the scalp. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents, in connection with the sale of the System, provide prospective purchasers with a separate disclosure sheet containing the information required in the immediately preceding Paragraph of this Order, Subparagraphs One (1) through Four (4) thereof, and that respondents require that, prior to executing any contract to purchase said System, such propective purchasers, sign and date the disclosure sheet after the sentence, "I have read the foregoing disclosures and understand what they mean," and that Orlando of Calabria, Inc., provide a copy of said disclosure sheet to the customers and retain such signed disclosure sheet for at least three years.

It is further ordered, That, in connection with the sale of the System, no contract for application of the System shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the System was executed, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of the System, that the purchaser may rescind or cancel any obligation incurred by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day, excluding Sundays and legal holidays, after the day on which said contract for application of the System was executed.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day on which said contract for application of the System was executed.

It is further ordered, That respondents, in connection with the advertising, offering for sale, or distribution of the System, serve a copy of this Order upon each present and every future licensee or franchisee, and upon each physician participating in application of respondents' System, and obtain written acknowledgment of the receipt thereof; and that respondents obtain from each present and future licensee or franchisee an agreement in writing, (1) to abide by the terms of this Order, and (2) to cancellation of their license or franchise for failure to do so; and that respondents cancel the license or franchise of any licensee or franchisee that fails to abide by the terms of this Order. Respondents shall retain such acknowledgments and agreements for so long as such persons or firms continue to participate in the application or sale of respondents' System.

It is further ordered, That respondents, in connection with the advertising, offering for sale, sale, or distribution of the System, forthwith distribute a copy of this Order to each of their operating divisions or departments.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, licensees, or franchisees, or any other change in the corporation which may affect compliance obligations arising out of the Order.

It is further ordered, That in the event that the corporate respondent merges with another corporation or transfers all or a substantial part of its business or assets to any other corporation or to any other person, said respondent shall require such successor or transferee to file promptly with the Commission a written agreement to be bound by the terms of this Order; *provided* That if said respondent wishes to present to the Commission any reasons why said Order should not apply in its present form to said successor or transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

It is further ordered, That the individual respondent Orlando Jiacinto promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further understood that nothing contained in this Order shall be construed in any way to annul, invalidate, repeal, terminate, modify or exempt respondents from complying with agreements, orders or directives of any kind obtained by any other agency or act as a defense to actions instituted by municipal or state regulatory agencies.

Nothing in this Order shall be construed to imply that any past or future conduct of respondents is subject to and complies with the rules and regulations of, or the statutes administered by the Federal Trade Commission.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

The decision and order was issued by the Commission September 15, 1975.

CHARLES A. TOBIN,
Secretary.

[FR Doc.75-27298 Filed 10-9-75;8:45 am]

[Docket C-1110]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Winn-Dixie Stores, Inc.

For codification under Part 13, see FR 10205.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18)

In the matter of Winn-Dixie Stores, Inc.

Order modifying an earlier order dated Sept. 14, 1966, 70 F.T.C. 611, 31 FR 13080, modified June 24, 1968, 73 F.T.C. 1056, 33 FR 10205, pursuant to order of the United States District Court for the Middle District of Florida, 377 F. Supp. 733, 9 S. & D. 1016, by requiring prior Commission approval of food store acquisitions by respondent only in those States or subdivisions where respondent presently operates such stores or departments.

The order reopening proceeding and modifying order to cease and desist is as follows: [1]

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND DESIST

The Federal Trade Commission, having issued a Consent Order herein on September 14, 1966, and having modified said Consent Order on June 24, 1968, and the United States District Court for the Middle District of Florida having enjoined the Commission from failing to reopen the consent order proceeding for the purpose of modifying the order in accordance with the order entered by the Commission against the Kroger Company in FTC Docket No. C-2067; now therefore,

It is ordered, That this matter be, and it hereby is reopened.

It is further ordered, That the order issued in this matter on September 14, 1966, as modified on June 24, 1968, be, and it hereby is, modified to read as follows:

It is ordered, That: (A) For a period of ten (10) years from September 14, 1966, to the extent specified in subparagraphs (B) and (C) below, Winn-Dixie Stores, Inc., shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, except with the prior approval of the Commission upon written application, the whole or any part of any grocery store (an establishment classification in Industry No. 5411,

[1] Copies of the order reopening proceedings and modifying order to cease and desist filed with original documents.

Standard Industrial Classification Manual, 1967 revision, or a grocery department in a non-food store, where such acquisition involves:

(1) Five (5) or more grocery stores or grocery departments in non-food stores, or

(2) Annual grocery store or grocery department sales of more than five million dollars ($5,000,000), or

(3) Combined (Winn-Dixie and the grocery stores or grocery departments to be merged or acquired) grocery store or grocery department sales of more than five percent (5 percent) of total grocery or food store sales in any city or county in the United States.

(B) The prohibition contained in subparagraph (A) shall apply to any merger or acquisition of grocery stores or grocery departments in non-food stores located in the following described areas of the United States: The States of Alabama, Florida, Georgia, Kentucky, North Carolina and South Carolina; that portion of the State of Tennessee east of the 86th meridian, that portion of the State of Virginia west of the 78th meridian and south of the 38th parallel; the Parish of Concordia in the State of Louisiana and the Counties of Adams, Lincoln, Pike and Forrest in the State of Mississippi and those portions of the States of Louisiana and Mississippi south of the 31st parallel; and that portion of Mississippi east of the 89th meridian; and that portion of the State of Indiana south of the 39th parallel.

(C) The prohibition contained in subparagraph (A) shall also apply to any merger or acquisition of grocery stores or grocery departments in non-food stores located in any city or county in those portions of the United States not described in subparagraph (B), if Winn-Dixie is then operating any grocery stores or grocery departments in non-food stores in such city or county.

(D) For a period of ten (10) years from September 14, 1966, Winn-Dixie shall not merge with or acquire, directly or indirectly, through subsidiaries or in any other manner, any grocery store or grocery department in a non-food store for which prior approval is not required pursuant to subparagraphs (A)–(C) without providing sixty (60) days' prior notification to the Commission, or, when the time schedule does not permit such notification, without providing a letter to the Commission within ten (10) days after the agreement or understanding in principle is reached, stating that the time schedule does not permit sixty (60) day's prior notification and setting forth the reasons why such prior notification cannot be made; *provided, however,* That for mergers or acquisitions involving not more than four (4) grocery stores or grocery departments in non-food stores and representing annual grocery store or grocery department sales of not more than five million dollars ($5,000,000), notification to the Commission shall be provided within thirty (30) days following the consummation of such merger or acquisition.

It is further ordered, That within (30) days from the effective date of this Order, and annually thereafter until it has fully complied with this Order, Winn-Dixie Stores, Inc., shall submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this Order to each person having authority to approve grocery store acquisitions and mergers.

The order reopening proceeding and modifying order to cease and desist issued September 10, 1975.

CHARLES A. TOBIN,
Secretary.

[FR Doc.75-27299 Filed 10-9-75;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[TD 75-254]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Supplies and Equipment for Aircraft

On July 29, 1975, Treasury Decision 75-183 was published in the FEDERAL REGISTER (40 FR 31752) amending paragraph (f) of § 10.59 of the Customs Regulations (19 CFR 10.59(f)) by adding Iran to the list of nations set forth in that paragraph. Aircraft registered in the nations set forth in that list are entitled to free withdrawal privileges reciprocal to those found by the Secretary of Commerce to be extended by those nations to aircraft registered in the United States. The free withdrawal privileges were extended to aircraft registered in Iran and engaged in foreign trade effective as of April 29, 1975, the date of the letter to the Secretary of the Treasury from the Secretary of Commerce announcing his finding that the Government of Iran accords to aircraft registered in the United States privileges with respect to exemption from the payment of Customs duties (and internal revenue taxes imposed by reason of importation) on aircraft supplies substantially similar to those described in sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

Also on July 29, 1975, Treasury Decision 75-184 was published in the FEDERAL REGISTER (40 FR 31753) amending paragraph (f) of § 10.59 of the Customs Regulations (19 CFR 10.59(f)) by adding Morocco to the list of nations set forth in that paragraph. The free withdrawal privileges were extended to aircraft registered in Morocco and engaged in foreign trade also effective as of April 29, 1975, the date of the letter to the Secretary of the Treasury from the Secretary of Commerce announcing his finding that the Government of Morocco accords to aircraft of United States registry privileges substantially similar to those described in sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

The Secretary of the Treasury has subsequently been advised by the Secretary of Commerce that the effective date of his finding relative to the Government of Iran is April 22, 1975, and that the effective date of his finding relative to the Government of Morocco is March 27, 1975. Consequently, free withdrawal privileges are extended to aircraft registered in Iran and engaged in foreign trade effective as of April 22, 1975, and to aircraft registered in Morocco and engaged in foreign trade effective as of March 27, 1975. Treasury Decisions 75-183 and 75-184 are amended accordingly.

§ 10.59 [Amended]

Accordingly, paragraph (f) of § 10.59 of the Customs Regulations is amended by deleting "75-183" in the column headed "Treasury Decision(s)" opposite "Iran" in the list of nations in that paragraph and by inserting in its place the number of this Treasury Decision. Similarly, "75-184" is deleted opposite "Morocco" in the list of nations in that paragraph and the number of this Treasury Decision inserted in its place.

(Secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759 (19 U.S.C. 1309, 1317, 1624))

As there is a statutory basis for the exemption from Customs duties on withdrawal of supplies by aircraft when reciprocity has been established, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

W. A. MAGEE, Jr.,
Acting Commissioner of Customs.

Approved: October 2, 1975.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[FR Doc.75-27309 Filed 10-9-75;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED (1974——)

Subpart E—Payment of Benefits, Overpayments and Underpayments

On January 16, 1974, a notice of proposed rule making was published in the FEDERAL REGISTER (39 FR 2012) relating to underpayments and overpayments under the supplemental security income program. The proposed rules would implement section 1631(b) of the Social Security Act (42 U.S.C. 1383(b)), which directs the Secretary to make proper adjustment or recovery when more or less than the correct amount of benefits has been paid with respect to any individual.

The Secretary is further directed to avoid penalizing an overpaid individual or his eligible spouse who is without fault in connection with the overpayment, if adjustment or recovery would defeat the purpose of title XVI of the Social Security Act, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of title XVI.

During the period for comments four letters were received from the public in response to the proposal. The two principal comments dealt with the proposed 1-year limitation on payment of underpayments in § 416.538(b), and the material in § 416.542(b) concerning payment of underpayments when the underpaid recipient is dead. There follows a discussion of the comments received from the public and the disposition thereof.

The proposed § 416.538(b) provided that an underpayment would not exceed an amount equal to the difference between the amount of the last 12 months' benefits that should have been paid to the underpaid individual and the amount of benefits that were actually paid for such period. It was felt that, because the supplemental security income program is based on need, the unrestricted payment of underpayments would be inconsistent with program purposes. The comments questioned both the fairness and legality of the provisions, particularly in view of the statement that persons have a legal right to supplemental security income payments. In view of these comments, the proposed limitation was eliminated. The period for which underpayments can be made is, of course, subject to the rules on administrative finality and reopening of initial determinations (see Subpart N).

With respect to the limitation contained in § 416.542(b) on payment of an underpayment due a deceased individual, the comments said the prohibition against paying underpayments to the estate of the recipient seemed to violate the spirit of the Social Security Act and might deprive an individual responsible for the medical or burial costs of the deceased underpaid recipient of funds to pay them. However, section 1631(b) of the Social Security Act authorizes the payment of an underpayment only to a surviving spouse eligible for supplemental security income and living with the individual when he died.

The other public comment dealt with an alleged failure to provide notice of the overpayment determination before adjusting payments to recover the overpayment. A new § 416.558, Notices Relating to Overpayments and Underpayments, has been added. It states that recovery by adjustment may be initiated only after notice of the overpayment determination has been given and an opportunity has been provided to appeal the determination and to request waiver of repayment. This section also specifies that notice of a determination of waiver will be provided in accordance with § 416.1404. Where waiver is denied and recovery will be accomplished through the adjustment of payments, advance notice must be given.

Examples have been added in § 416.554 to define the concept of "against equity and good conscience" more fully, and the concept of "defeat the purpose of title XVI" has been defined in § 416.553 in more specific terms. Certain other sections have been reworded for clarity.

Changes have been made at several places in these regulations to clarify the Social Security Administration's policies on the circumstances under which an underpayment or overpayment exists and the period for which such overpaid or underpaid amounts will be determined. Thus, in determining the existence of an overpayment, language has been added to § 416.537(a) to state expressly that no payment has been made where the payment is not received by the individual to whom the check is payable or where the payment is returned to the Social Security Administration.

Concerning the amount of any overpayment or underpayment, the "period" for which such amounts will be determined, as used in the proposed § 416.538, has been defined as beginning with the first month of any quarter for which there is a difference between the amount paid and the amount due and as ending with the month immediately preceding the calendar quarter in which the initial determination of overpayment or underpayment is made. This makes it clear that with respect to any period a person cannot be both overpaid and underpaid. The regulation also specifically provides that, if it appears that less than the proper amount has been paid for one or more months in a period and more than the correct amount has been paid for other months, the determination and payment of the underpayment discovered in any quarter cannot be delayed unless the possible overpayment situation will be resolved before the close of the following quarter.

The proposed § 416.570 has been clarified to show that the withholding of only part of a person's payment will be the usual approach to recovery where eligibility for payment continues. Based on this clarification the proposed § 416.572 has been deleted. In addition, although the Social Security Administration will not initiate the recovery of a title II or title XVIII overpayment by withholding title XVI payments or the recovery of a title XVI overpayment by withholding title II benefits for which the person is eligible, the proposed § 416.570 now shows that a person from whom refund of an overpayment is sought may request that such withholding be effectuated to recover the overpayment. However, in no case shall an overpayment of supplemental security income benefits be adjusted against title XVIII benefits.

Since the rules relating to the existence of and periods for determining overpayments and underpayments, and for adjusting overpayments after the appropriate procedural steps have been taken, reflect the existing practice of the Social Security Administration and are essential to the operation of this aspect of the supplemental security income program, these regulatory sections are being published in final form. However, comments concerning these rules may be submitted and will be carefully considered in connection with any additional revisions of this portion of the regulations which may be made. Any comments should be submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Public Affairs, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201.

Accordingly, with these changes and additions, the proposed amendments are adopted as set forth below.

(Secs. 1102, 1631(b), 49 Stat. 647, as amended, 86 Stat. 1476; 42 U.S.C. 1302, 1383(b))

Effective date. These amendments shall become effective October 10, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

Dated: August 13, 1975.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: September 29, 1975.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended by adding to Subpart E new §§ 416.533–416.570 to read as follows:

Subpart E—Payment of Benefits, Overpayments, and Underpayments

Sec.
416.533 Transfer or assignment of benefits.
416.535 Underpayments and overpayments—general.
416.536 Underpayments—defined.
416.537 Overpayments—defined.
416.538 Amount of underpayment or overpayment.
416.542 Underpayments—to whom payable.
416.543 Underpayments—used to reduce overpayments.
416.550 Waiver of adjustment or recovery of overpayment—when applicable.
416.551 Waiver of adjustment or recovery of overpayment—effect of.
416.552 Waiver of adjustment or recovery of overpayment—without fault.
416.553 Waiver of adjustment or recovery of overpayment—defeat the purpose of title XVI.
416.554 Waiver of adjustment or recovery of overpayment—against equity and good conscience.
416.555 Waiver of adjustment or recovery of overpayment—impede administration.
416.558 Notices relating to overpayments and underpayments.
416.560 Recovery—refund.
416.570 Adjustment—general rule.

Subpart E—Payment of Benefits, Overpayments, and Underpayments

§ 416.533 Transfer or assignment of benefits.

The Social Security Administration shall not certify payment of supplemental security income benefits to a transferee or assignee of a person eligible for such benefits under the Act. The Social Security Administration shall not certify payment of supplemental security income benefits to any person claiming such payment by virtue of an execution, levy, attachment, garnishment, or other legal process or by virtue of any bankruptcy or insolvency proceeding against or affecting the person eligible for benefits under the Act.

§ 416.535 Underpayments and overpayments—general.

Pursuant to section 1631(b) of the Act, an underpayment adjustment as set forth in §§ 416.542–416.543 is made when a recipient received less than the correct amount of supplemental security income benefits; and an overpayment adjustment as set forth in § 416.570 is made when a recipient received more than the correct amount of supplemental security income benefits.

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed application (where required) for benefits and met all conditions of eligibility therefor. An underpayment, including any amounts of State supplementary payments which are due and administered by the Social Security Administration, is:

(a) Nonpayment, where payment for a quarter (or month, where applicable) was due but was not made, and

(b) Payment of less than the amount due for any quarter (or month, where applicable).

§ 416.537 Overpayments—defined.

(a) *Overpayments.* As used in this subpart, the term "overpayment" means payment of more than the amount due for any period, including any amounts of State supplementary payments which are due and administered by the Social Security Administration. For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury, except that payment has not been made where payment has not been received by the designated payee, or where payment was returned.

(b) *Actions which are not overpayments*—(1) *Presumptive disability.* Any payment made for any month, including an advance payment of benefits pursuant to § 416.520, is not an overpayment to the extent it meets the criteria for payment pursuant to § 416.951.

(2) *Penalty.* The imposition of a penalty pursuant to § 416.713 is not an adjustment of an overpayment and is imposed only against any amount due the penalized recipient, or, after death, any amount due the deceased which otherwise would be paid to a surviving eligible spouse.

§ 416.538 Amount of underpayment or overpayment.

The amount of an underpayment or overpayment is the difference between the amount paid to a recipient for a period and the amount of payments for which such recipient actually was eligible for such period. The period with respect to a determination of the fact or amount of any overpayment or underpayment begins with the first month of any quarter for which there is a difference between the amount paid and the amount due and ends with the month immediately preceding the calendar quarter in which the initial determination of overpayment or underpayment is made except that the period for an overpayment originally detected in 1974 shall not end later than December 31, 1974. With respect to the period established, there can be no underpayment to a recipient or his eligible spouse if more than the correct amount payable under title XVI of the Social Security Act has been paid (whether or not adjustment or recovery of any overpayment for that period has been waived under the provisions of §§ 416.550–416.555). A subsequent initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that the basis of the prior overpayment remains the same. Where an apparent overpayment has been detected but determination of the overpayment has not been made (see § 416.558(a)), a determination and payment of an underpayment which is otherwise due cannot be delayed unless a determination with respect to the apparent overpayment can be made before the close of the ouarter following the quarter in which the underpaid amount was discovered. Further, any underpayment amount apparently due the surviving eligible spouse on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient under section 1631(e) of the Act (see § 416.537(b)(2)).

§ 416.542 Underpayments—to whom payable.

(a) *Underpaid recipient alive—underpayment payable.* If an underpaid recipient is alive, the amount of any underpayment due him will be paid to him in a separate payment or by increasing the amount of his monthly payment.

(b) *Underpaid recipient dead—underpayment payable.* If a recipient dies before the amount due him has been paid to him, or before he endorses the check representing the correct payment, the amount of the underpayment may be paid only to his surviving spouse and then only if such spouse was eligible for supplemental security income benefits and was living with the underpaid recipient when he died or was not separated from him for 6 months at the time of death. No underpayment may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, or to any survivor other than the living-with eligible spouse.

§ 416.543 Underpayments—used to reduce overpayments.

Any underpayment for which an individual is eligible is used to reduce any overpayment determined to exist (see § 416.558) for a different period unless recovery of such overpayment has been waived under the provisions of §§ 416.550–416.555. Similarly, when an underpaid recipient dies, priority consideration is given to applying the underpayment due the surviving eligible spouse against any overpayment to such surviving spouse unless recovery of such overpayment has been waived under the provisions of §§ 416.550–416.555.

Example. A husband and wife who were living together were eligible for payments under title XVI. The wife dies at a time when she was underpaid $25 and the husband was overpaid $75. The $25 underpayment due the surviving husband is applied to reduce his own overpayment to $50.

§ 416.550 Waiver of adjustment or recovery—when applicable.

Waiver of adjustment or recovery of an overpayment of supplemental security income benefits is applicable (see section 1631(b) of the Act) when:

(a) The overpaid individual was without fault in connection with an overpayment, and

(b) Adjustment or recovery of such overpayment would either:

(1) Defeat the purpose of title XVI, or

(2) Be against equity or good conscience, or

(3) Impede efficient or effective administration of title XVI due to the small amount involved.

§ 416.551 Waiver of adjustment or recovery—effect of.

Waiver of adjustment or recovery of an overpayment from the overpaid person himself (or, after his death, from his estate) frees him and his eligible spouse from the obligation to repay the amount of the overpayment covered by the waiver. Waiver of adjustment or recovery of an overpayment from anyone other than the overpaid person himself or his estate (e.g., a surviving eligible spouse) does not preclude adjustment or recovery against the overpaid person or his estate.

Example: The recipient was overpaid $390. It was found that the overpaid recipient was eligible for waiver of adjustment or recovery of $260 of that amount, and such action was taken. Only $130 of the overpayment remained to be recovered by adjustment, refund, or the like.

§ 416.552 Waiver of adjustment or recovery—without fault.

"Without fault" relates only to the situation of the individual seeking relief

from adjustment or recovery of an overpayment. The overpaid individual (and any other individual from whom the Social Security Administration seeks to recover the overpayment) is not relieved of liability and is not "without fault" solely because the Social Security Administration may have been at fault in making the overpayment. In determining whether an individual is without fault, the "fault" of the overpaid person and the "fault" of the individual seeking relief under the waiver provision are considered. Whether an individual is "without fault" depends on all the pertinent circumstances surrounding the overpayment in the particular case. The Social Security Administration considers the individual's understanding of the reporting requirements, the agreement to report events affecting payments, knowledge of the occurrence of events that should have been reported, efforts to comply with the reporting requirements, opportunities to comply with the reporting requirements, understanding of the obligation to return checks which were not due, and ability to comply with the reporting requirements (e.g., age, comprehension, memory, physical and mental condition). Although the finding depends on all of the circumstances in the particular case, an individual will be found to have been at fault in connection with an overpayment when an incorrect payment resulted from one of the following:

(a) Failure to furnish information which the individual knew or should have known was material;

(b) An incorrect statement made by the individual which he knew or should have known was incorrect (this includes the individual's furnishing his opinion or conclusion when he was asked for facts), or

(c) The individual did not return a payment which he knew or could have been expected to know was incorrect.

§ 416.553 Waiver of adjustment or recovery—defeat the purpose of title XVI.

Waiver of adjustment or recovery is proper when the person on whose behalf waiver is being considered is without fault, as defined in § 416.552, and adjustment or recovery would defeat the purpose of title XVI. For purposes of this subpart, adjustment or recovery of an overpayment will be considered to defeat the purpose of title XVI:

(a) If such person's current total monthly income does not exceed:

(1) The applicable Federal monthly standard payment rate (see Subpart D of this part), plus

(2) One-third of the quarterly amount of earned or unearned income excludable purusant to § 416.1165 (i.e. $20), plus

(3) One-third of the quarterly amount of earned income excludable pursuant to § 416.1167 but no more than $65, plus

(4) The applicable State supplementary payment, if any (see Subpart T of this part); or

(b) If recovery or adjustment would deprive such person of income or financial resources needed for ordinary and necessary living expenses under the criteria in § 404.508(a) of this chapter.

§ 416.554 Waiver of adjustment or recovery—against equity or good conscience.

Waiver of adjustment or recovery of an overpayment is proper when the person on whose behalf waiver is being considered is without fault, as defined in § 416.552, and adjustment or recovery would be against equity or good conscience. Adjusment or recovery is considered to be inequitable and contrary to good conscience when such person, in reliance on such payments or on notice that such payment would be made relinquished a valuable right or changed his position for the worse. In making such a decision, the individual's financial circumstances are not considered.

Example 1: Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for $15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case recovery would be considered against equity or good conscience.

Example 2: An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid. Recovery would be considered against equity or good conscience.

§ 416.555 Waiver of adjustment or recovery—impede administration.

Waiver of adjustment or recovery is proper when the overpaid person on whose behalf waiver is being considered is without fault, as defined in § 416.552, and adjustment or recovery would impede efficient or effective administration of title XVI due to the small amount involved. The amount of overpayment determined to meet such criteria is measured by the current average administrative cost of handling such overpayment case through such adjustment or recovery processes. In determining whether the criterion is met, the overpaid person's financial circumstances are not considered.

§ 416.558 Notice relating to overpayments and underpayments.

(a) *Notice of overpayment and underpayment determination.* Whenever a determination concerning the amounts paid and payable for any period is made and it is found that, with respect to any month in the period, more or less than the correct amount was paid, written notice of the correct and incorrect amounts for each such month in the period will be sent to the individual against whom adjustment or recovery of the overpayment as defined in § 416.537(a) may be effected or to whom the underpayment as defined in § 416.536 would be payable, notwithstanding the fact that part or all of the underpayment must be withheld in accordance with § 416.543. When notifying an individual of a determination of overpayment, the Social Security Administration will, in the notice, also advise the individual that adjustment or recovery is required except under certain specified conditions and of his right to request waiver of adjustment or recovery of the overpayment under the provisions of § 416.550.

(b) *Notice of waiver determination.* Written notice of an initial determination of waiver shall be given the individual in accordance with § 416.1404 unless the individual was not given notice of the overpayment in accordance with paragraph (a) of this section.

§ 416.560 Recovery—refund.

An overpayment may be refunded by the overpaid recipient or by anyone on his behalf. Refund should be made in every case in which the overpayment is identifiable as part, or all, of the amount of the recipient's nonexcluded resources or where the overpaid individual is not currently eligible for supplemental security income benefits. In all other cases adjustment as set forth in § 416.570 will be proposed.

§ 416.570 Adjustment—general.

Where a recipient has been overpaid, the overpayment has not been refunded, and waiver of adjustment or recovery is not applicable, the overpayment is adjusted against any payment due the overpaid recipient or his eligible spouse (or recovery from the estate of either or both when either or both die before adjustment is completed). Adjustment will generally be accomplished by withholding each month a part of any benefit payable to the individual except that, when the overpayment is identifiable wholly or as part of the recipient's nonexcluded resources or where the overpayment results from the disposition of resources as provided by § 416.1240(b), the overpayment will be adjusted against any payments due the overpaid recipient or his eligible spouse before any further payment is made. Absent a specific request from the person from whom refund is sought, no overpayment made under title II or title XVIII of the Act shall be adjusted against supplemental security income benefits, and no overpayment of supplemental security income benefits shall be adjusted against benefits payable under title II of the Act. However, a request for an adjustment of an overpayment of supplemental security income benefits against title II benefits shall not be honored if such adjustment would result in an increase in the amount of or reestablishment of eligibility for benefits under this part, and in no case shall an overpayment of supplemental security income benefits be adjusted against title XVIII benefits.

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