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VIII. Effective Date and Congressional Notification

This Final Rule will take effect January 28, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.⁸ The Commission will submit the Final Rule to both Houses of Congress and the General Accounting Office.⁹

⁸ 5 U.S.C. 804(2).

⁹ 5 U.S.C. 801(a)(1)(A).

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure. Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends parts 141 and 385, Chapter I, Title 18, of the Code of Federal Regulations, as follows:

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a-828c, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352.

2. Section 141.61 is revised, to read as follows:

§ 141.61 FERC Form No. 423, Monthly report of cost and quality of fuels for electric plants.

(a) *Who must file.* Every electric power producer having electric generating plants with a stream-electric generating capacity of 50 megawatts or greater during the reporting month must file with the Federal Energy Regulatory Commission for each such plant the FERC Form No. 423, "Monthly Report of Cost and Quality of Fuels for Electric Plants," pursuant to the General Instructions set out in this form.

(b) *When to file and what to file.* This report must be filed on or before the 45th day after the end of each reporting month. This report must be filed with the Federal Energy Regulatory Commission as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in this form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the report required to be submitted for the reporting month of January 2002.

PART 385—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85 (1988).

4. Section 385.2011 is amended by adding paragraph (a)(8), to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

(a) * * *
(8) FERC Form No. 423, Monthly Report of Cost and Quality of Fuels for Electric Plants.

* * * * *

[FR Doc. 01-32006 Filed 12-27-01; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 416 and 422

RIN 0960-AF31

Supplemental Security Income; Disclosure of Information to Consumer Reporting Agencies and Overpayment Recovery Through Administrative Offset Against Federal Payments

AGENCY: Social Security Administration.
ACTION: Final rules.

SUMMARY: We are modifying our regulations dealing with the recovery of supplemental security income (SSI) overpayments made under title XVI of the Social Security Act (the Act). The modifications reflect statutory authority for the Social Security Administration (SSA) to selectively refer information about SSI overpayments to consumer reporting agencies and to recover SSI overpayments through administrative offset by the Department of the Treasury against other Federal payments to which the overpaid individual may be entitled. These collection practices would be limited to overpayments made to a person after he or she attained age 18 that are determined to be otherwise unrecoverable under section 1631(b) of the Act after the individual ceases to be a beneficiary under title XVI of the Act.

DATES: These regulations will be effective on January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Hora, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-7183 or TTY (410) 966-5609 for information about these rules. For information on eligibility or claiming 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.ssa.gov/>.

SUPPLEMENTARY INFORMATION: Section 1631(b) of the Act prescribes the

methods SSA may use to recover SSI overpayments. Until enactment of Pub. L. 106-169 on December 14, 1999, SSA was not authorized to use certain tools found in 31 U.S.C. Chapter 37 to recover title XVI program overpayments. Section 203 of Pub. L. 106-169 amended section 1631(b) of the Act to permit SSA to use for SSI overpayments several of the debt collection practices that have been available for use regarding social security benefit overpayments under title II of the Act. Among other things, these practices include reporting delinquent debts to consumer reporting agencies and recovering debts by administrative offset against other Federal payments to which the overpaid person is entitled. Under section 1631(b) of the Act, these additional practices 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 is no longer entitled to benefits under title XVI of the Act.

Before we will refer information to consumer reporting agencies or refer an SSI overpayment to the Department of the Treasury for administrative offset, we will send the overpaid person a notice that explains the individual's statutory rights regarding the referral. Specifically, we will send the overpaid person written notice (or, in the case of an individual for whom we do not have a current address, take reasonable action to locate and send written notice) describing, among other things, the amount and nature of the overpayment, the action that we propose to take, and the overpaid person's rights to request us to review the debt and to inspect or copy our records about the overpayment. We will also explain in the notice that the overpaid person has at least 60 calendar days to present evidence that all or part of the overpayment is not past-due or not legally enforceable, or enter into a written agreement to pay the overpayment.

In these final rules, we set forth our policies on referral of information on title XVI overpayment debts to consumer reporting agencies and referral of such debts to the Department of the Treasury for administrative offset. In the future, as we make the necessary systems changes and develop policies and procedures to enable us to use additional debt collection tools for recovery of SSI overpayments, we will make further modifications to our overpayment recovery rules.

Explanation of Changes to Regulations

We are adding a new § 416.590 to our regulations to explain that we will use the additional tools authorized by section 1631(b) of the Act when the title XVI program overpayments occurred after the individual attained age 18, and the overpayment has been determined to be otherwise unrecoverable under section 1631(b) of the Act after the individual is no longer entitled to benefits under title XVI of the Act. Section 416.590 also contains the criteria under which we determine that an overpayment is otherwise unrecoverable under section 1631(b) of the Act. An overpayment will be determined to be unrecoverable when all of the following conditions are met:

- We completed our billing sequence (i.e., we have sent the overpaid person an initial notice of the overpayment, a reminder notice, and a past-due notice) or suspended or terminated collection activity in accordance with applicable rules, such as the Federal Claims Collection Standards in 31 CFR 903.2 or 903.3;
- There is no installment payment agreement, or the overpaid person has failed to pay in accordance with such an agreement for two consecutive months;
- We cannot collect the overpayment by adjusting benefits payable to individuals other than the overpaid person.

For purposes of § 416.590, if the overpaid person is a member of an eligible couple that is legally separated and/or living apart, we will deem unrecoverable from the overpaid person's spouse that part of the overpayment which the overpaid person's spouse did not receive. Adjustment of benefits will be waived for the overpaid person's spouse when that spouse is without fault (as defined in § 416.552) and waiver is requested under these circumstances. See § 416.554.

In these final rules, we made one change in new § 416.590(b)(1) from the version published in the Notice of Proposed Rulemaking of October 23, 2000 (65 FR 63221). We deleted the terms "the Federal Claims Collection Standards in 4 CFR 104.2 or 104.3" and inserted the terms "applicable rules, such as the Federal Claims Collection Standards in 31 CFR 903.2 or 903.3." The change reflects the revision and relocation of the Federal Claims Collection Standards within the Code of Federal Regulations effective December 22, 2000. See 65 FR 70390-70406 (November 22, 2000). As revised, new § 416.590(b)(1) provides that we will find an SSI overpayment to be

"otherwise unrecoverable" under section 1631(b) of the Act if, among other things, we completed our billing system sequence for the overpayment or we suspended or terminated our collection activity under the Federal Claims Collection Standards that applied at the time of the suspension or termination.

As set out in the proposed rules, we are adding to § 416.1403(a) (the list of administrative actions that are not initial determinations) new paragraphs (18) and (19) to include our determinations whether we will refer information about an overpayment to consumer reporting agencies and whether we will refer the overpayment to the Department of the Treasury for offset against other Federal payments due the overpaid person. Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N of our regulations at 20 CFR part 416, and they are not subject to judicial review under section 1631(c)(3) of the Act.

We are also expanding our existing regulations in subpart D of part 422 to cover SSI overpayments. Specifically, we have revised § 422.301 to add language to specify that the debt collection tools in subpart D may be used to recover title XVI program overpayments the Commissioner has determined, through § 416.590, to be unrecoverable under section 1631(b) of the Act. In § 422.305, we have revised both the section title and paragraph (a). The changes we are making to §§ 422.301 and 422.305 will allow us to apply to overpayments under both title II and title XVI of the Act the rules in subpart D on the referral of information to consumer reporting agencies and collection through administrative offset by the Department of the Treasury.

In addition to the one change noted above, these final rules contain several non-substantive revisions to correct minor typographical errors and to make the regulations easier to read.

Public Comments

On October 23, 2000 we published a Notice of Proposed Rulemaking in the **Federal Register** at 65 FR 63221 and provided a 60-day period for interested individuals and organizations to comment on the proposed rules. We received comments from two organizations. A summary of the comments and our responses to them follow.

Comment: One organization recommended that we include language in the notice advising individuals of

their rights to request that we waive collection of the overpayment. This organization expressed concern that individuals likely to be affected by our new statutory authority to report information on SSI overpayments to consumer reporting agencies and collect such debts through administrative offset by the Department of the Treasury may not realize that they may request waiver at any time.

Response: We agree with the organization. Before we will report information on an SSI overpayment debt to consumer reporting agencies and to the Department of the Treasury for administrative offset, we will send the overpaid individual a notice in accordance with 31 U.S.C. 3711(e) and 3716(a), advising him or her of our plans to take those actions. See 20 CFR 422.305(b) and 422.310(c). In addition to the information required by those provisions, we will include language in the notice advising the individual of his or her right to request that we waive collection of the overpayment. We will inform the individual that if the individual requests waiver within 60 days following the date of the notice, we will not take the actions to report information on the overpayment debt to consumer reporting agencies or to Treasury while we review the matter. Under the usual waiver procedures, the individual has the opportunity for a prerecoumpment personal conference before waiver of collection can be denied. If we then decide that waiver of collection is not appropriate, we will refer the overpayment information to consumer reporting agencies and the Department of the Treasury after we notify the individual of our decision on the waiver request. We do not need to change our regulations in order to adopt these practices.

Comment: One organization stated that SSA should not apply the additional debt collection activities in subpart D of part 422 while an appeal of the overpayment decision or waiver decision is pending at any level of appeal. The organization felt that the reviews done by the field offices (reconsideration and waiver) are cursory because of the lack of staff.

Response: When an individual submits a timely request for reconsideration of the initial overpayment decision and/or requests waiver of collection of the overpayment, we are precluded from taking any recovery action until we render a decision affirming the initial determination and/or (after the individual had the opportunity for a prerecoumpment personal conference) denying the waiver request. See

Califano v. Yamasaki, 442 U.S. 682 (1979). We are not required to refrain from taking collection action concerning a title XVI overpayment debt after a decision is issued on a request for reconsideration of the initial overpayment determination and/or after a determination is made on a request for waiver of recovery of the overpayment. However, under the process adopted to implement these final regulations we would not select a title XVI overpayment debt for referral to the Department of the Treasury or consumer reporting agencies while an administrative appeal regarding that debt is pending at any level of adjudication on the fact or amount of the overpayment or on waiver.

Comment: One organization asserted that there are problems in our administration of our programs that cause overpayments. Among the concerns are staffing in local offices, training for our employees, and documenting and acting on reports of changes potentially affecting eligibility or benefit amounts.

Response: Overpayments of benefits occur for many reasons. We take our responsibility for stewardship of the programs that we administer very seriously. That is why we constantly track our payment accuracy and strive to minimize overpayments. In addition, we are pursuing several initiatives that address the causes of overpayments and other matters described in the concerns and allegations conveyed by the organization. Notwithstanding the reasons for overpayments, we are responsible for recovering as much of the overpaid money as possible consistent with the law.

Comment: One organization stated that SSA should report information to consumer reporting agencies in accordance with the Fair Credit Reporting Act (FCRA). Specifically, SSA should use the credit reporting industry standard Metro2 format for reporting to consumer reporting agencies former SSI recipients who owe delinquent debts. In addition, SSA should use the automated consumer dispute verification process, which is a credit reporting industry facility for reporting and resolving consumer disputes about the credit report. It also encouraged SSA to meet with members of the organization to ensure the consistent reporting of accurate and complete information.

Response: Although the comment is not directly pertinent to these rules, we agree with the organization. We have been reporting delinquent title II overpayment debts to consumer reporting agencies since 1998. We realize the importance of reporting

complete and accurate information to credit repositories. We have always complied with the FCRA. Additionally, SSA has been using both the Metro2 format and the automated consumer dispute verification process suggested by the commenter. In the Fall of 2000, SSA staff met with members of the credit reporting industry at workshops sponsored by them. We also communicate with members of the credit reporting industry throughout the year to remain current on the latest standards.

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order (E.O.) 12866.

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.

Paperwork Reduction Act

These final regulations will impose no reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income)

List of Subjects

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: December 19, 2001.

Jo Anne B. Barnhart,
Commissioner of Social Security.

For the reasons set out in the preamble, we are amending subparts E and N of part 416 and subpart D of part 422 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

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

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

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

2. Section 416.590 is added 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 and 416.580, we may recover an overpayment under title XVI of the Act from you under the rules in subpart D of part 422, provided:

(1) The overpayment occurred after you attained age 18;

(2) You are no longer entitled to benefits under title XVI of the Act; and

(3) Pursuant to paragraph (b) of this section, we have determined that the overpayment is otherwise unrecoverable under section 1631(b) of the Act.

(b) *When we consider an overpayment to be otherwise unrecoverable.* We consider an overpayment under title XVI of the Act to be otherwise unrecoverable under section 1631(b) of the Act if all of the following conditions are met:

(1) 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 903.3.

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

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

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

(5) We cannot recover your overpayment pursuant to § 416.570 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.

3. The authority citation for subpart N of part 416 is revised 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).

4. Section 416.1403 is amended by removing the word “and” at the end of paragraph (a)(16), removing the first period in paragraph (a)(17), removing “See” and adding “see” in its place in the parenthetical in paragraph (a)(17), removing the second period at the end of paragraph (a)(17) and adding a semicolon in its place, and adding new paragraphs (a)(18) and (19) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *
* * * * *

(18) Determining whether we will refer information about your overpayment to a consumer reporting agency (see §§ 416.590 and 422.305 of this chapter); and

(19) Determining whether we will refer your overpayment to the Department of the Treasury for collection by offset against Federal payments due you (see §§ 416.590 and 422.310 of this chapter).

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

5. 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)); 31 U.S.C. 3711(e); 31 U.S.C. 3716.

6. Section 422.301(b) is amended by removing the words “title II” and by removing “§ 404.527” and adding “§§ 404.527 and 416.590” in its place.

7. Section 422.305 is amended by removing the reference to “title II” in the heading and in paragraph (a).

[FR Doc. 01–31897 Filed 12–27–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8973]

RIN 1545–AW09

Allocation of Loss With Respect to Stock and Other Personal Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final Tax Regulations which remove temporary regulations relating to the allocation of loss recognized on the disposition of stock and other personal property. The loss allocation regulations primarily will affect taxpayers that claim the foreign tax credit and that incur losses with respect to personal property and are necessary to modify existing guidance with respect to loss allocation.

DATES: *Effective dates:* These regulations are effective January 8, 2002.

Applicability Dates: For dates of applicability, see §§ 1.865–1(f) and 1.865–2(e).

FOR FURTHER INFORMATION CONTACT: David A. Juster, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On January 11, 1999, final regulations (TD 8805, 1999–1 C.B. 371, the 1999 final regulations) addressing the allocation of loss on the disposition of stock (§ 1.865–2) and amending the foreign tax credit passive limitation grouping rules under § 1.904–4(c) were published in the **Federal Register** (64 FR 1505), together with temporary regulations relating to the allocation of loss on the disposition of personal property other than stock (§ 1.865–1T) and providing a special matching rule with respect to the allocation of certain stock losses (§ 1.865–2T). A notice of proposed rulemaking (REG–106905–98) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (64 FR 1571). No public hearing was requested or held. One written comment responding to the notice of proposed rulemaking was received. After consideration of the comment, the regulations are finalized substantially as proposed, and the corresponding temporary regulations are removed. This Treasury decision also