

could be affected by this proposed rule include U.S. order buyers that import steers from Mexico and cow-calf operations that sell steers comparable in age and size to those imported from Mexico. The Small Business Administration (SBA) classifies cow-calf and stocker operations as small entities if their annual receipts are \$750,000 or less. There were 1,032,000 of these operations in the United States in 2002, and over 99 percent were considered small. This proposed rule could also affect industries that purchase and lease roping steers for their shows. The number and size distributions of this industry are not available, but their sizes are likely to be small. Additionally, as these animals retire from roping service, they are likely to be sold to feedlots, so some feedlots could also be affected. The SBA classifies cattle feedlots as small entities if their annual receipts are not more than \$1.5 million. There were 95,189 feedlots in the United States in 2002, of which about 93,000 (nearly 98 percent) had capacities of fewer than 1,000 head. Average annual receipts for these small feedlots totaled about \$35,300, a figure well below the SBA's small-entity criterion. However, as of January 1, 2003, the remaining 2 percent of the Nation's feedlots, which had capacities of at least 1,000 head, held 82 percent of all U.S. cattle and calves on feed.

This proposed rule could lead to increased costs for U.S. importers of roping steers and a decrease in the number of roping steers imported from Mexico. Any negative economic impacts for U.S. importers could be offset somewhat by the benefits that could accrue to U.S. cow-calf operations that sell or lease domestic roping steers if the price of those steers rises. In addition, if any increase in U.S. feeder cattle prices were to result from the proposed changes, U.S. cow-calf and stocker domestic operations would gain from a stronger market.

The overall benefits to the U.S. livestock industry of reducing the risk of importing tuberculosis-infected cattle by requiring additional testing for steers and spayed heifers with horn growth are expected to be of far greater significance than any other economic impacts, whether positive or negative, of this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

## Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

## Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

## List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

## PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

### § 93.406 [Amended]

2. Section 93.406 would be amended as follows:

a. In paragraph (a)(2)(i), by adding the words “without evidence of horn growth (polled or dehorned)” after the word “heifers”.

b. In paragraph (a)(2)(ii), by adding the words “and steers or spayed heifers with any evidence of horn growth” after the word “cattle”.

c. In paragraph (a)(2)(iii), by adding the words “and steers or spayed heifers with any evidence of horn growth” after the words “intact cattle”.

### § 93.427 [Amended]

3. In § 93.427, paragraph (c)(3) would be amended by adding the words “and steers or spayed heifers with any evidence of horn growth” after the word “cattle”.

Done in Washington, DC, this 19th day of August 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–19313 Filed 8–23–04; 8:45 am]

BILLING CODE 3410–34–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 408 and 416

[Regulations No. 4, 8 and 16]

RIN 0960–AG06

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

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rules.

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

**DATES:** To be sure that we consider your comments, we must receive them by September 23, 2004.

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

### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>. It is also available on the Internet site for

SSA (*i.e.*, Social Security Online) at <http://policy.ssa.gov/pnpublic.nsf/LawsRegs>.

**FOR FURTHER INFORMATION CONTACT:**

Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1758 or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

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

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

Section 210 of the SSPA repealed section 1147A and cross-program recovery provisions in section 808 of the Act and amended section 1147 to expand our cross-program recovery authority to allow recovery of an overpayment occurring under any of these programs from benefits or payments due in any other of these programs at a rate not to exceed 10 percent of the monthly benefit. It allows

for unlimited withholding of past-due benefits in one program to recover an overpayment paid under another program. It also allows for cross-program recovery even if the individual is entitled under the program in which the overpayment was made.

**Explanation of Proposed Changes**

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

Currently, part 404 has no provisions permitting cross-program recovery, since that option has not been applied to collect title II benefit overpayments. In part 404, we propose to add new §§ 404.530, .535, .540, and .545, which parallel existing regulations at §§ 408.930 through 408.933, to include the expanded authority to recover title II overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income to recover a title II overpayment;
  - We may withhold no more than 10 percent of current monthly SVB payments to recover a title II overpayment;
  - We may withhold up to 100 percent of SSI and SVB past-due payments to recover a title II overpayment.
- We propose to change §§ 408.930 through 408.933 to reflect the expanded authority to recover title VIII overpayments as follows:
- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income to recover an SVB overpayment;
  - We may withhold no more than 10 percent of current monthly title II benefits to recover an SVB overpayment;
  - We may withhold up to 100 percent of title II and SSI past-due payments to recover an SVB overpayment.

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

- We may withhold no more than 10 percent of current monthly title II benefits to recover an SSI overpayment;
- We may withhold no more than 10 percent of current monthly SVB payments to recover an SSI overpayment;
- We may withhold up to 100 percent of title II and SVB past-due payments to recover an SSI overpayment.

The new sections follow the same structure as the existing regulations at

§§ 408.930 through 408.933. We believe that this format is easy for members of the public to understand. We propose to remove the title II example from § 416.572 because the example illustrated how we applied the 10 percent limit to past-due title II benefits. Under the new law, this limitation no longer applies. We propose to remove the title VIII example from § 416.572 because we have added a cross-reference to the title VIII regulations that explain how title VIII benefits are computed. We propose to remove from the SVB and SSI regulations the provisions that preclude cross-program recovery when the overpaid person is currently eligible for payment under the program from which we made the overpayment. The amended statute does not contain that restriction. Proposed § 416.572(b) also states that if we are already making recovery from title II benefits, the maximum amount which may be withheld from title XVI monthly benefits is the lesser of the person's title XVI benefit for that month or 10 percent of the person's total income for that month, not including the title II income used to compute the title XVI benefit.

Like the current regulations in 20 CFR part 408, subpart I, and part 416, subpart E, the proposed regulations for each program require that, before we impose cross-program recovery, we would notify the overpaid person of the proposed action and allow the overpaid person an opportunity to pay the remaining balance of the overpayment debt, to request review of the status of the debt, to request waiver of recovery, and to request recovery of the debt from current monthly benefits at a different rate than that stated in the notice. We would not begin cross-program recovery from current monthly benefits until 30 calendar days have elapsed after the date of the notice. If within that time period the person requests review of the debt, waiver of recovery of the debt, or reduction of the rate of recovery from current monthly benefits stated in the notice, we would not take any action to reduce current monthly benefits before we notify the debtor of our determination on the request. As permitted by section 1147(b)(2)(A) of the Act, the regulations provide that, if we find that the overpaid person or that person's spouse was involved in willful misrepresentation or concealment of material information in connection with the overpayment, we could withhold the entire amount of the current monthly benefit.

**Clarity of These Rules**

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each

agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

## Regulatory Procedures

### Executive Order 12866

In view of our need to balance our stewardship responsibilities to the public and the public funds we administer with our responsibility to provide the public the opportunity to comment on our proposed rules, we are providing a 30-day comment period for these proposed rules rather than the 60-day period we usually provide. We believe that, in this instance, a 30-day period is sufficiently long to allow the public a meaningful opportunity to comment on the proposed rules, in accordance with E.O. 12866. The proposed rules are not especially complicated. They contain many of the same policies, practices and procedures that we already apply under current regulations at §§ 408.930 through 408.933 and 416.572. The public had a 60-day period to comment on the current regulations before they were published as final rules. As we stated above, these proposed rules, when published in final, would implement section 210 of the SSPA. The impetus for this legislation was, in large part, the processing of a large number of title II claims (the Special Disability Workload) with potentially large title II underpayments payable to individuals who owe outstanding SSI overpayments. Under the current regulations (§ 416.572), we can only withhold 10 percent of past-due title II benefits to recover the SSI overpayments in these cases, but the SSPA allows up to 100 percent withholding of past-due benefits. The sooner the changes are made, the more significant the program savings will be.

We have consulted with the Office of Management and Budget (OMB) and

determined that these proposed rules meet the requirements for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were subject to OMB review.

### Regulatory Flexibility Act

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

### Paperwork Reduction Act

These proposed rules contain reporting requirements at § 408.932(c), (d) and (e). The public reporting burden for these requirements has been cleared by the Office of Management and Budget under OMB No. 0960-0683, expiring 01/31/2007.

There are also reporting requirements at proposed §§ 404.540(c), (d) and (e) and 416.574(c), (d) and (e). The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information required by these rules to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirements contained in these rules. An Information Collection Request has been submitted to OMB. While these rules will be effective upon publication in final, these burdens will not be effective until cleared by OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We will publish a notice in the **Federal Register** upon OMB approval of the information collection requirements. Comments should be submitted and/or faxed to the OMB desk officer for SSA and to SSA at the following addresses/fax numbers: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202-395-6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex, 6401 Security Boulevard, Baltimore, MD 21235-6401. Fax number: 410-965-6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days from publication of these proposed rules. To receive a copy of the OMB clearance package, you may call

the SSA Reports Clearance Officer on 410-965-0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income; and 96.020, Special Benefits for Certain World War II Veterans.)

## List of Subjects

### 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

### 20 CFR Part 408

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

### 20 CFR Part 416

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

Dated: July 19, 2004.

**Jo Anne B. Barnhart,**

*Commissioner of Social Security.*

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

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

### Subpart F—[Amended]

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

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

2. Sections 404.530, .535, .540 and .545 are added to read as follows:

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

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

(2) *Benefits payable.* For purposes of this section, benefits payable means the

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

(b) *When may we collect title II overpayments using cross-program recovery?* Except as provided in paragraphs (b)(1) through (b)(3) of this section, we may use cross-program recovery to collect a title II overpayment you owe when benefits are payable to you under title VIII, title XVI, or both.

(1) We will not apply cross-program recovery against your title VIII or title XVI benefits while you are refunding your title II overpayment by regular monthly installments.

(2) We will not apply cross-program recovery against your title VIII benefits while we are recovering a title VIII overpayment by adjusting your title VIII benefits under §§ 408.922 through 408.923 of this chapter.

(3) We will not apply cross-program recovery against your title XVI benefits while we are recovering a title XVI overpayment by adjusting your title XVI benefits under § 416.571 of this chapter.

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

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

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

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

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

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

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

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

(c) In determining whether to grant your request that we withhold less than

the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 404.508 to similar requests about withholding from title II benefits.

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

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

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

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

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

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

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

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

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

(a) We will begin collecting the overpayment balance from your title VIII or title XVI current monthly benefits or payments by cross-program recovery no sooner than 30 calendar days after the date of the notice described in § 404.540. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

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

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

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

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

**Subpart I—[Amended]**

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

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

4. Section 408.930 is revised to read as follows:

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

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

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

(b) *When may we collect title VIII overpayments using cross-program recovery?* Except as provided in paragraphs (b)(1) through (b)(3) of this section, we may use cross-program recovery to collect a title VIII overpayment you owe when benefits are payable to you under title II, title XVI, or both.

(1) We will not apply cross-program recovery against your title II or title XVI benefits while you are refunding your title VIII overpayment by regular monthly installments.

(2) We will not apply cross-program recovery against your title II benefits while we are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(3) We will not apply cross-program recovery against your title XVI benefits while we are recovering a title XVI overpayment by adjusting your title XVI benefits under § 416.571 of this chapter.

5. Section 408.931 is revised to read as follows:

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

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

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

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

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

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

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

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

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

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

6. Section 408.932 is revised to read as follows:

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

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

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

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

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

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

monthly benefits (the notice will not include this information if § 408.931(d) applies); and

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

7. Section 408.933 is revised to read as follows:

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

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

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

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

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

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

**Subpart E—[Amended]**

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

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

9. Section 416.570 is revised to read as follows:

**§ 416.570 Adjustment—general rule.**

When a recipient has been overpaid, the overpayment has not been refunded, and waiver of adjustment or recovery is not applicable, any payment due the overpaid recipient or his or her eligible

spouse (or recovery from the estate of either or both when either or both die before adjustment is completed) is adjusted for recovery of the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 416.571 from the benefit payable to the individual except that, when the overpayment results from the disposition of resources as provided by §§ 416.1240(b) and 416.1244, the overpayment will be recovered by withholding any payments due the overpaid recipient or his or her eligible spouse before any further payment is made. Absent a specific request from the person from whom recovery is sought, no overpayment made under title XVIII of the Act will be recovered by adjusting SSI benefits. In no case shall an overpayment of SSI benefits be adjusted against title XVIII benefits. No funds properly deposited into a dedicated account (see §§ 416.546 and 416.640(e)) can be used to repay an overpayment while the overpaid individual remains subject to the provisions of those sections.

10. Section 416.572 is revised and sections 416.573, .574 and .575 are added to read as follows:

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

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

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

(b) *When may we collect title XVI overpayments using cross-program recovery?* Except as provided in paragraphs (b)(1) through (b)(3) of this section, we may use cross-program recovery to collect a title XVI overpayment you owe when benefits are payable to you under title II, title VIII, or both.

(1) We will not apply cross-program recovery against your title II or title VIII benefits while you are refunding your

title XVI overpayment by regular monthly installments.

(2) We will not apply cross-program recovery against your title II benefits while we are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(3) We will not apply cross-program recovery against your title VIII benefits while we are recovering a title VIII overpayment by adjusting your title VIII benefits under §§ 408.922 through 408.923 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 416.573(d) applies); and

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

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

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

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

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

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

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 26**

[REG-145987-03]

**RIN 1545-BC50**

**Qualified Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed regulations provide guidance regarding the qualified severance of a trust for generation-skipping transfer (GST) tax purposes under section 2642(a)(3) of the Internal Revenue Code, which was added to the Code by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The regulations will affect trusts that are subject to the GST tax.

**DATES:** Written or electronic comments and requests for a public hearing must be received by November 22, 2004.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-145987-03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-145987-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-145987-03).

**FOR FURTHER INFORMATION CONTACT:** Mayer R. Samuels, (202) 622-3090 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC