1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the following AD.

In FR Doc. 86-7543 (51 FR 11707, 11708) appearing on page 11708, column 1, line 19, in the **Federal Register** of April 7, 1986, make the following correction.

Change "proposes to amend § 39.13 of Part 39 of" to read "amends § 39.13 of Part 39 of".

Issued in Kansas City, Missouri, on September 19, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-21879 Filed 9-26-86; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Registration of Floor Brokers; Extension of Expiration Date

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order.

SUMMARY: The Commodity Futures Trading Commission ("Commission"), by order, is extending indefinitely the expiration date of the registration of certain floor brokers whose registration would otherwise expire on March 31, 1987. The Commission is taking this action in conjunction with the transfer of certain floor broker registration functions to the National Futures Association ("NFA").

EFFECTIVE DATE: September 29, 1986.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director for Registration, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9703.

SUPPLEMENTARY INFORMATION: In a separate order published elsewhere today in the **Federal Register**, the Commission is authorizing NFA to perform certain portions of the Commission's registration functions applicable to floor brokers. Specifically, the Commission is authorizing NFA, effective September 29, 1986, to process and, where appropriate, grant applications for registration with the Commission as a floor broker in accordance with the standards established by the Commodity Exchange Act ("Act") and Commission regulations thereunder. In that connection, in a separate notice published elsewhere today in the **Federal Register**, the Commission is amending its regulations governing floor broker registration. Among other things, the Commission is amending rules §§ 3.2 and 3.11, 17 CFR 3.2 and 3.11, to eliminate the current one-year period of registration and provide for the indefinite registration of floor brokers whose registrations have neither been suspended, revoked nor withdrawn and who also continue to hold trading privileges on a Commission designated contract market.

Consistent with the foregoing, the Commission, by the below order, is extending indefinitely the floor broker registration of those individuals currently registered with the Commission, whose registration would otherwise expire on March 31, 1987, provided such registrants have trading privileges on an exchange on that date. The registration of all currently registered floor brokers will remain in effect to and including March 31, 1987, regardless of whether such individuals have trading privileges on an exchange. Subsequent to that date, however, consistent with the final rules adopted today regarding the duration of floor broker registration, the registration of those floor brokers who do not have trading privileges on an exchange will terminate.[1] In connection with the foregoing, the Commission is issuing the following order.[2]

United States of America Before the Commodity Futures Trading Commission.

Order Extending the Expiration Date of Registration of Certain Floor Brokers

Pursuant to section 4f(1) of the Commodity Exchange Act, 7 U.S.C. 6f(1) (1982), the Commission hereby orders that the expiration date of the registration of any floor broker, whose registration would otherwise expire on March 31, 1987, is hereby extended indefinitely, provided such individual has trading privileges on a designated contract market on that date. On or after March 31, 1987, however, if such floor broker has either failed to acquire trading privileges on a designated contract market by March 31, 1987, or if such floor broker ceases to have trading privileges on any designated contract market, the floor broker registration of such individual will terminate by the terms of this order and Commission rule 3.11, as amended, effective September 29, 1986.

Issued in Washington, DC, on September 23, 1986, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 86-21896 Filed 9-26-86; 8:45 am]

BILLING CODE 6531-01-M

[1] In that connection, by letter dated July 24, 1986, the Division of Trading and Markets, in anticipation of final rules in this regard, advised those floor brokers who do not currently have trading privileges, that unless they acquire such privileges on an exchange, their registrations will terminate March 31, 1987.

[2] A copy of this order is being sent to all registered floor brokers.

17 CFR Part 3

Floor Broker Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted amendments to its regulations governing the registration of floor brokers under sections 4e and 4f of the Commodity Exchange Act ("Act"). The amendments would eliminate the current one-year period of registration for floor brokers in favor of indefinite floor broker registration and provide that such registration would expire when the floor broker no longer has trading privileges on an exchange.

EFFECTIVE DATE: September 29, 1986.

FOR FURTHER INFORMATION CONTACT: Robert P. Shiner, Assistant Director, or Linda Kurjan, Esq., Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-9703 or (202) 254-8955, respectively.

SUPPLEMENTARY INFORMATION: On July 17, 1986, the Commission published for comment in the **Federal Register** proposed amendments to its regulations governing the registration of floor brokers necessary to implement a plan pursuant to which the Commission will authorize the National Futures Association ("NFA") to process and, where appropriate, grant application for registration with the Commission as a floor broker.[1]

Under this plan, the current one-year period of registration would be eliminated. In lieu thereof, the Commission's rules would provide for the indefinite registration of floor brokers, such that registration would

[1] 51 FR 25897. Pursuant to section 8a(10) of the Act, the Commission may—authorize any person to perform any portion of the registration functions under the Act, in accordance with rules, notwithstanding any other provision of law, adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to section 17(j) of this Act, and subject to the provisions of this Act applicable to registrations granted by the Commission.

terminate only when a floor broker no longer has trading privileges on any exchange.[2] A special registration procedure similar to that provided for associated persons who transfer from one firm to another also would be provided for a floor broker who ceases to have trading privileges on one exchange and within sixty days thereafter obtains privileges on another exchange.[3]

In this regard, the Commission proposed to amend Commission rule 3.2 to delete therefrom the provision that the registration of each floor broker shall expire on March 31.[4] In addition, Commission rule 3.11 was proposed to be amended essentially to parallel rule 3.12 and other rules relating to the registration of associated persons. [5] Finally, rule 3.31 was proposed to be amended to require each exchange that has granted trading privileges to a floor broker to file a Form 8–T or similar form with NFA whenever a floor broker no longer has trading privileges on the exchange within twenty days of the cessation of such privileges. Proposed § 3.31(d).

The Commission received two comments on its proposed amendments, one from NFA and one from a law firm representing the Chicago Board Options Exchange ("CBOE"). Upon careful consideration of these comments and its own review of the proposed amendments, the Commission has determined to adopt the amendments essentially as proposed. By separate release elsewhere in this **Federal Register**, the Commission is issuing an Order, pursuant to section 8a(10) of the Act, authorizing NFA, effective September 29, 1986, to process and, where appropriate, grant applications for registration with the Commission as a floor broker.[6]

In its comment, NFA addressed the proposed amendment to Commission rule 3.31 that would require a contract market that has granted trading privileges to a person who is registered or has applied for registration as a floor broker to file a Form 8–T with NFA whenever that person no longer has trading privileges on that exchange. In its further discussions with the exchanges, NFA has determined the filing of a Form 8–T is not necessary, since an exchange will be able to notify NFA when an applicant or registrant ceases to have trading privilege on the exchange through a communications link that will exist between NFA and each exchange. Therefore, NFA requested that the Commission delete the reference in the rule to the Form 8–T.

The Commission's purpose in proposing rule 3.31(d) is to ensure that the registration file of a floor broker applicant or registrant with respect to that individual's registration status remains accurate. The Commission has no objection if NFA has concluded that it can accomplish this purpose through means other than a Form 8–T. Therefore, the Commission has revised rule 3.31(d) accordingly. In this connection, however, the Commission has advised NFA that, in addition to maintaining this information in its computer records, adequate documentation must be prepared and placed in the hard copy file of the floor broker applicant or registrant.

Counsel on behalf of the CBOE did not object to the amendments as proposed. Rather, it was suggested that even further efficiencies may be achieved "by recognizing the current registration status of the numerous securities exchange members who are registered as broker-dealers with the Securities and Exchange Commission" and that automatic floor broker registration be granted to such individuals that are members in good standing of a contract market and a national securities exchange. If the Commission should determine that such automatic registration is not appropriate, however, counsel further urged the Commission to consider a temporary licensing procedure for such individuals.

With respect to automatic registration of individual broker-dealers, the Commission notes that it currently receives more information from a Federal Bureau of Investigation fingerprint examination than does the Securities and Exchange Commission ("SEC"). As a result, the Commission has not accepted an SEC background investigation as a substitute for a Commission investigation. Therefore, automatic floor broker registration of individual registered broker-dealers would not be appropriate.

Further, in its discussions with NFA regarding the transfer of floor broker registration, Commission staff had suggested that it could recommend temporary licenses for floor brokers, if each exchange were prepared to conduct a preliminary background investigation comparable to that performed by sponsors of applicants for registration as an associated person and to certify that such investigation has been conducted. Following separate discussions between NFA and the several exchanges, NFA concluded that it would not request from the Commission authority to issue temporary licenses. Until NFA requests such authority, the Commission does not believe it necessary to adopt amendments to its own rules for this purpose.

Related Matters

A. Regulatory Flexibility Act

The Commission has previously stated that, with respect to floor brokers, determinations regarding the applicability of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et. seq.*, should be made in the context of rule proposals specifically affecting them.[7] In this connection, these regulations impose no additional requirements for doing business as a floor broker, since this class of commodity participant is already required to be registered with the Commission. In fact, they would ease the regulatory burden by eliminating the annual renewal requirement for registration. Further, the Commission has previously determined that contract markets are not "small entities" within the RFA and, accordingly, the requirements of the RFA do not apply to those entitites.[8] Accordingly, pursuant

[2] Under current rule 3.11, a floor broker could remain registered as such until the thirty-first day of March following the date on which registration was granted even if the floor broker no longer has trading privileges on an exchange.

[3] *See, e.g.*, Commission rule 3.12(d).

[4] The Commission also proposed to delete therefrom the provision that the registration of futures commission merchants shall expire on March 31. The Commission has previously authorized NFA to distribute the dates for registration of futures commission merchants and other registrants for which NFA performs the Commission's registration functions. 48 FR 51809 (November 14, 1983). This provision, therefore, is superfluous.

[5] In this connection, the Commission reiterates that there is no intent to prohibit a floor broker from being a floor broker on more than one exchange. Nor would a floor broker be required to be registered separately with respect to each exchange on which he has trading privileges. As at the present time, the floor broker would add (or delete) any additional exchanges on which he later obtains (or ceases to have) trading privileges by filing the appropriate form.

[6] Pursuant to Commission Order issued October 30, 1985, 50 FR 45101, all floor broker registrations granted on or after January 1, 1985, will remain in effect through March 31, 1987. By separate release in this **Federal Register**, the Commission is also issuing an Order extending the floor broker registration of any person who currently has trading privileges on any exchange indefinitely for so long as such privileges remain in effect. For those registered floor brokers who do not have trading privileges on March 31, 1987, such registrations would expire on that date.

[7] 47 FR 18618, 18620 (April 30, 1982).

[8] *See* 47 FR 18618.

to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget.

Copies of the information collection package associated with this rule may be obtained from Katie Lewin, Office of Management and Budget, Room 3235, NECB, Washington, DC 20503, (202) 395–7231.

C. Effective Date

Section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that rules promulgated by an agency may not be made effective less than thirty days afer publication in the **Federal Register** except, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction." In proposing these amendments, the Commission stated that, because they essentially relieved a restriction, the Commission may determine that the amendments may take effect on less than thirty days notice. In this connection, NFA has advised the Commission that it is prepared to assume responsibility for processing floor broker registration applications on September 29, 1986. Therefore, the Commission, pursuant to 5 U.S.C. 553(d), has determined that these rule amendments shall take effect on that date.

List of Subjects in 17 CFR Part 3

Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants, Petitions for review.

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: Secs. 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982).

2. Section 3.2 is amended by revising paragraph (d) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

* * * * *

(d) The registration of each leverage transaction merchant shall expire on the thirty-first day of March following the date on which registration was granted.

* * * * *

3. Section 3.11 is revised to read as follows:

§ 3.11 Registration of floor brokers.

(a) *Application for registration.* (1) Application for registration as a floor broker must be on Form 8–R, completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 8–R filed in accordance with this paragraph (a) must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association, except that a fingerprint card need not be filed by any applicant who has a current Form 8–R on file with the Commission or the National Futures Associations.

(2) An applicant for registration as a floor broker will not be registered as such unless the applicant has been granted trading privileges by a board of trade designated as a contract market by the Commission.

(3) When the Commission or the National Futures Association determines than an applicant for registration as a floor broker is not disqualified from such registration, the National Futures Association will provide notification in writing to the applicant and to any contract market that has granted the applicant trading privileges that the applicant's registration as a floor broker is granted.

(b) *Duration of registration.* A person registered as a floor broker in accordance with paragraph (a) or (c) of this section, and whose registration has neither been suspended, revoked nor withdrawn, will continue to be so registered so long as such person has trading privileges on a contract market.

(c) *Special registration for certain persons.* Any person whose registration as a floor broker has terminated within the proceeding sixty days and who is granted trading privileges by another contract market will be registered as, and in the capacity of, a floor broker upon mailing to the National Futures Association of a Form 8–R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor broker on a fingerprint card provided by the National Futures Association for that purpose.

4. Section 3.31 is amended by adding a new paragraph (d) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes to be reported.

* * * * *

(d) Each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker must notify the National Futures Association within twenty days after such person has ceased having trading privileges on such contract market.

Issued in Washington, DC, on September 23, 1986, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 86–21897 Filed 9–26–86; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 261

[Release Nos. 33–6661; 39–2038]

Securities Issued or Guaranteed by United States Branches or Agencies of Foreign Banks; Interpretive Release

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation of section 3(a)(2) of the Securities Act of 1933.

SUMMARY: The Commission is issuing an interpretive release regarding the application of the registration provisions of the Securities Act of 1933 to the offer and sale of securities by United States branches and agencies of foreign banks.

EFFECTIVE DATE: September 23, 1986.

FOR FURTHER INFORMATION CONTACT: William E. Morley or William H. Carter, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2573.

SUPPLEMENTARY INFORMATION: For more than twenty years the Division of Corporation Finance (the "Division") and, in two particular instances, the Commission, have addressed the applicability of the section 3(a)(2) exemption under the Securities Act of 1933 (the "Securities Act") to the issuance and/or guarantee of securities by United States branches or agencies of foreign banks. There has been an increasing number of requests for staff

no-action letters with respect to an expanding array of instruments issued by such branches and agencies.

Section 3(a)(2) exempts from the application of the registration provisions of the Securities Act "any security issued or guaranteed by any bank" and defines "bank" to mean "any national bank, or any banking institution organized under the law of any State, Territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking Commission or similar officials." Branches and agencies of foreign banks are operational arms of foreign banks conducting business in the United States under licenses granted either by the Comptroller of the Currency or a State authority. However, such agencies and branches are not separate legal entities from the foreign bank and technically may not be national banks or be organized under the laws of any State. Therefore, they may not fall literally within the definition of a "bank" under section 3(a)(2).

In 1964, the Commission reviewed the availability of the section 3(a)(2) exemption for United States branches of foreign banks, particularly with respect to their day-to-day normal banking operations. After review of the issues involved, particularly the comparability of regulation of these branches, the Commission was satisfied that the foreign bank branches in question were subject to the type and extent of supervision contemplated by section 3(a)(2) for domestic banks and authorized the Division to issued no-action letters with respect to the sale without registration of various instruments. The Division then granted the first no-action letter with respect to certificates of deposit and pass book accounts issued by a New York State branch. Other letters involving state-licensed branches and agencies followed.[1]

In 1974, the no-action policy was reexamined. The Commission reaffirmed the previous position, in part as a policy decision intended to implement the "principle of national treatment," that foreign and domestic banks should have the same privileges and be subject to the same rules in this country. In addition, the Commission determined that the branches and agencies in question appeared to be virtually indistinguishable from their domestic counterparts.

[1] *See* examples of no-action letters cited in footnote 4, *infra*.

In 1978, Congress passed the International Banking Act ("IBA").[2] Prior to the IBA, the only branches and agencies of foreign banks in the United States were those licensed by the States. Under the IBA a foreign bank can establish a "Federal" branch or agency licensed and supervised by the Comptroller of the Currency. Congress enacted the IBA to establish "the principle of parity of treatment between foreign and domestic banks in like circumstances" (the principle of national treatment).[3]

To date more than 100 no-action letters have been issued with regard to a wide variety of securities issued and/or guaranteed by foreign bank branches or agencies, including certificates of deposit, unsubordinated notes, and letters of credit (as well as the underlying securities to which the letters of credit relate).[4] In each of the no-action letters since 1984, the Division's favorable response has been conditioned upon the receipt of an opinion of counsel that the nature and extent of Federal and State regulation and supervision of the branch or agency in question were substantially equivalent to that applicable to Federal or State chartered domestic banks doing business in the same jurisdiction.

The unifying principle underlying these repeated no-action positions by the Division is that, where they are subject to domestic regulation by federal or state banking authorities that is substantially equivalent to that applied to domestic banks, such branches and agencies are functionally indistinguishable from their domestic counterparts.

In view of the increasing number of requests for guidance on this issue and the wide variety of instruments involved, and to assure clear and consistent application of the Act, the Commission believes it appropriate to formalize its position on the application of the section 3(a)(2) exemption from the registration requirements of the Securities Act to securities issued or guaranteed by branches and agencies of foreign banks located in this country. The Commission's interpretation, which underlies the more than 20 years of no-action positions taken by the Division of Corporation Finance, is that, for purposes of the exemption from registration provided by section 3(a)(2) of the Securities Act,[5] the Commission deems a branch or agency of a foreign bank located in the United States to be a "national bank," or a "banking institution organized under the laws of any State, Territory or the District of Columbia," provided that the nature and extent of Federal and/or State regulation and supervision of the particular branch or agency is substantially equivalent to that applicable to Federal or State chartered domestic banks doing business in the same juridiction.[6] The determination

[2] 12 U.S.C. 3101 *et seq*.

[3] S. Rep. No. 1073, 95th Cong., 2d Sess. 2 (1978).

[4] The following are some examples of the types of securities covered by no-action letters issued to date; the letters are listed in chronological order to show how these requests have evolved, with the year a representative no-action letter was granted shown parenthetically:

(a) First no-action letter, certificates of deposit and passbook accounts (1964);

(b) Certificates of deposit, $100,000 minimum denominations, sold only to institutions, "varying" maturities (1971);

(c) Letters of credit guaranteeing short-term notes themselves exempt from registration under section 3(a)(3) (1973);

(d) Notes, unspecified denominations, maturities up to 360 days (1973);

(e) Certificates of deposit, $100,000 minimum denominations, 360 day maturities (1975);

(f) Certificates of deposit, $100,000 minimum denominations, five year maturities (1975);

(g) Certificates of deposit, seven year maturities (1978);

(h) Certificates of deposit, minimum denominations of $25,000 (1978);

(i) Letters of credit guaranteeing notes of branch's commercial and industrial customers (1979);

(j) Letters of credit guaranteeing one year promissory notes (1980);

(k) Letters of credit guaranteeing industrial development bonds (1980);

(l) Notes, maturities up to two years, $100,000 minimum denominations (1983);

(m) Irrevocable guarantees by branch of parent foreign bank's certificates of deposit (1984);

(n) Letters of credit guaranteeing certificates of deposit issued by parent foreign bank (1984);

(o) Letters of credit guaranteeing non-exempt bonds where the term of the bonds exceeded the term of the original letter of credit (with the proviso that if the orignal letter of credit was not replaced with a substantially equivalent letter the issuer was obligated to redeem the bonds with the original letter guaranteeing the redemption) (1985);

(p) Letters of credit guaranteeing participation certificates evidencing fractional undivided interests in a trust composed of industrial development bonds, housing bonds, and mortgages (1985); and

(q) Letters of credit guaranteeing non-exempt notes with maturities of 20 to 30 years (1985).

[5] The exemption provided by section 304(a)(4)(A) of the Trust Indenture Act of 1939 is also available to branches and agencies of foreign banks under the same circumstances.

However, this interpretation does not affect in any way the status of foreign banks (or U.S. branches, agencies or subsidiaries of foreign banks) under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq*]. *See, e.g.*, Investment Company Act Release No. 15314 (September 17, 1986), proposing an exemption from the Investment Company Act of 1940 for the offer or sale of debt securities and non-voting preferred stock by foreign banks or foreign bank finance subsidiaries.

[6] The passage of legislation adopting the recommendation of the Task Group on Regulation of Financial Services, chaired by Vice President

Continued

with respect to the requirement of "substantially equivalent regulation," as well as the determination as to whether the business of the branch or agency in question "is substantially confined to banking and is supervised by the State or territorial banking commission or similar official" is the responsibility of issuers and their counsel. Of course, these determinations will have to be made with regard to the banking regulations in effect at the time the securities are issued or guaranteed.

In light of the issuance of this interpretive release, no-action letters regarding securities issued or guaranteed by foreign bank branches and agencies will no longer be granted.[7]

List of Subjects in 17 CFR Parts 231 and 261

Reporting and recordkeeping requirements, Securities, Registration Requirements, Banks.

PARTS 231 AND 261—[AMENDED]

Parts 231 and 261 of Title 17 of the Code of Federal Regulations are amended by adding this Interpretive Release [Release Nos. 33–6661 and 39–2038] to the lists of Interpretive Releases.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: September 23, 1986.

[FR Doc. 86–21942 Filed 9–26–86; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Exclusion of Underpayments from Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations reflect the provisions of section 2614 of Pub. L. 98–369, the Deficit Reduction Act of 1984, which amended section 1613(a) of the Social Security Act (the Act). Section 2614 provides for excluding title XVI and title II retroactive payments from resources for 6 months following the month of receipt. A written notice of the 6-month exclusion limitation must be sent to the recipient at the same time as the retroactive payment. These final regulations also include two technical changes that are not related to the statutory exclusion.

EFFECTIVE DATES: These regulations are effective October 1, 1986, but the statutory change which these regulations reflect was effective October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION: We published a Notice of Proposed Rulemaking (NPRM) which reflected the provisions of section 2416 of Pub. L. 98–369 on August 28, 1985 (50 FR 34862) and provided a 60-day comment period. The comments are discussed below.

Section 1613(a) of the Act specifies a list of exclusions to be used in determining the resources of an individual (and eligible spouse, if any). The existing regulations are silent concerning the exclusion of retroactive payments. Operating instructions interpreting the Act provided that, prior to October 1, 1984, the effective date of section 2614 of Pub. L. 98–369, retroactive Supplemental Security Income (SSI) payments were not counted as resources for 3 months following the month of receipt. Retroactive title II payments resulting from the Secretary's April 13, 1984, decision to suspend the continuing disability review process were not counted as resources for 3 months following the month of receipt.

Section 2614 of Pub. L. 98–369 adds a resource exclusion to section 1613(a) of the Act. Effective October 1, 1984, the amount of any title XVI or title II underpayment due for one or more prior months is excluded from resources for 6 months following the month of receipt. (It is our practice to use the term "retroactive payment" for the types of underpayments addressed by this amendment. Under our current regulations at 20 CFR 416.536, and for purposes of this exclusion, "underpayments" include federally administered State supplementary payments.) The exclusion applies to retroactive payments received by an individual (and spouse, if any) and by any other person whose resources are subject to deeming. A written notice of the 6-month exclusion limitation will be given to the recipient when the payment is made.

The 6-month exclusion applies only to the unspent portion of funds from a title II or title XVI retroactive payment. The exclusion gives recipients time to use the funds from past benefits due to pay bills which may have accumulated because the recipient had no means with which to discharge his or her financial obligations. Once the money from a retroactive payment is spent, the exclusion does not apply to items purchased with the money unless those items are otherwise excluded, even if the 6-month period has not yet expired. However, any unspent portion of funds from a retroactive payment is excluded for the full 6-month period.

To be consistent with the treatment of other excluded funds, we are requiring that money from a retroactive payment be kept identifiable from other resources. If retroactive-payment funds cannot be distinguished from other resources, they will be counted toward the nonexcludable resources limit as described in § 416.1205.

These regulations add 20 CFR 416.1233 to reflect the new exclusion from resources. In addition, we have added a reference to 20 CFR 416.1233 to the list of resource exclusions found in 20 CFR 416.1210.

While there are no substantive changes, we have modified the format of 20 CFR 416.1233 from the version that was published in the NPRM by adding subparagraphs to clarify some aspects of the provision. These modifications include an explanation, in response to comments, that retroative-payment funds may be "identifiable" even if commingled with other funds; a specification that the exclusion applies ony to the unspent portion of retroactive-payment funds; and a fuller description of the retroactve payments.

These final regulations also include two technical changes that are not related to the statutory exclusion of certain underpayments from resources. We are revising 20 CFR 416.211(c)(5)(iii) to correct a statement that was the result of the recodification several years ago. The language of this particular paragraph was unintentionally changed to the second person. We are changing the language to the original third person for clarification. We are also making a

George Bush, to narrow the section 3(a)(2) exemption would narrow the effective scope of this interpretive release. The Commission Continues to urge the adoption of this Task Group recommendation. Nonetheless, the Commission believes that comparably regulated foreign bank agencies and branches and domestic banks should be given parity of treatment within whatever regulatory framework exists at any particular time.

[7] Moreover, the Division will not act on any pending no-action requests with respect to the registration under the Securities Act of instruments issued or guaranteed by branches or agencies of foreign banks whether based on section 3(a)(2), the definition of a security, or otherwise.