

This rule will result in a reduction of reporting-hour burden requirements under provisions of the Paperwork Reduction Act of 1995, Public Law 104-13.

List of Subjects in 15 CFR Part 30

Economic statistics, Foreign trade, Exports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Part 30 is amended as follows:

PART 30—FOREIGN TRADE STATISTICS REGULATIONS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301-307; Reorganization Plan No. 5 of 1950 (3 CFR 1949-1953 Comp., p. 1004); Department of Commerce Organization Order No. 35-2A, August 4, 1975, 40 CFR 42765.

Subpart D—Exemptions from the Requirements for the Filing of Shipper's Export Declarations

2. Section 30.56 (b) is revised to read as follows:

§ 30.56 Conditional exemptions.

* * * * *

(b) Tools of trade are usual and reasonable kinds and quantities of commodities and software, and their containers, that are intended for use by individual exporters or by employees or representatives of the exporting company in furthering the enterprises and undertakings of the exporter abroad. Commodities and software eligible for this exemption are those that do not normally require an export license or that are exported without a license as specified in 15 CFR 740.9 of the EAR (15 CFR chapter VII, subchapter C) and are subject to the following provisions:

- (1) Are owned by the individual exporter or exporting company;
- (2) Accompany the individual exporter, employee or representative of the exporting company;
- (3) Are necessary and appropriate and intended for the personal and/or business use of the individual exporter, employee or representative of the company or business;
- (4) Are not for sale; and
- (5) Are returned to the United States no later than one year from the date of export.

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Dated: September 5, 1997.

Martha Farnsworth Riche,

Director, Bureau of the Census.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960-AE67

Supplementary Security Income; Overpayment Recovery by Offset of Federal Income Tax Refund

AGENCY: Social Security Administration

ACTION: Final rules.

SUMMARY: These final regulations govern use of the Federal income tax refund offset program established under section 2653 of the Deficit Reduction Act of 1984, Pub. L. No. 98-369. They permit the recovery of supplemental security income (SSI) overpayments through the withholding of amounts due to former SSI recipients as Federal income tax refunds. In these rules, we reflect the provisions of the statute and explain the procedures that we will follow in referring SSI overpayments to the Department of the Treasury for income tax refund offset (TRO).

EFFECTIVE DATE: These final rules are effective September 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Robert J. Augustine, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-5121. For information on eligibility or claiming benefits, call our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: Section 2653 of the Deficit Reduction Act of 1984, codified at 31 U.S.C. § 3720A and 26 U.S.C. § 6402(d), authorized the Secretary of the Treasury, upon receiving notice from a Federal agency that a named individual owes the agency a past-due, legally enforceable debt, to withhold all or a part of any income tax refund that is due to the debtor and pay the amount withheld to the agency. Section 2653 specifically precluded the use of these procedures to recover overpayments of Social Security benefits paid under title II of the Social Security Act (the Act). Under 31 U.S.C. § 3720A, a Federal agency that is owed a past-due, legally enforceable debt by an individual shall notify the Secretary of the Treasury of the debt in accordance with regulations issued by the Department of the Treasury. The applicable Treasury regulations are codified at 31 CFR Part 285 (62 FR 34175). Before an agency may refer a debt to Treasury, it must, under 31 U.S.C. § 3720A, take the following actions: (1) notify the debtor that the agency proposes to refer the debt for tax refund offset; (2) give the debtor at least

60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; (3) consider all evidence the debtor presents in determining that all or a part of the debt is past-due and legally enforceable; and (4) satisfy any other conditions that the Secretary of the Treasury may prescribe to ensure that the agency's findings are valid and that the agency has made reasonable efforts to obtain the payment of the debt.

Although section 2653 gave us the authority to use the TRO provisions to recover overpayments made to recipients of SSI payments under title XVI of the Act, we elected not to do so at that time because we did not think it appropriate to use a procedure we were precluded from using to recover title II overpayments to recover overpayments made under the needs-based title XVI program.

Section 5129 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) removed the restriction on using the TRO provisions to recover title II overpayments. Section 5129 added several additional conditions to the referral of title II overpayments for offset. These included: (1) the overpaid individual may not be currently entitled to Social Security benefits under title II of the Act; (2) the notice that we send to the overpaid individual concerning our intent to seek the offset must describe the conditions under which we are required to waive recovery of an overpayment under section 204(b) of the Act; and (3) if the overpaid individual requests that we waive recovery of the overpayment within the 60-day period allowed under the program for presenting evidence that the debt is not past due or not legally enforceable, we may not certify the overpayment to Treasury without first issuing a determination on the waiver request. We issued final regulations on October 21, 1991 (56 FR 52466) implementing these statutory changes.

Since that time, we have been modifying our computer systems to extend the TRO provisions to various subgroups of former title II program beneficiaries. We now have the necessary systems modifications in place to permit us to extend the TRO provisions to the title XVI program, as well. These title XVI rules closely follow the existing rules for the title II program, including the same conditions that the OBRA 90 legislation required for the title II program. That is, these rules provide that: (1) the overpaid individual may not currently be eligible to receive SSI payments under title XVI of the Act; (2) the notice we send to the overpaid individual concerning our

intent to seek offset must describe the conditions under which we are required to waive recovery of an overpayment under section 1631(b)(1)(B) of the Act; and (3) if the overpaid individual requests that we waive recovery of the overpayment within the 60-day period allowed under the program for presenting evidence that the debt is not past due or legally enforceable, we may not certify the overpayment to Treasury without first issuing a determination on the waiver request.

On June 23, 1997, we published proposed rules in the **Federal Register** at 62 FR 33778 and provided a 30-day period for interested individuals to comment. We received no comments. We are, therefore, publishing these rules essentially unchanged.

Explanation of Changes to Regulations

We are adding new §§ 416.580 through 416.586 to our regulations to explain our rules on recovery of title XVI overpayments through the withholding of amounts due to former SSI recipients as Federal income tax refunds. Section 416.580 provides general information about the tax refund offset program and explains that we may pursue collection of an overpayment through this program if the overpaid individual is not eligible for benefits. This new regulatory section also explains that we will not initiate the tax refund offset to collect an overpayment more than 10 years after our right to collect the overpayment first accrued, thereby making this section consistent with proposed TRO regulations for title II (62 FR 42439) and the applicable Department of the Treasury regulations (31 CFR Part 285).

Section 416.581 explains that, before we refer an overpayment to the Treasury Department, we will notify the overpaid individual of our intention to do so. This notice will advise the individual of the amount of the overpayment and the conditions under which we will waive recovery of an overpayment under section 1631(b)(1)(B) of the Act. The notice will also explain that unless, within 60 days from the date of our notice, the overpaid individual repays the overpayment, presents evidence that the overpayment is not past due or not legally enforceable, or requests a waiver of the overpayment, we will refer the overpayment to the Department of the Treasury to offset any tax refund payable to the overpaid individual. The notice additionally will advise the individual of the right to inspect and copy our records related to the overpayment.

Sections 416.582 and 416.583 explain our procedures for reviewing and

making findings when an overpaid individual submits evidence that an overpayment is not past due or not legally enforceable.

Section 416.584 explains our procedures for the overpaid individual who wishes to review our records related to the overpayment.

Section 416.585 explains that if, within 60 days after the date of our notice of intent to seek an offset, an individual presents evidence that the overpayment is not past due or not legally enforceable or asks us to waive collection of the overpayment, we will suspend our referral of the overpayment to the Department of the Treasury for offset until we issue written findings that affirm that all or a part of the overpayment is past due and legally enforceable and, where appropriate, determine that waiver of the overpayment is unwarranted.

Section 416.586 sets out our intention, in cases where a tax refund is insufficient in a tax year to satisfy the amount of the overpayment, to continue to offset in succeeding years any amount of the overpayment that remains, as long as the remainder of the overpayment continues to meet the criteria for referral under the tax refund offset program in succeeding years. This differs from our title II rules on TRO which provide that, where a tax refund is insufficient to recover an overpayment in a given year, we will recertify the remainder for offset in the following year. This proposed section reflects the fact that the Department of the Treasury now has the systems capability to retain the overpaid amount in their records for offset against future tax refunds the individual may be due. On August 7, 1997, we published separate proposed rules dealing with title II overpayments that would make this same change in the title II TRO rules (62 FR 42439).

We are also adding to § 416.1403(a) a new paragraph (17) that includes in the list of administrative actions that are not initial determinations findings on whether we can collect an SSI overpayment by using the Federal income tax refund offset procedure. 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, and they are not subject to judicial review.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Pub. L. 103-296, the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5

U.S.C. 553 in the development of its regulations. The APA provides in 5 U.S.C. 553(d)(3) for an exception to the requirement of publication of a substantive rule 30 days before its effective date for good cause. In order to use the TRO provisions to recover title XVI overpayments from income tax refunds payable in 1998, these final rules must be effective in early October 1997, so that we can begin notifying individuals that we propose to refer their overpayments to the Department of the Treasury for offset. Any delay in sending the notices and referring these debts to Treasury will result in lost program savings of up to \$6 million. These final rules benefit the public by allowing for substantial program savings, while adequately safeguarding the rights of former SSI recipients by giving overpaid individuals the right to repay the amount, present evidence that the overpayment is not past due or not legally enforceable, or request us to waive collection of the overpayment, before referral to the Department of the Treasury is made. We will issue written findings affirming that all or part of the overpayment is past due and legally enforceable and, where appropriate, determine that waiver of the overpayment is unwarranted before making such a referral. In light of these considerations, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, 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 additional reporting or recordkeeping requirements requiring OMB clearance. (Catalog of Federal Domestic Assistance Programs: No. 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs,

Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: September 12, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subparts E and N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended to read as follows:

1. The authority citation for subpart E is revised 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. Sections 416.580, 416.581, 416.582, 416.583, 416.584, 416.585, and 416.586 are added to subpart E to read as follows:

§ 416.580 Referral of overpayments to the Department of the Treasury for tax refund offset—General.

(a) The standards we will apply and the procedures we will follow before requesting the Department of the Treasury to offset income tax refunds due taxpayers who have an outstanding overpayment are set forth in §§ 416.580 through 416.586 of this subpart. These standards and procedures are authorized by the Deficit Reduction Act of 1984 [31 U.S.C. § 3720A], as implemented through Department of the Treasury regulations at 31 CFR 285.2.

(b) We will use the Department of the Treasury tax refund offset procedure to collect overpayments that are certain in amount, past due and legally enforceable, and eligible for tax refund offset under regulations issued by the Secretary of the Treasury. We will use these procedures to collect overpayments only from individuals who are not currently entitled to monthly supplemental security income benefits under title XVI of the Act. We will refer an overpayment to the Secretary of the Treasury for offset against tax refunds no later than 10 years after our right to collect the overpayment first accrued.

§ 416.581 Notice to overpaid individual.

A request for reduction of a Federal income tax refund will be made only after we determine that an amount is owed and past due and provide the overpaid individual with 60 calendar days written notice. Our notice of intent to collect an overpayment through Federal income tax refund offset will state:

(a) The amount of the overpayment;

(b) That unless, within 60 calendar days from the date of our notice, the overpaid individual repays the overpayment, sends evidence to us at the address given in our notice that the overpayment is not past due or not legally enforceable, or asks us to waive collection of the overpayment under section 1631(b)(1)(B) of the Act, we intend to seek collection of the overpayment by requesting that the Department of the Treasury reduce any amounts payable to the overpaid individual as refunds of Federal income taxes by an amount equal to the amount of the overpayment;

(c) The conditions under which we will waive recovery of an overpayment under section 1631(b)(1)(B) of the Act;

(d) That we will review any evidence presented that the overpayment is not past due or not legally enforceable;

(e) That the overpaid individual has the right to inspect and copy our records related to the overpayment as determined by us and will be informed as to where and when the inspection and copying can be done after we receive notice from the overpaid individual that inspection and copying are requested.

§ 416.582 Review within SSA that an overpayment is past due and legally enforceable.

(a) *Notification by overpaid individual.*—An overpaid individual who receives a notice as described in § 416.581 of this subpart has the right to present evidence that all or part of the overpayment is not past due or not legally enforceable. To exercise this right, the individual must notify us and present evidence regarding the overpayment within 60 calendar days from the date of our notice.

(b) *Submission of evidence.* The overpaid individual may submit evidence showing that all or part of the debt is not past due or not legally enforceable as provided in paragraph (a) of this section. Failure to submit the notification and evidence within 60 calendar days will result in referral of the overpayment to the Department of the Treasury, unless the overpaid individual, within this 60-day time period, has asked us to waive collection of the overpayment under section 1631(b)(1)(B) of the Act and we have not yet determined whether we can grant the waiver request. If the overpaid individual asks us to waive collection of the overpayment, we may ask that evidence to support the request be submitted to us.

(c) *Review of the evidence.* After a timely submission of evidence by the overpaid individual, we will consider

all available evidence related to the overpayment. We will make findings based on a review of the written record, unless we determine that the question of indebtedness cannot be resolved by a review of the documentary evidence.

§ 416.583 Findings by SSA.

(a) Following the review of the record, we will issue written findings which include supporting rationale for the findings. Issuance of these findings concerning whether the overpayment or part of the overpayment is past due and legally enforceable is the final Agency action with respect to the past-due status and enforceability of the overpayment. If we make a determination that a waiver request cannot be granted, we will issue a written notice of this determination in accordance with the regulations in subpart E of this part. Our referral of the overpayment to the Department of the Treasury will not be suspended under § 416.585 of this subpart pending any further administrative review of the waiver request that the individual may seek.

(b) Copies of the findings described in paragraph (a) of this section will be distributed to the overpaid individual and the overpaid individual's attorney or other representative, if any.

(c) If the findings referred to in paragraph (a) of this section affirm that all or part of the overpayment is past due and legally enforceable and, if waiver is requested and we determine that the request cannot be granted, we will refer the overpayment to the Department of the Treasury. However, no referral will be made if, based on our review of the overpayment, we reverse our prior finding that the overpayment is past due and legally enforceable or, upon consideration of a waiver request, we determine that waiver of our collection of the overpayment is appropriate.

§ 416.584 Review of our records related to the overpayment.

(a) *Notification by the overpaid individual.* An overpaid individual who intends to inspect or copy our records related to the overpayment as determined by us must notify us stating his or her intention to inspect or copy.

(b) *Our response.* In response to a notification by the overpaid individual as described in paragraph (a) of this section, we will notify the overpaid individual of the location and time when the overpaid individual may inspect or copy our records related to the overpayment. We may also, at our discretion, mail copies of the

overpayment-related records to the overpaid individual.

§ 416.585 Suspension of offset.

If, within 60 days of the date of the notice described in § 416.581 of this subpart, the overpaid individual notifies us that he or she is exercising a right described in § 416.582(a) of this subpart and submits evidence pursuant to § 416.582(b) of this subpart or requests a waiver under § 416.550 of this subpart, we will suspend any notice to the Department of the Treasury until we have issued written findings that affirm that an overpayment is past due and legally enforceable and, if applicable, make a determination that a waiver request cannot be granted.

§ 416.586 Tax refund insufficient to cover amount of overpayment.

If a tax refund is insufficient to recover an overpayment in a given year, the case will remain with the Department of the Treasury for succeeding years, assuming that all criteria for certification are met at that time.

3. The authority citation for subpart N 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); 31 U.S.C. 3720A.

4. Section 416.1403 is amended by deleting the word "and" at the end of paragraph (a)(15), replacing the period at the end of paragraph (a)(16) with "; and", and adding paragraph (a)(17) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(17) Findings on whether we can collect an overpayment by using the Federal income tax refund offset procedure. (See § 416.583).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH108-1a; FRL-5894-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves a State implementation plan (SIP) revision submitted by the State of Ohio on

January 3, 1997, which changed the sulfur dioxide limits for the Procter and Gamble Company, Hamilton County, in Ohio Administrative Code (OAC) 3745-18-37. The revised limits provide an actual heat input cap of 922 million British thermal units (BTU) per hour on the combination of all of the Procter and Gamble Company boilers identified in OAC 3745-18-37(GG), to allow for simultaneous operation.

DATES: The direct final approval is effective on November 21, 1997 unless significant adverse or critical comments which have not been previously addressed are received by October 22, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the revision request are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone John Paskevicz at (312) 886-6084 before visiting the Region 5 office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz at (312) 886-6084.

SUPPLEMENTARY INFORMATION:

I. Background

On May 15, 1996, the EPA published a SIP revision completing the approval of the Hamilton County, Ohio sulfur dioxide (SO₂) implementation plan. This plan was approved because it was demonstrated to provide for attainment and maintenance of the SO₂ national ambient air quality standard in Hamilton County. The plan included all major SO₂ sources in the County and listed out each of the appropriate operating parameters in OAC 3745-18-37, as needed to assure attainment and maintenance of the NAAQS as estimated using a rough terrain dispersion model.

On January 3, 1997, Ohio EPA submitted for approval a revision to the Hamilton County SO₂ SIP requesting changes to OAC 3745-18-37(GG), for the air emission sources owned and operated by Procter and Gamble Company. This revision was requested because the original SIP for Procter and Gamble did not provide for the simultaneous operation of the main power boilers while backup boilers are brought on line. The original SIP did not

allow for flexibility in operation in the event the main power boilers need to be shut down for maintenance, repaired or operated simultaneously.

The four Procter and Gamble boilers are listed in the documentation to the SIP submittal as having a total maximum heat input capacity of 1098 million BTU/hour. Boiler numbers 1 and 2 are limited to emissions of a maximum of 1.1 pounds of SO₂ per million BTU from each boiler. Boiler number 3 is limited to emissions of a maximum of 1.50 pounds of SO₂ per million BTU actual heat input and average operating rate of 277 million BTU per hour for any calendar day. And boiler number 4 is limited to emissions of a maximum of 2.0 pounds of SO₂ per million BTU using an average operating rate of 450 million BTU per hour for any calendar day.

II. Review of State Submittal

In this submittal, Ohio requests a revision to OAC 3745-18-37(GG) Procter and Gamble sulfur dioxide limits. The revision changes the limits to allow for simultaneous operation of all of the boilers. The submittal provides technical support and includes some of the same material provided for the Hamilton County SIP review submitted in 1993.

In the previous review of the Hamilton County SO₂ SIP, Ohio looked at each of the four boilers at Procter and Gamble individually and made judgments regarding impact at full load of fuel sulfur content on air quality concentrations. Ohio concluded that the two backup boilers could not operate on oil when the main power boilers, using coal, were in operation. Therefore, the backup boilers were not allowed to emit SO₂ and were given a 0.0 pounds of SO₂ per million BTU limit when the main boilers were operating, as presumed, at full load.

In developing this new revision, the approach was to develop a limit for boiler operation in a worst case situation by operating all boilers at the maximum level. The backup boilers with short stacks were operated fully on and then the main boilers, with taller stacks, were brought on. From the State's analysis, Ohio established an allowable cap for all four boilers, based on a concentration to capacity ratio to an operating rate of 922 million BTU per hour daily average. Thus, when in operation, boilers number 1 and 2 are to be limited to a maximum of 1.1 pounds of SO₂ per million BTU actual heat input from each boiler; Boiler number 3 is to be limited to a maximum of 1.50 pounds of SO₂ per million BTU actual heat input at an average operating rate