

2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to create Class E airspace sufficient in size to contain aircraft executing instrument procedures at Atqasuk Airport and represents the FAA’s continuing effort to safely and efficiently use the navigable airspace.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### **PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### **§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 15, 2005, is to be amended as follows:

\* \* \* \* \*

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **AAL AK E5 Atqasuk, AK [Revised]**

Atqasuk Edward Burnell Sr Memorial Airport, AK  
(Lat. 70°28’02” N., long. 157°26’09” W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Atqasuk Airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Atqasuk Airport.

\* \* \* \* \*

Issued in Anchorage, AK, on February 7, 2006.

**Anthony M. Wylie,**

*Manager, Safety, Area Flight Service Operations.*

[FR Doc. E6–3480 Filed 3–10–06; 8:45 am]

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## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Part 422**

**RIN 0960–AE89**

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

**AGENCY:** Social Security Administration.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to modify our regulations dealing with the recovery of benefit overpayments under titles II and XVI of the Social Security Act (the Act), as well as recovery of administrative debts owed to us. Specifically, we propose to modify our regulations to implement statutory authority for the use of Federal Salary Offset (FSO). FSO is a process whereby the salary-paying agency withholds and pays to us up to 15 percent of the debtor’s disposable pay until the debt has been repaid. In the case of title II program overpayment debts, we would apply FSO to collect only overpayments made to a person after he or she attained age 18, and we

would pursue FSO after that person ceases to be a beneficiary and we determine that the overpayment is otherwise unrecoverable under section 204 of the Act. In the case of title XVI program overpayment debts, these same restrictions apply, but we must determine the overpayment to be otherwise unrecoverable under section 1631(b) of the Act, rather than section 204 of the Act. FSO is only applicable if the debtor is a Federal employee.

**DATES:** To be sure your comments are considered, we must receive them no later than May 12, 2006.

**ADDRESSES:** You may give us your comments by: using our Internet facility (i.e., Social Security Online) at <http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment> or the Federal rulemaking portal at <http://www.regulations.gov>; email 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, Room 107, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site or you may inspect them physically by making arrangements with the contact person shown below.

#### **FOR FURTHER INFORMATION CONTACT:**

Suzanne DiMarino, Social Insurance Specialist, Office of Regulations, Social Security Administration, Room 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 965–1769. 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:**

##### **Electronic Version**

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

##### **Background**

Section 204 of the Act prescribes many of the methods that we may use to recover Social Security benefits overpaid under title II of the Act (title II program overpayments), as distinguished from the methods that we may use to collect administrative debts owed the agency that are recoverable

under other statutory authority. Until 1994, we were authorized to recover title II program overpayments only by adjusting future title II benefits payable to the overpaid individual or to others on the earnings record on which the overpayment was made, by direct recovery from the overpaid person (or the overpaid person's estate, if deceased), or by offset against Federal income tax refunds due from the Department of the Treasury. Amendments to section 204 of the Act and other statutes by section 5 of Public Law 103-387 (1994) and section 31001(z)(2) of Public Law 104-134 (1996) permit us to use several debt collection procedures that have been available to other Federal agencies by statute since 1982, but that we had been precluded from using to recover title II program overpayments. Among other things, these procedures include recovering debts by FSO under 5 U.S.C. 5514 and by offset under 31 U.S.C. 3716 against other Federal payments to which the debtor is entitled. Under section 204(f) of the Act (42 U.S.C. 404(f)), these additional debt collection procedures may be used to recover title II program overpayments only if the overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 204 of the Act after the overpaid person ceases to be a beneficiary under title II of the Act.

Section 1631(b) of the Act prescribes many of the methods we may use to recover supplemental security income (SSI) overpayments that occur under title XVI of the Act. Until enactment of Public Law 106-169 on December 14, 1999, we were not authorized to use certain methods found in 31 U.S.C. Chapter 37 and 5 U.S.C. 5514 to recover SSI overpayments. Section 203 of Public Law 106-169 amended section 1631(b) of the Act to permit recovery of SSI overpayments using several of the debt management practices that have been available for the recovery of title II program overpayments. Among other things, these practices include using FSO to recover debts. Under section 1631(b)(4)(B) of the Act, these additional methods may be used only if the SSI overpayment was made to a person after he or she attained age 18 and the overpayment has been determined to be otherwise unrecoverable under section 1631(b) of the Act after the overpaid person ceases to be a beneficiary under title XVI of the Act.

For both title II and title XVI program overpayments, FSO is only applicable if the debtor is a Federal employee.

Before we can begin to use FSO to recover debts, we must issue regulations that comply with standards prescribed in the regulations of the Office of Personnel Management (OPM). See 5 U.S.C. 5514(b) and 5 CFR 550.1104. The Department of the Treasury administers FSO as part of the Treasury Offset Program, the Government-wide process for offsetting Federal payments to collect delinquent debts owed by debtors to the Federal government. (See 31 CFR 285.7). Our current regulations at 20 CFR part 422, subpart D, address the procedures required for participation in the Treasury Offset Program. We propose to amend appropriate sections of those regulations to comply with the standards prescribed in the OPM regulations and make other changes.

#### **Explanation of Changes to the Regulations**

Subject to certain exceptions, 5 U.S.C. 5514(a) requires us to do the following before initiating FSO to collect a debt that a Federal employee owes:

- Send written notice to the debtor at least 30 days before taking FSO action explaining the nature and amount of the debt, our intention to collect by deduction from Federal pay, and the debtor's rights described below;
- Give the debtor an opportunity to inspect and copy our records relating to the debt;
- Give the debtor an opportunity to enter into a written agreement with us establishing a repayment schedule; and
- Give the debtor the opportunity for a hearing on the existence and amount of the debt and any payment schedule mentioned in the notice. According to 5 U.S.C. 5514(a)(2), the hearing must be conducted by a person who is not under the supervision or control of the Commissioner of Social Security or by an administrative law judge.

The OPM regulations on FSO impose these and several additional requirements. Our current regulations on administrative offset against Federal payments due the debtor already reflect many of the requirements of 5 U.S.C. 5514 and the OPM regulations. We propose to revise 20 CFR 422.301, 422.310 and 422.317 so that our regulations permit the use of FSO and meet the requirements of the statute and OPM standards and to make other changes as set forth below. In addition, we propose to add new section 20 CFR 422.303 to meet OPM standards.

#### *Clarifying the Scope of 20 CFR Part 422, Subpart D*

We would revise § 422.301(a) and (b), add new paragraph (c) and delete

information from § 422.306(b) to clarify that subpart D of part 422 does not apply to administrative debts incurred by our employees, including overpayments of pay and allowances. As authorized by section 106(b) of Public Law 103-296, we have applied the rules of the Department of Health and Human Services in 45 CFR part 30 that were in effect immediately before March 31, 1995. The rules in 45 CFR part 30 allow us to collect administrative debts owed by our employees by withholding money payable to our employees by the U.S. Government. Amounts available for such withholding include the Federal salaries of our employee/debtors. For this reason, the current provisions in subpart D of 20 CFR part 404 on Treasury offset and the FSO provisions described in this proposed rule do not apply to administrative debts owed by our employees.

#### *Restrictions on the Use of FSO*

In § 422.301(c), we explain that we will not use FSO to recover an employee's debt while:

- The employee's title II disability benefits are stopped during the reentitlement period, under 20 CFR 404.1592a(a)(2) of this chapter;
- The employee's Medicare entitlement is continued because the individual is deemed to be entitled to title II disability benefits under section 226(b) of the Social Security Act; or
- The employee is participating in the Ticket to Work and Self-Sufficiency Program and the ticket is in use as described in 20 CFR 411.170 through 411.225.

#### *Charging Interest, Late Payment Penalties, and Administrative Costs When Authorized by SSA Regulations*

OPM regulations require that our regulations on FSO contain a provision about charging the debtor with interest, late payment penalties, and administrative costs of collection on the delinquent debt pursuant to 31 U.S.C. 3717. See 5 CFR 550.1104(n). We are authorized, but are not required, to impose these charges on a debtor. See 42 U.S.C. 404(f) and 1383(b)(4). In order to comply with 5 CFR 550.1104(n), we propose to add § 422.303 to subpart D. The new section would provide that we will impose these charges when authorized by specific regulations that we would issue in accordance with the Federal Claims Collection Standards (FCCS) at 31 CFR 901.9.

### *Notice and Procedures for Initiating FSO*

In § 422.310, we describe generally the procedures we use to initiate recovery of debts under the Treasury Offset Program and the notice required before we initiate recovery. Proposed paragraph (a)(1) would state that, if the debtor is a Federal employee, we would recover overdue debts through this program by reducing the debtor's Federal "disposable pay," defined in 5 CFR 550.1103, and that such action is called "Federal salary offset" in part 422, subpart D. Proposed paragraph (a)(2) would state that we would use FSO to collect overdue program debts from our employees and overdue program and administrative debts from employees of other Federal agencies.

We propose to delete the specific dollar amount in current § 422.310(b) to allow more flexibility in the regulation to accommodate changes in the dollar threshold amount as required by the Treasury. Currently, the minimum dollar threshold amount for FSO is \$100.

Paragraph (c) of § 422.310 describes the written notice requirements for initiating recovery under the Treasury Offset Program. We would revise the paragraph to include provisions required for FSO. The notice would explain the nature and amount of the debt, our determination that the debt is overdue, our intention to refer the debt for administrative offset (including FSO if the debtor is a Federal employee), and the frequency and amount of any FSO deduction. The notice would also explain that the debtor has the following rights:

- To inspect and copy our records relating to the debt;
- To request review of the existence or amount of the debt or our right to collect it and any payment schedule for FSO stated in the notice; and
- To request an installment payment plan.

The notice would also inform the debtor that we will refer the debt to the Department of the Treasury for administrative offset at the expiration of 60 calendar days after the date of the notice unless, within that period, the debtor pays the full amount of the debt, requests review of the debt or the FSO payment schedule stated in the notice, or requests an installment payment plan. Finally, the notice would advise that, if the debtor furnishes false or frivolous statements, representations, or evidence, the debtor may be subject to civil or criminal penalties and (if the debtor is a Federal employee) appropriate disciplinary actions.

We would add proposed paragraph (c)(9), explaining that we will refer the debt for FSO at the expiration of not less than 30 calendar days after the date of the notice in accordance with 5 U.S.C. 5514(a), unless the debtor takes the action described above within that period.

We would add proposed paragraph (d) to § 422.310 to address the amount, frequency and duration of FSO deductions and hearing request timeframes. The new paragraph would explain that deductions from a debtor's Federal salary will not exceed 15% of the debtor's disposable pay every payday. FSO would begin no sooner than the first payday following 30 calendar days after the date of the notice to the debtor and would continue until we recover the full amount of the debt, the debt is otherwise resolved, or the debtor ceases to be a Federal employee, whichever occurs first.

We would add proposed paragraph (e) to § 422.310 regarding refunds. Paragraph (e) would explain that we will promptly refund to the debtor any amounts collected that the debtor does not owe. Such refunds would not bear interest unless required or permitted by law or contract.

### *Procedures for Conducting the Review (Hearing) on the Validity and Amount of the Debt and the Repayment Schedule for FSO*

Section 422.317 addresses our procedures for reviewing the debt when requested by the debtor. Under new paragraph (a), a debtor who receives the notice under §§ 422.305(b), 422.306(b), or 422.310(c) has the right to have a review (a hearing) on the validity and amount of the debt described in the notice and the payment schedule for FSO stated in the notice. The debtor must notify us that he or she wants such review and give us evidence that he or she does not owe all or part of the debt, or that we do not have the right to collect it.

We would explain in new paragraph (a)(1) that, if the debtor requests review and gives us evidence within 60 calendar days from the date of our notice (except as provided in new paragraph (a)(3) for FSO), we would not take any action described in our notice until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable. A similar explanation would be deleted from current paragraph (b) of § 422.317.

Under new paragraph (a)(2), if the debtor does not notify us and give us evidence within 60 calendar days from the date of our notice (except as

provided in new paragraph (a)(4) for FSO), we would conduct the review, but we may take the action described in the notice (refer information on the debt for offset against Federal payments or refer information about the debt to consumer reporting agencies or credit reporting agencies).

New paragraph (a)(3) would explain that, if the debtor is a Federal employee who requests review and gives us evidence within 30 calendar days from the date of our notice, we will not take any FSO action described in our notice until we consider all of the evidence and send the debtor our findings that all or part of the debt is overdue and legally enforceable and (when appropriate) our findings on the FSO payment schedule.

Under new paragraph (a)(4), if the debtor does not notify us and give us evidence within 30 calendar days from the date of our notice regarding FSO, the review will occur, but we may take the FSO action described in the notice.

We propose to revise paragraphs (a) and (b) of § 422.317 to allow an exception when the debtor has good cause for failing to request review within the 60-day period described in proposed paragraph (a)(1) or the 30-day period described in proposed paragraph (a)(3). If the debtor has good cause for making the request late, we would treat the request as received within the prescribed period. Thus, if the debtor requests review late, but has good cause, we would not take any action (or we would stop any action we had initiated) while our decision on the request is pending. New paragraphs (a)(2) and (a)(4) would provide that if the debtor does not notify us and give us evidence within the prescribed period and does not have good cause for failing to request review on time, we would conduct the review, but we may initiate any action described in our notice without further delay.

Under proposed § 422.317(b), we would determine good cause under the rules in § 422.410(b)(1) and (2) of subpart E, part 422, the regulations on administrative wage garnishment. In determining whether the debtor had good cause, we would consider: Any circumstances that kept the debtor from making the request on time; whether our action misled the debtor; whether the debtor had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that prevented the debtor from making a request on time or from understanding the need to make a request on time.

As revised by these proposed rules, paragraph (c) of § 422.317 would generally describe our review (hearing)

process. The review would cover our records pertaining to the debt and all of the evidence and statements presented by the debtor.

We propose to add a new paragraph (d) to § 422.317 that would provide special rules on the conduct of the review when we would use FSO. The review available to the debtor under revised § 422.317 would satisfy the requirement in 5 U.S.C. 5514(a)(2) that, before we would begin to collect a debt by FSO, we must provide the debtor with the opportunity for a hearing concerning the existence and amount of the debt and the terms of the repayment schedule stated in the notice. The following special rules apply to the conduct of the review:

- An official designated in accordance with 5 U.S.C. 5514(a)(2) would conduct the review requested by a Federal employee who is subject to FSO.
- The Federal employee's request for review must be written and be signed by that employee, must explain with reasonable specificity the facts and evidence that support the employee's position, and must identify any witnesses.
- When reviewing the payment schedule for FSO, the reviewing official would apply the rules regarding financial hardship in § 422.415 (b), (c), and (d) of subpart E, part 422, the regulations on administrative wage garnishment.
- The reviewing official would review our records on the debt and any evidence and written statements submitted by the debtor and would issue the final decision.
- The reviewing official would complete the review within 60 calendar days from the date on which we receive the request for review and the debtor's evidence. If the reviewing official does not make a decision on the request within that 60-day period and the debt was referred to the Department of the Treasury for FSO (e.g., when the request was received late), we would notify the Department of the Treasury to suspend FSO. Offset would not begin or resume before we send the debtor the findings that all or part of the debt is overdue and legally enforceable or (if appropriate) the findings on the payment schedule.

The OPM regulations provide that the proper content and form of the hearing required by 5 U.S.C. 5514(a)(2) depend on the nature of the matter under which the debt arose and that we must consult the Federal Claims Collection Standards (FCCS) for guidance. 5 CFR 550.1104(g)(2). Our current regulations provide an administrative appeal

process for the debtor on our original determination of indebtedness, including the opportunity for an oral hearing conducted by an administrative law judge. (See 20 CFR part 404, subpart J & part 416, subpart N). This appeal process would be available to the debtor before we would initiate the process for using FSO, described in proposed § 422.310, or any other action described in 20 CFR part 422, subpart D. The appeal process for the determination of indebtedness is available to resolve any issue pertaining to that determination, including credibility or veracity, for which an oral hearing would be appropriate.

The review process for FSO described in proposed § 422.317 would afford the debtor a "paper hearing" on issues pertaining to the current status of the debt and the terms of repayment stated in the notice described in proposed § 422.310. We believe that review of written evidence and statements would be adequate and appropriate to resolve those issues. We have determined that the combination of the administrative appeal process available on the original determination of indebtedness and the hearing afforded by the review of documents and written statements described in our proposed regulations meet the requirements of the applicable provisions in the FCCS. (See 31 CFR 901.3(b)(4)(iv), (e)).

The provisions regarding the review findings, currently in paragraph (c) of § 422.317, would appear in proposed new paragraph (e). Issuing the review findings would be our final action on the debtor's request for review. We would revise the current provisions to clarify the actions we would take based on the findings, particularly where FSO is involved. If the debtor requested review of the payment schedule for FSO, the written findings would cover that matter. If the reviewing official would find that the payment schedule would cause financial hardship, we would notify the debtor and the Department of the Treasury of the revised payment schedule. If we already initiated FSO, but the reviewing official finds that the individual does not owe the debt, the debt is not overdue, or we do not have the right to collect it, we would cancel that action and refund any amounts collected that the debtor does not owe or that we do not have the right to collect.

#### Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these final

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*

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, OMB reviewed them.

##### *Regulatory Flexibility Act*

We certify that these proposed 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.

##### *Paperwork Reduction Act*

These proposed rules contain information collection activities at 422.310 and 422.317. However, the activities are exempt from the Paperwork Reduction Act as administrative actions under 44 U.S.C. 3518(c)(1)(B)(ii) and from the clearance requirements of 44 U.S.C. 3507 as amended by section 2 of Public Law 104-13 (May 22, 1995), the Paperwork Reduction Act of 1995.

(Catalog of Federal Domestic Assistance Programs No. 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 in 20 CFR Part 422

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

Dated: November 29, 2005.

**Jo Anne B. Barnhart,**  
*Commissioner of Social Security.*

For the reasons set forth in the preamble, we are proposing to amend

subpart D of part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

**PART 422—[AMENDED]**

1. The authority citation for subpart D of part 422 is revised to read as follows:

**Authority:** Secs. 204(f), 205(a), 702(a)(5), and 1631(b) of the Social Security Act (42 U.S.C. 404(f), 405(a), 902(a)(5), and 1383(b)); 5 U.S.C. 5514; 31 U.S.C. 3711(e); 31 U.S.C. 3716.

2. Section 422.301 is revised to read as follows:

**§ 422.301 Scope of this subpart.**

(a) Except as provided in paragraphs (b) and (c) of this section, this subpart describes the procedures relating to collection of:

(1) Overdue administrative debts, and  
(2) Overdue program overpayments described in §§ 404.527 and 416.590 of this chapter.

(b) This subpart does not apply to administrative debts owed by employees of the Social Security Administration, including, but not limited to, overpayment of pay and allowances.

(c) The following exceptions apply only to Federal salary offset as described in § 422.310(a)(1).

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

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

(3) We will not use this subpart to collect a debt if the debtor has decided to participate in the Ticket to Work and Self-Sufficiency Program and the debtor's ticket is in use as described in §§ 411.170 through 411.225 of this chapter.

3. Section 422.303 is added to read as follows:

**§ 422.303 Interest, late payment penalties, and administrative costs of collection.**

We may charge the debtor with interest, late payment penalties, and our costs of collection on delinquent debts covered by this subpart when authorized by our regulations issued in accordance with the Federal Claims Collection Standards (31 CFR 901.9).

4. Paragraph (a) of § 422.306 is amended by removing "overpayments of

pay and allowances paid to employees," from the second sentence.

5. Section 422.310 is revised to read as follows:

**§ 422.310 Collection of overdue debts by administrative offset.**

(a) *Referral to the Department of the Treasury for offset.*

(1) We will recover overdue debts by offsetting Federal payments due the debtor through the Treasury Offset Program (TOP). TOP is a Government-wide delinquent debt matching and payment offset process operated by the Department of the Treasury, whereby debts owed to the Federal Government are collected by offsetting them against Federal payments owed the debtor. Federal payments owed the debtor include current "disposable pay," defined in 5 CFR 550.1103, owed by the Federal Government to a debtor who is an employee of the Federal Government. Deducting from such disposable pay to collect an overdue debt owed by the employee is called "Federal salary offset" in this subpart.

(2) Except as provided in paragraphs (b) and (c) of § 422.301, we will use Federal salary offset to collect overdue debts from Federal employees, including employees of the Social Security Administration. A Federal employee's involuntary payment of all or part of a debt collected by Federal salary offset does not amount to a waiver of any rights which the employee may have under any statute or contract, unless a statute or contract provides for waiver of such rights.

(b) *Debts we will refer.* We will refer for administrative offset all qualifying debts that meet or exceed the threshold amounts used by the Department of the Treasury for collection from Federal payments, including Federal salaries.

(c) *Notice to debtor.* Before we refer any debt for collection by administrative offset, we will send the debtor written notice that explains all of the following:

(1) The nature and amount of the debt.

(2) We have determined that payment of the debt is overdue.

(3) We will refer the debt for administrative offset (except as provided in paragraph (c)(9) of this section) at the expiration of not less than 60 calendar days after the date of the notice unless, within that 60-day period:

(i) The debtor pays the full amount of the debt, or

(ii) The debtor takes any of the actions described in paragraph (c)(6) or (c)(7) of this section.

(4) The frequency and amount of any Federal salary offset deduction (the

payment schedule) expressed as a fixed dollar amount or percentage of disposable pay.

(5) The debtor may inspect or copy our records relating to the debt. If the debtor or his or her representative cannot personally inspect the records, the debtor may request and receive a copy of such records.

(6) The debtor may request a review of the debt by giving us evidence showing that the debtor does not owe all or part of the amount of the debt or that we do not have the right to collect it. The debtor may also request review of any payment schedule for Federal salary offset stated in the notice. If the debtor is an employee of the Federal Government and Federal salary offset is proposed, an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review.

(7) The debtor may request to repay the debt voluntarily through an installment payment plan.

(8) If the debtor knowingly furnishes any false or frivolous statements, representations, or evidence, the debtor may be subject to:

(i) Civil or criminal penalties under applicable statutes;

(ii) Appropriate disciplinary procedures under applicable statutes or regulations, when the debtor is a Federal employee.

(9) We will refer the debt for Federal salary offset at the expiration of not less than 30 calendar days after the date of the notice unless, within that 30 day period the debtor takes any actions described in paragraph (c)(3)(i), (c)(6), or (c)(7) of this section.

(d) *Federal salary offset: amount, frequency, and duration of deductions.*

(1) We may collect the overdue debt from an employee of the Federal Government through the deduction of an amount not to exceed 15% of the debtor's current disposable pay each payday.

(2) Federal salary offset will begin no sooner than the first payday following 30 calendar days after the date of the notice to the debtor described in paragraph (c) of this section.

(3) Once begun, Federal salary offset will continue until we recover the full amount of the debt, the debt is otherwise resolved, or the debtor's Federal employment ceases, whichever occurs first.

(4) After Federal salary offset begins, the debtor may request a reduction in the amount deducted from disposable pay each payday. When we determine that the amount deducted causes financial harm under the rules in § 422.415(b), (c), and (d) of this chapter, we will reduce that amount.

(e) *Refunds.* We will promptly refund to the debtor any amounts collected that the debtor does not owe. Refunds do not bear interest unless required or permitted by law or contract.

5. Section 422.317 is revised to read as follows:

**§ 422.317 Review of the debt.**

(a) *Notification and presentation of evidence by the debtor.* A debtor who receives a notice described in § 422.305(b), § 422.306(b), or § 422.310(c) has a right to have a review of the debt and the payment schedule for Federal salary offset stated in the notice. To exercise this right, the debtor must notify us and give us evidence that he or she does not owe all or part of the debt, or that we do not have the right to collect it, or that the payment schedule for Federal salary offset stated in the notice would cause financial hardship.

(1) If the debtor notifies us and presents evidence within 60 calendar days from the date of our notice (except as provided for Federal salary offset in paragraph (a)(3) of this section), we will not take the action described in our notice unless and until review of all of the evidence is complete and we send the debtor the findings that all or part of the debt is overdue and legally enforceable.

(2) If the debtor notifies us and presents evidence after that 60 calendar-day period expires (except as provided for Federal salary offset in paragraph (a)(4) of this section) and paragraph (b) of this section does not apply, the review will occur, but we may take the actions described in our notice without further delay.

(3) If the debtor notifies us and presents evidence within 30 calendar days from the date of our notice, we will not refer the debt for Federal salary offset unless and until review of all of the evidence is complete and we send the debtor the findings that all or part of the debt is overdue and legally enforceable and (if appropriate) the findings on the payment schedule for Federal salary offset.

(4) If the debtor notifies us and presents evidence after that 30 calendar-day period expires and paragraph (b) of this section does not apply, the review will occur, but we may refer the debt for Federal salary offset without further delay.

(b) *Good cause for failure to timely request review.* (1) If we decide that the debtor has good cause for failing to request review within the applicable period mentioned in paragraphs (a)(1) and (a)(3) of this section, we will treat

the request for review as if we received it within the applicable period.

(2) We will determine good cause under the rules in § 422.410(b)(1) and (2) of this chapter.

(c) *Review of the evidence.* The review will cover our records and any evidence and statements presented by the debtor.

(d) *Special rules regarding Federal salary offset.* (1) When we use Federal salary offset to collect a debt owed by an employee of the Federal Government, an official designated in accordance with 5 U.S.C. 5514(a)(2) will conduct the review described in this section and will issue the findings.

(2) In addition to the requirements in paragraphs (a) and (b) of this section, the Federal employee must submit the request for review in writing. The request must:

- (i) Be signed by the employee,
- (ii) Explain with reasonable specificity the facts and evidence that support the employee's position, and
- (iii) Include the names of any witnesses.

(3) In reviewing the payment schedule described in the notice to the Federal employee, the reviewing official must apply the rules in § 422.415(b), (c), and (d) of this chapter regarding financial hardship.

(4) The reviewing official will review our records and any documents, written statements, or other evidence submitted by the debtor and issue written findings.

(5) The reviewing official will complete the review within 60 calendar days from the date on which the request for review and the debtor's evidence are received. If the reviewing official does not complete the review within that 60-day period and the debt was referred to the Department of the Treasury for Federal salary offset, we will notify the Department of the Treasury to suspend Federal salary offset. Offset will not begin or resume before we send the debtor findings that all or part of the debt is overdue and legally enforceable or (if appropriate) findings on the payment schedule.

(e) *The findings.* (1) Following the review described in paragraphs (c) or (d) of this section, we will send the written findings to the debtor. The findings will state the nature and origin of the debt, the analysis, findings and conclusions regarding the amount and validity of the debt, and, when appropriate, the repayment schedule for Federal salary offset. Issuance of these findings will be the final action on the debtor's request for review.

(2) If the findings state that an individual does not owe the debt, or the debt is not overdue, or we do not have the right to collect it, we will not send

information about the debt to consumer or other credit reporting agencies or refer the debt to the Department of the Treasury for administrative offset. If we had referred the debt to the Department of the Treasury for administrative offset, we will cancel that action. If we had informed consumer or credit reporting agencies about the debt, we will inform them of the findings.

(3) If the findings state that the payment schedule for Federal salary offset would cause financial hardship, we will notify the debtor and the Department of the Treasury of the new payment schedule.

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 866**

[Docket No. 2005N-0471]

**Immunology and Microbiology Devices; Reclassification of Herpes Simplex Virus (Types 1 and/or 2) Serological Assays; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of January 9, 2006 (71 FR 1399). That document proposed the reclassification of herpes simplex virus (types 1 and/or 2) serological assays from class III (premarket approval) to class II (special controls). That document inadvertently included a list of references related to a draft guidance that also was announced in the **Federal Register** of January 9, 2006 (71 FR 1432). The draft guidance contains the correct list of references. This document corrects the error.

**FOR FURTHER INFORMATION CONTACT:** Sally Hojvat, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240-276-0496, ext. 114.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 06-173, appearing on page 1399, in the **Federal Register** of Monday, January 9, 2006, the following correction is made:

1. On pages 1402-1403, section XII. References is removed.