases brought under section 1140 of the Social Security Act, a penalty imposed under this part may be compromised by the Commissioner or his or her designee and may be recovered in a civil action brought in the United States district court for the district where, as determined by the Commissioner, the:

- (1) Violation referred to in § 498.102(b) occurred; or
- (2) Respondent resides; or
- (3) Respondent has its principal office; or
- (4) Respondent may be found.

§ 498.129 [Reserved]

§ 498.132 Limitations.

The Office of the Inspector General may initiate a proceeding in accordance with § 498.109 of this part to determine whether to impose a penalty within 6 years from the date on which the violation was committed.

§ 498.200 [Reserved]

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626 and 632

Job Training Partnership Act: Indian and Native American Programs Under Title IV–A

AGENCY: Employment and Training Administration, Labor.

ACTION: Interim final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor, in consultation with the Native American Employment and Training Council, is amending its regulations for the Indian and Native American program under title IV–A of the Job Training Partnership Act (JTPA or Act) by providing for waivers of regulatory requirements. These changes provide additional program flexibility to JTPA section 401 grantees, so that they may tailor their individual programs to better facilitate provision of services to those most in need of JTPA services, to enhance the quality of services provided and program outcomes in relation to labor market needs, to strengthen and better define fiscal and program accountability, to improve grantees' ability to provide services to their client populations by reducing or eliminating burdensome Federal requirements, and to foster a comprehensive and coherent system of human resource services.

DATES: *Effective date:* This interim final rule is effective on December 27, 1995.

Comments: Written comments are invited on this interim final rule. To be most useful in the development of the Final Rule, however, comments in response to this notice should be submitted in writing and received by January 26, 1996. However, such comments will be considered at any time up to the publication of the Final Rule.

ADDRESSES: Written comments shall be mailed to the Assistant Secretary for Employment and Training, Employment and Training Administration, Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Paul A. Mayrand, Director, Office of Special Targeted Programs. Commenters wishing acknowledgment of receipt of their comments shall submit them by certified mail, return receipt requested.

Comments received will be available for public inspection during normal business hours at the Division of Indian and Native American Programs, U.S. Department of Labor, 200 Constitution

Avenue, NW., Room N–4641, Washington, DC 20210. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment, call (202) 219–5500 (VOICE) or (202) 326–2577 (TDD) (these are not toll-free numbers).

Copies of this interim final rule are available on computer disk or in a large-type edition which may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Dowd, Chief, Division of Indian and Native American Programs, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–8502 (VOICE) or (202) 326–2577 (TDD) (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration of the Department of Labor (Department or DOL) is amending its regulations at 20 CFR part 632 for Indian and Native American employment and training programs to implement a general waiver provision similar to the one appearing in the JTPA title II–A regulations at 20 CFR 627.201. In the absence of other revisions in the section 401 program regulations, this waiver provision will allow individual section 401 grantees the same latitude as the States to request waivers to current program regulations which they feel inhibit or obstruct their ability to provide employment and training services to their client populations.

Regulatory Certifications

This interim final rule is designed to allow individual JTPA section 401 grantees the flexibility to structure their job training programs to better meet the needs of their constituents. It does not fundamentally change the delivery system for providing services under JTPA title IV–A. It does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12866, 58 FR 51735, October 4, 1993.

This rule was not preceded by a proposed rule and is not, therefore, a rule under the Regulatory Flexibility Act. Nevertheless, the Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, that, pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), this interim final rule would not have a significant economic impact on