''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2003–26–02 Airbus:** Amendment 39–13398. Docket 2002–NM–61–AD.

*Applicability:* All Model A319–113 and –114 series airplanes; and Model A320–111, –211, and –212 series airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent jamming of a thrust reverser door during operation or inadvertent deployment of a thrust reverser door in-flight, which could result in reduced controllability of the airplane, accomplish the following:

**Inspection and Follow-on Actions**

(a) Within 500 airplane flight cycles after the effective date of this AD: Do a detailed inspection of the eight hydraulic actuators located in the pivot doors of the thrust reversers (one actuator per pivot door, four pivot doors per thrust reverser, two thrust reversers per airplane) to identify the part number (P/N) of each actuator, in accordance with Airbus Service Bulletin A320–78–1020, excluding Appendix 01, dated March 28, 2001. Instead of a detailed inspection of the hydraulic actuators, a review of airplane maintenance and delivery records is acceptable if the P/N of each actuator installed on the airplane can be positively determined from that review.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.,* may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For any actuator having P/Ns D23090000–1, D23090000–2, D23090000–3, or D23090000–4: Prior to the accumulation of 20,000 total actuator flight cycles, or within 250 airplane flight cycles after accomplishment of the detailed inspection or airplane records review required by paragraph (a) of this AD, whichever occurs later, replace the actuator with a modified or new actuator having part number D23090000–5 or D23090000–6, in accordance with the service bulletin.

(2) For any actuator having P/N D23090000–5: Prior to the accumulation of 30,000 total actuator flight cycles, or within 250 airplane flight cycles after the detailed inspection or airplane records review required by paragraph (a) of this AD, whichever occurs later, replace the actuator with a modified or new actuator having P/N D23090000–6, in accordance with the service bulletin.

(3) For any actuator having P/N D23090000–6: No further action is required by this paragraph.

**Note 2:** Airbus Service Bulletin A320–78–1020 references Rohr CFM56–5A Service Bulletin RA32078–106, dated November 16, 2000, as an additional source of service information for modification of the actuators.

(b) Once all of the actuators located in the pivot doors of the thrust reversers have P/N D23090000–6, no further action is required by paragraph (a) of this AD.

(c) For operators that do not track actuator flight cycles, or do not have a means of obtaining information regarding actuator flight cycles, engine flight cycles must be used instead of actuator flight cycles.

**Parts Installation**

(d) As of the effective date of this AD, no person may install an actuator having P/N D23090000–1, D23090000–2, D23090000–3, or D23090000–4 on any airplane.

**Submission of Inspection Results to Manufacturer Not Required**

(e) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

**Alternative Methods of Compliance**

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(g) The actions must be done in accordance with Airbus Service Bulletin A320–78–1020, excluding Appendix 01, dated March 28, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 2001–361(B) R1, dated September 3, 2003.

**Effective Date**

(h) This amendment becomes effective on January 27, 2004.

Issued in Renton, Washington on December 12, 2003.

**Kevin M. Mullin,**

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

[FR Doc. 03–31271 Filed 12–22–03; 8:45 am]

BILLING CODE 4910–13–P

## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Parts 404, 416 and 422

**RIN 0960–AE92**

## Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income; Collection of Overdue Program and Administrative Debts Using Administrative Wage Garnishment

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rules.

**SUMMARY:** We are modifying our regulations dealing with the collection of program overpayment debts that arise under titles II and XVI of the Social Security Act (the Act) and administrative debts owed to us. Specifically, we are making some changes and establishing new regulations on the use of administrative wage garnishment (AWG) to collect such debts when they are past due. AWG is a process whereby we order the debtor's employer to withhold and pay to us up to 15 percent of the debtor's disposable pay every payday until the debt is repaid. The employer is required by law to comply with our AWG order.

**EFFECTIVE DATE:** These final rules are effective on January 22, 2004.

*Electronic Version:* The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet Web site for SSA (*i.e.*, Social Security Online): *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

**FOR FURTHER INFORMATION CONTACT:** Robert J. Augustine, Social Insurance

Specialist, Office of Regulations, Social Security Administration, Room 100, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits: Call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:** Section 31001(o)(1) of Pub. L. 104–134 amended Chapter 37, subchapter II, of title 31, United States Code, by adding section 3720D to permit Federal agencies to use AWG to recover past due debts. We are pursuing AWG to collect past due program overpayment debts incurred under title II and title XVI of the Act and past due administrative debts (see 20 CFR 422.306(a) for examples of administrative debts). The final regulations discussed below will implement 31 U.S.C. 3720D under the guidance provided by the Department of the Treasury at 31 CFR 285.11.

**Explanation of Changes to Regulations**

We are creating a new subpart E in part 422 of our regulations containing the rules we will use to collect both title II and title XVI program overpayments and administrative debts by AWG. Subpart E will include the following sections that explain the conditions for our use of AWG, the rights of the debtor and the responsibilities of the employer.

In § 422.401, we describe the scope of this subpart—our use of AWG under 31 U.S.C. 3720D to recover past due debts that you owe.

Section 422.402 contains definitions of several terms used in the new subpart, including:

- Paragraph (a), defining ''administrative wage garnishment'' as the process whereby we order your employer to withhold from your disposable pay and send the amount withheld to us;
- Paragraph (b), defining the term ''debt'' to mean any amount of money or property that we determine is owed to the United States government and that arises from a program that we administer or an activity that we perform;
- Paragraph (c), defining the term ''disposable pay'' to mean the amount equal to your total compensation from an employer (including, among other things, wages or salary, bonuses, commissions and vacation pay) after deduction of health insurance premiums and amounts withheld as required by law other than amounts withheld under court order.

Section 422.403 provides that, subject to certain exceptions and conditions, we will use AWG to collect any debt that is past due. We may use AWG concurrently with other practices, such as, tax refund offset and other administrative offset conducted by the Department of the Treasury and referral of information about the debt to consumer reporting agencies. See paragraph (a). We will not use AWG to collect a debt from salary or wages paid by the United States Government. If you have been separated involuntarily from employment, we will not use AWG against you until you have been re-employed continuously for at least 12 months. We will not use AWG to recover your debt while:

- Your title II disability benefits are stopped during the reentitlement period, under 20 CFR 404.1592a(a)(2) of this chapter.
- Your Medicare entitlement is continued because you are deemed to be entitled to title II disability benefits under section 226(b) of the Social Security Act, or
- You are participating in the Ticket to Work and Self-Sufficiency Program and your ticket is in use as described in 20 CFR 411.170 through 411.255. See paragraph (b).

In paragraphs (c) and (d) of § 422.403, we describe the conditions under which we may apply AWG to recover title II and title XVI program overpayment debts, respectively. We may apply AWG if all of the following conditions are met.

- You are not receiving benefits under the program under which the overpayment occurred.
- For an overpayment under title XVI, we are not collecting the debt by reducing your title II benefits.
- We have completed our billing sequence (*i.e.*, we have sent an overpayment notice, reminder notice and past-due notice) or we have terminated or suspended collection activity.
- We have no installment payment arrangement with you, or you failed to make payment under such an arrangement for two consecutive months.
- You have not requested that we waive collection of the overpayment, or you requested waiver but we determined that we would not waive collection.
- You have not requested reconsideration of the initial overpayment determination, or you requested reconsideration but we affirmed the initial determination in whole or in part.
- We cannot recover the overpayment by adjustment of benefits payable to someone other than you.

According to 31 U.S.C. 3720D(b), we must send you written notice at least 30 days prior to taking AWG action. We will send the notice at least 60 days before we will take AWG action. Section 422.405 describes the information we will include in that notice:

- The payment of your debt is past due;
- The nature and amount of your debt;
- Our intention to collect the debt by AWG;
- The amount that could be withheld from your disposable pay (the payment schedule) under AWG;
- You may inspect and copy our records about the debt;
- You may ask us to review the debt (*i.e.*, whether you owe the amount stated in the notice) or the payment schedule stated in the notice;
- You may request an installment payment plan.

The notice will also explain that at the expiration of 60 calendar days from the date of the notice we will order your employer to begin withholding from your disposable pay, unless within that 60-day period you pay us the full amount of the debt, request review of the debt or the payment schedule or request to arrange to pay us by installments. We will keep an electronic record of the notice, showing the date we mailed it and the amount of the debt.

Section 422.410 explains the actions we will take after we send the notice. We will not send an AWG order to your employer before the expiration of 60 calendar days from the date of the notice. If within that 60-day period you request that we review the debt (see § 422.425) or the payment schedule (see § 422.415) stated in the notice or request an installment payment arrangement, we will not take further action until we send you a written notice of our decision. If within that 60-day period you do not pay the full balance of the debt, request review, or request an installment payment arrangement, we may send the AWG order to your employer without further delay. If your request for review is late, we will still perform the review even though we may send the AWG order to your employer. However, if you had good cause for failing to request review of the debt or the payment schedule on time, we will treat your request as if we received it within the 60-day period and delay further action until we send you our decision. Paragraph (b) of § 422.410 describes the circumstances that show good cause for your failure and gives

examples. If we arrange an installment payment plan with you after we send you the AWG notice and you fail to make the installment payments for two consecutive months, we may send your employer an AWG order without further delay.

As explained below in the discussion of PUBLIC COMMENTS, we revised paragraph (a)(3) of § 422.410 to ensure that the regulation is consistent with the regulation of the Department of the Treasury on suspending an AWG order pending our decision on a request for review. We also clarified the language of paragraph (b)(3) of that section regarding suspension of an AWG order when you have good cause for failing to request review on time.

Under 31 U.S.C. 3720D(b)(3) and (5) and (c), we must give you the opportunity to inspect and copy our records relating to the debt and the opportunity for a hearing on the existence and amount of the debt and the terms of the repayment schedule. We address these requirements in §§ 422.415, 422.420 and 422.425.

Section 422.415 provides that, upon your request, we will review the amount that your employer will withhold from your disposable pay (the payment schedule) and, when we find that withholding a particular amount would cause financial hardship, we will reduce that amount. We will not reduce the amount to be withheld every payday below $10.00. We will find financial hardship when evidence submitted by you shows that withholding a particular amount from your disposable pay will deprive you of income necessary to meet ordinary and necessary living expenses. Such expenses include, among other things, the cost of food, clothing, housing, medical care, insurance, and support of others for whom you are legally responsible. We will not reduce the amount the employer will withhold for financial hardship if the debt was caused by your intentional false statement or willful concealment of or failure to furnish material information.

Section 422.420 explains that we will arrange to make our records relating to the debt available for your inspection and copying if you notify us of your intention to inspect and copy them.

Section 422.425 describes the hearing process, the process by which we will review the debt at your request. Essentially, this is the same process that we employ to review the debt upon your request before we refer information to the Department of the Treasury for collection by administrative offset or refer information about the debt to consumer reporting agencies. See 20 CFR 422.317. To exercise your right to this review, you must request review and give us evidence that you do not owe all or part of the debt described in the notice or that we do not have the right to collect it. If you do not request review and give us the evidence before the expiration of 60 calendar days from the date of the notice, we may issue the AWG order without further delay. If you request review and give us the evidence within that 60-day period, or if you had good cause for failing to request review and give us the evidence on time, we will not take further AWG action unless and until we consider all of the evidence (including our own records) and send you our written findings that all or part of the debt is past due and we have the right to collect it. Our findings will include supporting rationale and will be our final decision on your request. If we find that you do not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send your employer an AWG order.

Section 422.430 states that, if we determine that you do not owe the debt or we do not have the right to collect it, we will cancel any AWG order that we issued and refund promptly any amount withheld from your pay under that order. Refunds will not bear interest unless Federal law or contract requires interest.

In § 422.435, we describe the AWG order, the factors that determine the amount your employer must withhold and the information that your employer must send us. Paragraph (a) describes the information that will appear in the AWG order (your name, address and social security number; the amount of the debt; information about the amount that the employer must withhold; and where to send the withheld amount). We will maintain an electronic record of the order showing the date that we mailed the order. See paragraph (b). We will require the employer to certify within 20 days of receipt of the AWG order your employment status and the amount of disposable pay available for withholding. See paragraph (c).

Paragraph (d) of § 422.435 explains how the employer will calculate the actual amount to withhold from your disposable pay on each payday and remit to us. This section implements 31 U.S.C. 3720D(b)(1) and 31 CFR 285.11(i). Usually, the amount to be withheld under the AWG order will be the lesser of the amount indicated in the order (up to 15% of disposable pay) or the amount by which disposable pay exceeds thirty times the minimum wage.

Paragraph (e) of § 422.435 discusses our rules that apply if your disposable pay is subject to more than one garnishment order. A withholding order for family support always has priority over our AWG order. Our AWG order has priority over other types of orders served after our AWG order unless Federal law provides otherwise. When your disposable pay is already subject to one or more withholding orders with higher or equal priority with our AWG order, the amount that your employer must withhold and remit to us will not be more than an amount calculated by subtracting the amount(s) withheld under the other withholding order(s) from 25% of your disposable pay. Under paragraph (f), we will have your employer withhold more than the amount calculated under these rules if you request in writing the higher rate of withholding. Moreover, as noted above, we will reduce the amount that your employer will withhold if we find under § 422.415(b) that withholding at that amount will cause you financial hardship.

In paragraphs (a) through (e) of § 422.440, we discuss the responsibilities of your employer under the AWG order. The rules require your employer to begin withholding the appropriate amount on the first payday following receipt of the AWG order, or on the first or second payday after such receipt if the employer received the AWG order within 10 days before the first payday. The rules require your employer to continue to withhold and promptly pay the withheld amount to us every payday until we have recovered the debt and any interest, penalties and administrative costs that we may charge you under applicable law. Your employer need not alter its normal pay and disbursement cycles. However, your employer cannot honor any allotment or assignment of pay by you (other than arrangements made to satisfy a family support judgement or order) to the extent that such assignment or allotment interferes with or prevents withholding under the AWG order.

In paragraph (f) of § 422.440, we explain that Federal law prohibits your employer from using an AWG order as the basis for firing, refusing to employ or disciplining you. You may file a civil action in Federal or State court against an employer who violates the prohibition. See 31 U.S.C. 3720D(e).

In § 422.445, we explain that we may file a civil action in Federal court against the employer for any amounts that it fails to withhold in compliance with our AWG order issued under proposed § 422.435, and the employer may also be liable for our attorney fees and other associated costs and damages. See 31 U.S.C. 3720D(f). We will not

bring a civil action against your employer until we terminate collection action against you in accordance with applicable Federal standards, unless earlier filing is necessary to avoid the expiration of any applicable statute of limitations period. We will deem collection to be terminated if we receive no payment on the debt for one year.

*Other Changes*

We are amending 20 CFR 404.527 and 416.590 to mention that we may recover title II and title XVI overpayments, respectively, under the rules in subpart E of part 422.

We are adding to 20 CFR 404.903 a new paragraph (v) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title II of the Act. We are adding to 20 CFR 416.1403(a) a new paragraph (20) to include in the list of administrative actions that are not initial determinations our determination to use AWG to collect an overpayment made under title XVI of the Act. As a result of these two revisions, the administrative review procedures in 20 CFR part 404, subpart J, and part 416, subpart N, will not apply to the determination to use AWG. Moreover, that determination is not subject to judicial review under 42 U.S.C. 405(g) or 1383(c)(3).

In addition, we corrected an obsolete reference in 20 CFR 404.527(b)(1) to the provisions of the Federal Claims Collection Standards on termination and suspension of collection activity.

**Public Comments**

On November 15, 2002, we published proposed rules in the **Federal Register** at 67 FR 69164 and provided a 60-day period for interested parties to comment. We received comments from 5 organizations and 3 individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the issues raised by the commenters that are within the scope of the proposed rules.

*Comment:* Four organizations recommended that we provide an opportunity for an oral hearing when the individual requests review of the debt or the repayment schedule. These organizations claimed that § 422.425 is not consistent with the AWG statute and the implementing regulation of the Department of the Treasury at 31 CFR 285.11. One organization stated that our regulation overlooks the need for interactive discussion between SSA and the debtor when paper review is inadequate. Another mentioned that the oral hearing should be conducted by an administrative law judge.

*Response:* The statute on AWG requires that, before an agency issues a garnishment order to an individual's employer, the agency must provide the individual with an opportunity for a ''hearing'' on the existence and amount of the debt and the terms of the repayment schedule stated in the agency's notice of proposed garnishment. See 31 U.S.C. 3720D(b)(5) and (c). The statute does not describe the type of hearing that the agency must provide. This matter is addressed in the regulation of the Department of the Treasury established under the authority of 31 U.S.C. 3720D(h). The Treasury regulation on AWG states at 31 CFR 285.11(f)(2) that, when requested by the debtor, the agency ''shall provide a hearing, which at the agency's option may be oral or written * * *'' The agency must provide the debtor with ''a reasonable opportunity for an oral hearing when the agency determines that the issues in dispute cannot be resolved by review of the documentary evidence, for example, when the validity of the claim turns on the issue of credibility or veracity.'' 31 CFR 285.11(f)(3)(i). When an oral hearing is not required, the agency must afford the debtor a ''paper hearing'' and ''decide the issues in dispute based upon a review of the written record.'' 31 CFR 285.11(f)(3)(iii). Moreover, the Treasury regulation provides that ''[n]othing in this section requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations.'' 31 CFR 285.11(b)(6).

Thus, the Treasury regulation leaves to the agency's judgement the decision whether the circumstances warrant providing the opportunity for an oral hearing before taking garnishment action. Also, that regulation does not require the agency to afford the debtor an oral hearing in connection with the AWG process regarding matters on which the opportunity for an oral hearing has previously been provided under other applicable laws and regulations. We believe that the process for review provided under § 422.425 of our AWG regulation combined with the process established in other SSA regulations for review of SSA's overpayment and waiver determinations fully complies with the requirements of the statute and Treasury regulations at 31 CFR 285.11.

Well before we would send the notice to a debtor of our intention to collect a program overpayment debt by AWG, we would have sent the debtor notice of the overpayment determination that explained the overpayment and offered the debtor the opportunity to appeal that determination, to request waiver of recovery of the overpayment, and to make arrangements to repay the debt. The administrative processes provided in 20 CFR part 404, subparts F and J, and 20 CFR part 416, subparts E and N, including the informal conference with an adjudicator and the oral hearing before an administrative law judge, are available at that time.

By the time that we would send the notice of intent to garnish, the issues on which the debtor has not had the opportunity to challenge the agency can be adequately resolved by documentary evidence. Examples of these issues are whether the overpayment balance stated in the notice is accurate (reflects all payments made by the debtor), whether collection of the overpayment was waived previously by SSA, and whether the debt was discharged by (or SSA must suspend collection efforts) an order of a bankruptcy court. Under § 422.425, we will conduct the review (hearing) by examining SSA records related to the debt and any evidence submitted by the individual. When the debtor requests review on time or has good cause for a late request, we will not order the debtor's employer to withhold from the debtor's disposable pay until we issue our decision.

Some of the commenters indicated that they had concerns about the underlying overpayment determinations and overpayment notices, and had concerns that the procedures provided in § 422.425 would not be adequate to ensure a meaningful opportunity for a hearing on these matters before we would send a garnishment order. We believe that the procedures provided in current regulations at 20 CFR parts 404 and 416 are adequate to resolve these matters. If the debtor indicates in responding to the notice of intent to garnish that he or she wants us to review the overpayment determination, we would invoke those procedures when consistent with those regulations (*e.g.*, when the debtor shows good cause for extending the time to request reconsideration, a hearing before an administrative law judge, or review by the Appeals Council on the overpayment determination). See 20 CFR 404.909, 404.911, 404.933(c), 404.968(b), 416.1409, 416.1411, 416.1433(c) and 416.1468(b). Moreover, if the debtor cannot show good cause for an extension of time to review the overpayment determination, other regulations allow us to reopen and revise that determination under certain conditions. See 20 CFR 404.987–404.996 and 416.1487–416.1494. We

have concluded that these long-standing procedures adequately provide for the resolution of issues concerning the overpayment determination.

Finally, our procedures for implementing AWG would not preclude an individual from interactive discussions and exchange of information with SSA representatives about the overpayment, the garnishment process, or the options available to the individual to obtain an explanation or review of the debt, waiver of collection, etc. Like other notices that we issue regarding overpayments, the notice described in § 422.405 will contain standard language inviting the individual to contact SSA in writing, by telephone, or by visiting a local SSA office to ask questions or obtain further explanation of the debt. The notice will include telephone numbers and the address of the SSA field office located closest to the individual's address. Thus, the individual will have an opportunity for interactive discussion with SSA representatives. During that discussion, he or she may provide and receive explanations and information concerning the case. In conducting the review described in § 422.425, we will consider our records on the case and any information, explanations (oral or written) or documents furnished by the individual.

*Comment:* Three organizations said that our AWG notice to individuals should fully explain the right to request a reduction of the withholding based on financial hardship, and should clearly state that the request can be made at any time.

*Response:* We are committed to providing a full and clear written explanation of an individual's rights regarding AWG. The explanation recommended by the three organizations will appear in the notice to the debtors. Specifically, our notice informing individuals about garnishment will include an explanation of the right to request a reduction of the amount to be withheld from disposable pay based on financial hardship. Our notice will also explain that the individual can make this request at any time. If the individual shows us that the withholding schedule in question would cause financial hardship, we will lower the amount we would collect from that person's pay. We will find hardship if the withholding schedule would keep the individual from meeting the ordinary and necessary living expenses of the individual and his family.

*Comment:* Two organizations said that we should remain consistent with Treasury's regulations by providing a time limit for issuing our decision on the person's requests for review.

*Response:* Treasury's regulation, 31 CFR 285.11(f)(10), provides that an agency shall issue a written decision as soon as practicable, but no later than 60 days after the date on which a request for hearing was received by the agency. Further, the regulation provides that if the agency cannot issue the decision in that 60-day timeframe, then the agency may not issue a garnishment order (and must suspend an order that it issued) until the agency holds the hearing and renders its decision. We have revised § 422.410(a) to ensure that our policy is consistent with the Treasury regulation.

We will strive to issue a written decision on a person's request for review as soon as possible. In a case where a person requests review within the 60-day period from the date of the notice of our intent to garnish, we will not take further action to initiate garnishment until we send that person a written notice of our decision. If the person has good cause for requesting review after that 60-day period, we will not take further action, and we will suspend any AWG action already taken, until we send the decision notice. We revised § 422.410(a)(3) to provide that, if an individual requests review late without ''good cause'' and we do not make our decision on the request within 60 calendar days from the date that we received the request, we will suspend any AWG order already issued. AWG will not resume before we conduct the review and issue the notice of our decision.

*Comment:* One organization said we should make the following two changes to § 422.405 of the proposed regulations: (1) Provide that our written notice to individuals proposing garnishment will inform people they can request waiver; and (2) explain the differences between waiver and review. In addition, one organization said we should not initiate garnishment proceedings while the request for waiver is pending.

*Response:* We are not adopting the recommended changes to § 422.405. Our regulations on administrative wage garnishment implement 31 U.S.C. 3720D under the guidance of Treasury's regulation at 31 CFR 285.11. Neither of these provisions cover waiver of collection. We will, however, follow our usual practice and include detailed language describing the right to request waiver in our notice to the debtor about garnishment. We will also explain the difference between waiver and review of the debt in that same notice. While a waiver request is pending, we will not initiate garnishment. Effective on the date we receive a request, we will suspend any garnishment action that began before we received the request.

*Comment:* One organization stated that our decision to use AWG should be an initial determination subject to our administrative appeal process and further judicial appeal.

*Response:* Consistent with our regulations regarding the decision to use other practices (such as, reporting debts to consumer reporting agencies and collection through administrative offset against Federal payments) authorized by 31 U.S.C. chapter 37, we will not include the decision to use AWG among the actions listed as initial determinations in 20 CFR 404.902 and 416.1402. Those sections of our regulations contain lists of SSA determinations that affect the rights of individuals under the Social Security and Supplemental Security Income programs (among other things, entitlement to, eligibility for and amount of benefit payments). Initial determinations are subject to the administrative appeal process described in 20 CFR part 404, subpart J, and part 416, subpart N. When an individual exhausts the administrative remedies provided in those regulations, the individual may obtain further review in Federal court under sections 205(g) and 1631(c) of the Act. Because our decision to use AWG does not affect rights under these programs, it is not the type of determination described in 20 CFR 404.902 and 416.1402. Thus, in these final rules, we include the decision to use AWG among those decisions listed in 20 CFR 404.903 and 416.1403 that are not initial determinations.

We note that waiver of collection of an overpayment is a right granted by sections 204(b) and 1631(b)(1)(B) of the Act to individuals who meet the conditions prescribed in those laws. An individual notified under § 422.405 regarding AWG will have the opportunity to request waiver of collection of the overpayment before we will issue a garnishment order. An individual may request waiver of collection of the overpayment at any time. Our determination on a request for waiver is an initial determination subject to the appeal process described in subpart J of part 404 or subpart N of part 416. See 20 CFR 404.902(k) and 416.1402(c).

*Comment:* One organization stated that the 60-day period to submit documentary evidence will not be adequate for individuals to obtain necessary records in many cases. The organization recommended that SSA provide in § 422.425 for extension of time to obtain such evidence where the individual shows good cause.

*Response:* We are not changing the regulation to specifically provide for an extension of the 60-day period to submit documentary evidence. However, we will cover this matter in staff instructions on the procedures for conducting AWG. The regulation established by these final rules allows us, but does not require us, to issue the garnishment order immediately after the 60-day period expires if the individual does not give us the evidence within that period. See § 422.425(a). We will give an individual a reasonable amount of extra time to secure documentary evidence if we find that the 60-day period established in the regulation is inadequate in a particular case. The reasonable amount of extra time will depend on the individual's specific circumstances and the type of documentary evidence the individual is trying to obtain. In addition, if a person has good cause for requesting review of the debt after the 60-day period expires and also needs more time to obtain documentary evidence, we will allow that person a reasonable amount of time according to the circumstances of the case.

*Comment:* One organization commented that AWG should not be initiated while an individual is engaged in work activities with a Ticket to Work, or is in an extended period of eligibility. The organization expressed concern that the financial condition and long-term work prospects of such an individual are uncertain.

*Response:* We agree with the organization. We added paragraphs (b)(3), (4) and (5) to § 422.403 of the final regulations to provide that we will not apply AWG in the situations described in the comment. One of our strategic goals is to deliver high-quality, citizen-centered service. In pursuit of this goal, we are committed to encouraging and supporting the work activity of individuals with disabilities. To that end, our programs, including the Ticket to Work and Self-Sufficiency program, provide incentives and services to promote return to work. Also, title II disability beneficiaries can be provided an extended period of eligibility (the reentitlement period) and extended Medicare coverage while they attempt to work. Another of our strategic goals is to ensure superior stewardship of our programs and resources. One of the steps we are taking to achieve this goal is the improvement of debt management practices, and the implementation of AWG serves this objective. In pursuing both of these goals, we must find the proper balance between these activities and objectives.

Imposing AWG on individuals who are not receiving cash benefits during the reentitlement period because they are working, or during the period in which they are entitled to extended Medicare coverage following termination of their cash benefits due to work activity, or during the period in which they are participating in the Ticket to Work and Self-Sufficiency Program and have a ticket in use, could discourage them from continuing to work and, thus, could act counter to the purposes of the work incentive programs. The exclusion from AWG would be temporary if they continue to work at a substantial level. The possible negative effects on our work incentive programs would outweigh the benefits of any additional overpayment recovery that we might gain from imposing AWG on individuals during their early attempts to work.

*Comment:* One organization commented that we should deliver our notice of planned garnishment action in formats other than written notices for people who need special accommodations.

*Response:* We have a tradition of helping people who need special accommodations in their dealings with the Agency. This includes people with visual and hearing impairments, people with physical and mental disabilities and people who speak languages other than English. Depending upon the individual's needs, we will try to take special action to help the person. For example, we give all people applying for or receiving Social Security payments by reason of blindness the opportunity to choose how they want to receive SSA notices. Such people can elect to be notified by SSA in a telephone call, by certified mail and by first class mail. They can change their election at any time, and we will honor that change. At this time, however, due to a lack of contractor support for the production of Braille notices, we cannot offer that option.

In addition, our regulations on the use of AWG will provide some accommodation for people who have physical, mental, educational or linguistic limitations which prevent them from requesting review on time or from understanding the need to make a request on time. Section 422.410(b) provides that when a person has good cause for a late request, SSA will treat the request for review as if we received it on time; *i.e.*, we would not pursue garnishment (or we would stop it if it has begun) until we notify the person about our decision. In determining whether there is good cause for a late request we will take into consideration the person's physical, mental, educational or linguistic limitations.

*Comment:* One organization recommended that we include with our notices lists of the names and addresses of local legal aid organizations and other advocacy groups who could assist individuals who are subject to AWG.

*Response:* As required by law, we provide on notices of adverse determinations, covered by 20 CFR part 404, subpart J, and part 416, subpart N, information on the options for obtaining legal representation to assist individuals in their dealings with us. See sections 206(c) and 1631(d)(2)(B) of the Act and 20 CFR 404.1706 and 416.1506. We are not required by law to provide this information in our AWG notices.

When we send the initial notice of overpayment to an individual and also when we notify a person about an adverse determination regarding his or her benefits, we include the information about options available to the person to obtain legal representation or assistance. We inform the person that he can have a friend, lawyer or someone else help. We also tell the person that any local Social Security office can provide a list of groups that can help. In the notice of garnishment to the individual, we will include the address of the local Social Security office that services the person's area, as well as a toll-free telephone number the person can call with any questions. We believe that the information that the individual would receive in certain notices prior to receiving the notice about AWG, and the availability of the information about legal aid organizations and other advocacy groups in our local offices, are adequate to help a person obtain independent advice and assistance. Consequently, we do not plan to include names and addresses of local legal aid organizations and other advocacy groups in the notice of garnishment to individuals.

*Comment:* We received three comments from individuals. Two of the comments were not specific to the regulation and will therefore not be addressed. The third comment questioned why Federal employees are exempt from AWG under § 422.403(b)(1).

*Response:* Federal employees who owe debts to the Federal Government are subject to Federal salary offset under 5 U.S.C. 5514, rather than AWG under 31 U.S.C. 3720D. The regulation of the Department of the Treasury regarding AWG under 31 U.S.C. 3720D does not cover Federal salary offset. See 31 CFR § 285.11(b)(5). Thus, Federal salary offset is not covered under our regulations on AWG. However, we are

developing a Federal salary offset program.

**Regulatory Procedures**

*Executive Order (E.O.) 12866*

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with E.O. 12866, as amended by E.O. 13258.

*Regulatory Flexibility Act*

We certify that these final regulations will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Some entities, as employers of some individuals who owe debts to us, will be subjected to these final regulations and to the certification requirement in proposed § 422.435(c). However, any particular small employer is not likely to receive wage garnishment orders from us concerning a significant number of employees. Under § 422.435(c), employers of delinquent debtors must certify certain information about the debtor's status such as the debtor's employment status and earnings. This information is contained in the employer's payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for an employer to complete the certification form. Even if an employer receives withholding orders from us on several employees over the course of a year, the cost imposed on the employer to complete the certifications, withhold from disposable pay, and remit those amounts to us will not have a significant economic impact on that entity. Employers will not be required to vary their normal pay cycles to comply with a withholding order that is issued under these final rules.

*Federalism*

We have reviewed these final rules under the threshold criteria of E.O. 13132, ''Federalism,'' and determined that they will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Although States and local governments, as employers of some individuals who owe debts to us, are subject to these final regulations and to the certification requirement in § 422.435(c), there will be a relatively small number of debtors who will meet the criteria for selection who are employed by the States and local governments. Any particular State or local government is not likely to receive AWG orders from us concerning a significant number of employees. Under § 422.435(c), States and local governments that employ delinquent debtors must certify certain information about the debtors' status such as the debtors' employment status and earnings. This information is contained in the States' or local governments' payroll records. Therefore, it will not take a significant amount of time or result in a significant cost for a State or local government to complete the certification form. Even if a State or local government receives AWG orders from us on several employees over the course of a year, the cost imposed on the State or local government to complete the certifications, withhold from disposable pay, and remit those amounts to us will not have a significant economic impact on that entity. States or local governments are not required to vary their normal pay cycles to comply with AWG orders that will be issued under these final rules.

*Paperwork Reduction Act*

The final rules in new subpart E of part 422 contain information collection activities at §§ 422.415, 422.425 and 422.435. However, the activities are exempt as administrative actions under 44 U.S.C. 3518(c)(1)(B)(ii) from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Pub. L. 104–13 (May 22, 1995), the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

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

*20 CFR Part 416*

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

*20 CFR Part 422*

Administrative practice and procedure, Organization and functions (Government agencies), Social Security.

Dated: November 10, 2003.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending parts 404, 416 and 422 of Title 20 of the Code of Federal Regulations as follows:

## PART 404—[AMENDED]

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

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

■ 2. Paragraph (a), introductory text, of § 404.527 is revised and paragraph (b)(1) is amended by removing ''4 CFR 104.2 or 104.3.'' at the end of the paragraph and adding in its place ''31 CFR 903.2 or 903.3.''.

The revised text reads as follows:

**§ 404.527 Additional methods for recovery of title II benefit overpayments.**

(a) *General.* In addition to the methods specified in §§ 404.502 and 404.520, an overpayment under title II of the Act is also subject to recovery under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

* * * * *

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

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 4. Section 404.903 is amended by removing the word ''and'' at the end of paragraph (t), replacing the period at the end of paragraph (u) with ''; and'', and adding paragraph (v) to read as follows:

**§ 404.903 Administrative actions that are not initial determinations.**

* * * * *

(v) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title II of the Social Security Act (*see* part 422, subpart E, of this chapter).

## PART 416—[AMENDED]

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

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

■ 6. Paragraph (a), introductory text, of § 416.590 is revised to read as follows:

**§ 416.590 Are there additional methods for recovery of title XVI benefit overpayments?**

(a) *General.* In addition to the methods specified in §§ 416.560, 416.570, 416.572 and 416.580, we may recover an overpayment under title XVI of the Act from you under the rules in subparts D and E of part 422 of this chapter. Subpart D of part 422 of this chapter applies only under the following conditions:

* * * * *

■ 7. The authority citation for subpart N of part 416 continues 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).

■ 8. Section 416.1403 is amended by removing the word ''and'' at the end of paragraph (a)(18), replacing the period at the end of paragraph (a)(19) with ''; and'', and adding paragraph (a)(20) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) * * *

(20) Determining whether we will order your employer to withhold from your disposable pay to collect an overpayment you received under title XVI of the Social Security Act (see part 422, subpart E, of this chapter).

## PART 422—[AMENDED]

■ 9. Subpart E is added to read as follows:

## Subpart E—Collection of Debts by Administrative Wage Garnishment

Sec.

422.401 What is the scope of this subpart?
422.402 What special definitions apply to this subpart?
422.403 When may we use administrative wage garnishment?
422.405 What notice will we send you about administrative wage garnishment?
422.410 What actions will we take after we send you the notice?
422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?
422.420 May you inspect and copy our records related to the debt?
422.425 How will we conduct our review of the debt?
422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?
422.435 What happens when we decide to send an administrative wage garnishment order to your employer?
422.440 What are your employer's responsibilities under an administrative wage garnishment order?
422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?

## Subpart E—Collection of Debts by Administrative Wage Garnishment

**Authority:** Secs. 205(a), 702(a)(5) and 1631(d)(1) of the Social Security Act (42 U.S.C. 405(a), 902(a)(5) and 1383(d)(1)) and 31 U.S.C. 3720D.

**§ 422.401 What is the scope of this subpart?**

This subpart describes the procedures relating to our use of administrative wage garnishment under 31 U.S.C. 3720D to recover past due debts that you owe.

**§ 422.402 What special definitions apply to this subpart?**

(a) *Administrative wage garnishment* is a process whereby we order your employer to withhold a certain amount from your disposable pay and send the withheld amount to us. The law requires your employer to comply with our garnishment order.

(b) *Debt* means any amount of money or property that we determine is owed to the United States and that arises from a program that we administer or an activity that we perform. These debts include program overpayments made under title II or title XVI of the Social Security Act and any other debt that meets the definition of ''claim'' or ''debt'' at 31 U.S.C. 3701(b).

(c) *Disposable pay* means that part of your total compensation (including, but not limited to, salary or wages, bonuses, commissions, and vacation pay) from your employer after deduction of health insurance premiums and amounts withheld as required by law. Amounts withheld as required by law include such things as Federal, State and local taxes but do not include amounts withheld under court order.

(d) *We, our,* or *us* means the Social Security Administration.

(e) *You* means an individual who owes a debt to the United States within the scope of this subpart.

**§ 422.403 When may we use administrative wage garnishment?**

(a) *General.* Subject to the exceptions described in paragraph (b) of this section and the conditions described in paragraphs (c) and (d) of this section, we may use administrative wage garnishment to collect any debt that is past due. We may use administrative wage garnishment while we are taking other action regarding the debt, such as, using tax refund offset under §§ 404.520–404.526 and 416.580–416.586 of this chapter and taking action under subpart D of this part.

(b) *Exceptions.* (1) We will not use this subpart to collect a debt from salary or wages paid by the United States Government.

(2) If you have been separated involuntarily from employment, we will not order your employer to withhold amounts from your disposable pay until you have been reemployed continuously for at least 12 months. You have the burden of informing us about an involuntary separation from employment.

(3) We will not use this subpart to collect a debt while your disability benefits are stopped during the reentitlement period, under § 404.1592a(a)(2) of this chapter, because you are engaging in substantial gainful activity.

(4) We will not use this subpart to collect a debt while your Medicare entitlement is continued because you are deemed to be entitled to disability benefits under section 226(b) of the Social Security Act (42 U.S.C. 426(b)).

(5) We will not use this subpart to collect a debt if you have decided to participate in the Ticket to Work and Self-Sufficiency Program and your ticket is in use as described in §§ 411.170 through 411.225 of this chapter.

(c) *Overpayments under title II of the Social Security Act.* This subpart applies to overpayments under title II of the Social Security Act if all of the following conditions are met:

(1) You are not receiving title II benefits.

(2) We have completed our billing system sequence (*i.e.*, we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity in accordance with applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(3) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(4) You have not requested waiver pursuant to § 404.506 or § 404.522 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(5) You have not requested reconsideration of the initial overpayment determination pursuant to

§§ 404.907 and 404.909 of this chapter or, after a review conducted pursuant to § 404.913 of this chapter, we have affirmed all or part of the initial overpayment determination.

(6) We cannot recover your overpayment pursuant to § 404.502 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, an overpayment will be deemed to be unrecoverable from any individual who was living in a separate household from yours at the time of the overpayment and who did not receive the overpayment.

(d) *Overpayments under title XVI of the Social Security Act.* This subpart applies to overpayments under title XVI of the Social Security Act if all of the following conditions are met:

(1) You are not receiving benefits under title XVI of the Social Security Act.

(2) We are not collecting your title XVI overpayment by reducing title II benefits payable to you.

(3) We have completed our billing system sequence (*i.e.*, we have sent you an initial notice of the overpayment, a reminder notice, and a past-due notice) or we have suspended or terminated collection activity under applicable rules, such as, the Federal Claims Collection Standards in 31 CFR 903.2 or 31 CFR 903.3.

(4) We have not made an installment payment arrangement with you or, if we have made such an arrangement, you have failed to make any payment for two consecutive months.

(5) You have not requested waiver pursuant to § 416.550 or § 416.582 of this chapter or, after a review conducted pursuant to those sections, we have determined that we will not waive collection of the overpayment.

(6) You have not requested reconsideration of the initial overpayment determination pursuant to §§ 416.1407 and 416.1409 of this chapter or, after a review conducted pursuant to § 416.1413 of this chapter, we have affirmed all or part of the initial overpayment determination.

(7) We cannot recover your overpayment pursuant to § 416.570 of this chapter by adjustment of benefits payable to any individual other than you. For purposes of this paragraph, if you are a member of an eligible couple that is legally separated and/or living apart, we will deem unrecoverable from the other person that part of your overpayment which he or she did not receive.

**§ 422.405 What notice will we send you about administrative wage garnishment?**

(a) *General.* Before we order your employer to collect a debt by deduction from your disposable pay, we will send you written notice of our intention to do so.

(b) *Contents of the notice.* The notice will contain the following information:

(1) We have determined that payment of the debt is past due;

(2) The nature and amount of the debt;

(3) Information about the amount that your employer could withhold from your disposable pay each payday (the payment schedule);

(4) No sooner than 60 calendar days after the date of the notice, we will order your employer to withhold the debt from your disposable pay unless, within that 60-day period, you pay the full amount of the debt or take either of the actions described in paragraphs (b)(6) or (7) of this section;

(5) You may inspect and copy our records about the debt (*see* § 422.420);

(6) You may request a review of the debt (*see* § 422.425) or the payment schedule stated in the notice (*see* § 422.415); and

(7) You may request to pay the debt by monthly installment payments to us.

(c) *Mailing address.* We will send the notice to the most current mailing address that we have for you in our records.

(d) *Electronic record of the notice.* We will keep an electronic record of the notice that shows the date we mailed the notice to you and the amount of your debt.

**§ 422.410 What actions will we take after we send you the notice?**

(a) *General.* (1) We will not send an administrative wage garnishment order to your employer before 60 calendar days elapse from the date of the notice described in § 422.405.

(2) If paragraph (b) of this section does not apply and you do not pay the debt in full or do not take either of the actions described in § 422.405(b)(6) or (7) within 60 calendar days from the date of the notice described in § 422.405, we may order your employer to withhold and send us part of your disposable pay each payday until your debt is paid.

(3) If you request review of the debt or the payment schedule after the end of the 60 calendar day period described in paragraph (a)(2) of this section and paragraph (b) of this section does not apply, we will conduct the review. However, we may send the administrative wage garnishment order to your employer without further delay. If we sent the administrative wage garnishment order to your employer and we do not make our decision on your request within 60 calendar days from the date that we received your request, we will tell your employer to stop withholding from your disposable pay. Withholding will not resume before we conduct the review and notify you of our decision.

(4) We may send an administrative wage garnishment order to your employer without further delay if:

(i) You request an installment payment plan after receiving the notice described in § 422.405, and

(ii) We arrange such a plan with you, and

(iii) You fail to make payments in accordance with that arrangement for two consecutive months.

(b) *Good cause for failing to request review on time.* If we decide that you had good cause for failing to request review within the 60-day period mentioned in paragraph (a)(2) of this section, we will treat your request for review as if we received it within that 60-day period.

(1) *Determining good cause.* In determining whether you had good cause, we will consider—

(i) Any circumstances that kept you from making the request on time;

(ii) Whether our action misled you;

(iii) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from making a request on time or from understanding the need to make a request on time.

(2) *Examples of good cause.* Examples of facts supporting good cause include, but are not limited to, the following.

(i) Your serious illness prevented you from contacting us yourself or through another person.

(ii) There was a death or serious illness in your family.

(iii) Fire or other accidental cause destroyed important records.

(iv) You did not receive the notice described in § 422.405.

(v) In good faith, you sent the request to another government agency within the 60-day period, and we received the request after the end of that period.

(3) *If we issued the administrative wage garnishment order.* If we determine that you had good cause under paragraph (b) of this section and we already had sent an administrative wage garnishment order to your employer, we will tell your employer to stop withholding from your disposable pay. Withholding will not resume until we conduct the review and notify you of our decision.

**§ 422.415 Will we reduce the amount that your employer must withhold from your pay when withholding that amount causes financial hardship?**

(a) *General.* Unless paragraph (d) of this section applies, we will reduce the amount that your employer must withhold from your pay when you request the reduction and we find financial hardship. In any event, we will not reduce the amount your employer must withhold each payday below $10. When we decide to reduce the amount that your employer withholds, we will give you and your employer written notice.

(1) You may ask us at any time to reduce the amount due to financial hardship.

(2) If you request review of the payment schedule stated in the notice described in § 422.405 within the 60-day period stated in the notice, we will not issue a garnishment order to your employer until we notify you of our decision.

(b) *Financial hardship.* We will find financial hardship when you show that withholding a particular amount from your pay would deprive you of income necessary to meet your ordinary and necessary living expenses. You must give us evidence of your financial resources and expenses.

(c) *Ordinary and necessary living expenses.* Ordinary and necessary living expenses include:

(1) Fixed expenses such as food, clothing, housing, utilities, maintenance, insurance, tax payments;

(2) Medical, hospitalization and similar expenses;

(3) Expenses for the support of others for whom you are legally responsible; and

(4) Other reasonable and necessary miscellaneous expenses which are part of your standard of living.

(d) *Fraud and willful concealment or failure to furnish information.* (1) We will not reduce the amount that your employer withholds from your disposable pay if your debt was caused by:

(i) Your intentional false statement, or

(ii) Your willful concealment of, or failure to furnish, material information.

(2) ''Willful concealment'' means an intentional, knowing and purposeful delay in providing, or failure to reveal, material information.

**§ 422.420 May you inspect and copy our records related to the debt?**

You may inspect and copy our records related to the debt. You must notify us of your intention to review our records. After you notify us, we will arrange with you the place and time the records will be available to you. At our discretion, we may send copies of the records to you.

**§ 422.425 How will we conduct our review of the debt?**

(a) *You must request review and present evidence.* If you receive a notice described in § 422.405, you have the right to have us review the debt. To exercise this right, you must request review and give us evidence that you do not owe all or part of the debt or that we do not have the right to collect it. If you do not request review and give us this evidence within 60 calendar days from the date of our notice, we may issue the garnishment order to your employer without further delay. If you request review of the debt and present evidence within that 60 calendar-day period, we will not send a garnishment order to your employer unless and until we consider all of the evidence and send you our findings that all or part of the debt is overdue and we have the right to collect it.

(b) *Review of the evidence.* If you request review of the debt, we will review our records related to the debt and any evidence that you present.

(c) *Our findings.* Following our review of all of the evidence, we will send you written findings, including the supporting rationale for the findings. Issuance of these findings will be our final action on your request for review. If we find that you do not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send a garnishment order to your employer.

**§ 422.430 When will we refund amounts of your pay withheld by administrative wage garnishment?**

If we find that you do not owe the debt or that we have no right to collect it, we will promptly refund to you any amount withheld from your disposable pay under this subpart that we received and cancel any administrative wage garnishment order that we issued. Refunds under this section will not bear interest unless Federal law or contract requires interest.

**§ 422.435 What happens when we decide to send an administrative wage garnishment order to your employer?**

(a) *The wage garnishment order.* The wage garnishment order that we send to your employer will contain only the information necessary for the employer to comply with the order. This information includes:

(1) Your name, address, and social security number,

(2) The amount of the debt,

(3) Information about the amount to be withheld, and

(4) Information about where to send the withheld amount.

(b) *Electronic record of the garnishment order.* We will keep an electronic record of the garnishment order that shows the date we mailed the order to your employer.

(c) *Employer certification.* Along with the garnishment order, we will send your employer a certification form to complete about your employment status and the amount of your disposable pay available for withholding. Your employer must complete the certification and return it to us within 20 days of receipt.

(d) *Amounts to be withheld from your disposable pay.* After receipt of the garnishment order issued under this section, your employer must begin withholding from your disposable pay each payday the lesser of:

(1) The amount indicated on the order (up to 15% of your disposable pay); or

(2) The amount by which your disposable pay exceeds thirty times the minimum wage as provided in 15 U.S.C. 1673(a)(2).

(e) *Multiple withholding orders.* If your disposable pay is subject to more than one withholding order, we apply the following rules to determine the amount that your employer will withhold from your disposable pay:

(1) Unless otherwise provided by Federal law or paragraph (e)(2) of this section, a garnishment order issued under this section has priority over other withholding orders served later in time.

(2) Withholding orders for family support have priority over garnishment orders issued under this section.

(3) If at the time we issue a garnishment order to your employer amounts are already being withheld from your pay under another withholding order, or if a withholding order for family support is served on your employer at any time, the amounts to be withheld under this section will be the lesser of:

(i) The amount calculated under paragraph (d) of this section; or

(ii) The amount calculated by subtracting the amount(s) withheld under the withholding order(s) with priority from 25% of your disposable pay.

(4) If you owe more than one debt to us, we may issue multiple garnishment orders. If we issue more than one garnishment order, the total amount to be withheld from your disposable pay under such orders will not exceed the amount set forth in paragraph (d) or (e)(3) of this section, as appropriate.

(f) *You may request that your employer withhold more.* If you request in writing that your employer withhold more than the amount determined under paragraphs (d) or (e) of this section, we will order your employer to withhold the amount that you request.

**§ 422.440 What are your employer's responsibilities under an administrative wage garnishment order?**

(a) *When withholding must begin.* Your employer must withhold the appropriate amount from your disposable pay on each payday beginning on the first payday after receiving the garnishment order issued under this section. If the first payday is within 10 days after your employer receives the order, then your employer must begin withholding on the first or second payday after your employer receives the order. Withholding must continue until we notify your employer to stop withholding.

(b) *Payment of amounts withheld.* Your employer must promptly pay to us all amounts withheld under this section.

(c) *Other assignments or allotments of pay.* Your employer cannot honor an assignment or allotment of your pay to the extent that it would interfere with or prevent withholding under this section, unless the assignment or allotment is made under a family support judgement or order.

(d) *Effect of withholding on employer pay and disbursement cycles.* Your employer will not be required to vary its normal pay and disbursement cycles in order to comply with the garnishment order.

(e) *When withholding ends.* When we have fully recovered the amounts you owe, including interest, penalties, and administrative costs that we charge you as allowed by law, we will tell your employer to stop withholding from your disposable pay. As an added precaution, we will review our debtors' accounts at least annually to ensure that withholding has been terminated for accounts paid in full.

(f) *Certain actions by an employer against you are prohibited.* Federal law prohibits an employer from using a garnishment order issued under this section as the basis for discharging you from employment, refusing to employ you, or taking disciplinary action against you. If your employer violates this prohibition, you may file a civil action against your employer in a Federal or State court of competent jurisdiction.

**§ 422.445 May we bring a civil action against your employer for failure to comply with our administrative wage garnishment order?**

(a) We may bring a civil action against your employer for any amount that the employer fails to withhold from your disposable pay in accordance with § 422.435(d), (e) and (f). Your employer may also be liable for attorney fees, costs of the lawsuit and (in the court's discretion) punitive damages.

(b) We will not file a civil action against your employer before we terminate collection action against you, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this section, ''terminate collection action'' means that we have terminated collection action in accordance with the Federal Claims Collection Standards (31 CFR 903.3) or other applicable standards. In any event, we will consider that collection action has been terminated if we have not received any payments to satisfy the debt for a period of one year.

[FR Doc. 03–31493 Filed 12–22–03; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF JUSTICE

## 28 CFR Part 15

**[CIV 102F; AG Order No. 2697–2003]**

**RIN 1105–AA62**

## Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** In cases where employees of the Federal government are sued for money damages based on alleged torts, if the Attorney General certifies that the employees (and certain non-employees) were acting within the scope of their employment at the time, the suit would be deemed an action against the United States under the Federal Tort Claims Act. This final rule conforms Department regulations to the provisions of the Federal Employees Liability Reform and Tort Compensation Act which expanded the tort protections for Federal employees (and certain non-employees) by finalizing a proposed rule the Department published on this subject on October 22, 2002.

**DATES:** This final rule is effective January 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Phyllis J. Pyles, Director, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20044.

**SUPPLEMENTARY INFORMATION:** The Department published a proposed rule on this subject on October 22, 2002, at 67 FR 64844. No comments were received before the comment period closed on December 23, 2002, and, accordingly, the Department is finalizing the proposed rule without change.

### Background

In 1961 Congress passed the Federal Drivers Act, 75 Stat. 539, which immunized Federal employees from liability for money damages based on torts involving the operation of motor vehicles within the scope of their employment. In the event that a Federal employee was sued in such a case, the statute authorized the Attorney General to issue a certification that the employee was acting within the scope of his or her employment at the time of the incident out of which the suit arose, and the suit thereafter would be deemed a tort action against the United States pursuant to the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671–2680.

In ensuing years, a number of similar certification statutes were enacted to protect medical and legal personnel employed by certain Federal agencies from tort liability for professional malpractice arising within the scope of their employment. *E.g.*, 10 U.S.C. 1054 (Department of Defense legal personnel); 10 U.S.C. 1089 (Department of Defense medical personnel); 22 U.S.C. 2509(j) (Peace Corps medical personnel); 22 U.S.C. 2702 (Department of State medical personnel); 38 U.S.C. 7316 (Department of Veterans Affairs medical personnel); 42 U.S.C. 233 (Public Health Service medical personnel); 42 U.S.C. 2458a (National Aeronautics and Space Administration medical personnel).

Most recently, the Federal Employees Liability Reform and Tort Compensation Act, 28 U.S.C. 2679(b)–(e), became law. This certification statute, which replaced the less comprehensive Federal Drivers Act, extended immunity from liability for money damages to Federal employees for all common law torts committed within the scope of their employment.

A number of certification statutes also have been enacted to protect certain non-employees from tort liability arising out of certain Federal programs. As part of the National Swine Flu Immunization Program of 1976, 90 Stat. 1113, Congress authorized the Attorney General to issue certifications in suits brought against