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Manager, Airspace-Rules and Aeronautical Information Division.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-24209; File No. S7-17-86]

Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission amends Rule 3a12-8 under the Securities Exchange Act of 1934 to eliminate the requirement that futures on designated foreign government securities be traded on a board of trade in the country that issued those securities. The Rule currently designates certain United Kingdom, Canadian and Japanese government securities as "exempted securities" under the Act for the purpose of marketing futures contracts on those securities in the United States. The Rule contains a number of conditions for such securities to be deemed exempt, including the requirement that the futures be traded on a board of trade located in the country that issued the underlying security. The amendment will remove the requirement, and allow such futures to be traded on boards of trade in the United States. Trading the underlying securities, absent compliance with applicable registration and other regulatory requirements, will remain prohibited to the same extent as under current federal securities law.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Underhill, Esq., (202) 272-2375, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), futures trading on individual securities is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC"), however, adopted Rule 3a12-8 ("Rule") to designate British, Canadian and Japanese government debt obligations ("designated foreign government securities") that meet certain conditions as exempted securities under the Exchange Act only for purposes of marketing futures on those securities in the United States. In effect, the designation of these securities as "exempted securities" removes the CEA's prohibition against marketing futures on the securities in the United States, so long as the terms of the Rule are satisfied. The SEC is today adopting an amendment to the Rule.

The amendment retains the current list of designated foreign government securities, but removes one of the conditions of the exemption, *i.e.*, the requirement that the futures be traded on or through a board of trade located in the country that issued the designated foreign government security ("the location restriction"). The amendment effectively removes the CEA's prohibition against trading futures on designated securities on U.S. contract markets or marketing in the United States foreign futures traded on contract markets other than those located in the issuing country. To qualify for the exemption, futures contracts on the enumerated securities must comply with all other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982,[1] prohibits the trading of futures contracts on individual securities unless such securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[2] Foreign government securities are not exempted under either of these sections. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted securities" includes

> such other securities . . . as the Commission may, by such rules and regulations as it deems consitent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984, pursuant to this authority, the Commission promulgated Rule 3a12-8.[3] The Rule, as amended,[4] designates British, Canadian and Japanese government securities that meet certain conditions as "exempted securities" under the Exchange Act. The primary purpose of the Rule is to permit certain foreign, exchange-traded futures contracts on the designated securities to be marketed in the United States. Under the Rule, designated foreign government securities are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) the securities are not registered in the United States; (2) the futures transactions involve contracts that require delivery outside the United States; and (3) the futures contracts are traded on a market located in the country that issued those securities.

At the time the Commission first proposed Rule 3a12-8, several commentators objected to the location restriction, among other matters.[5] For example, the Chicago Board of Trade ("CBT") and the Chicago Mercantile Exchange ("CME") argued that the proposed exemption should allow the Commodity Futures Trading Commission ("CFTC") to designate United States boards of trade as contract markets for futures on the exempted British and Canadian securities.[6] The CBT and CME also

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[1] Pub. L. No. 97-444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.* (1984).

[2] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v), provides that "[n]o person shall offer to enter into, enter into or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act . . . or section (3)(a)(12) of the . . . Exchange Act. . . ."

[3] *See* Securities Exchange Act Release Nos. 20708 ("1984 Adoption Release"), March 2, 1984, 49 FR 8595, and 19811 ("1983 Proposal Release"), May 25, 1983, 48 FR 24725.

[4] The Rule recently was amended to include Japanese government securities. *See* Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25996. As originally adopted, the Rule applied only to British and Canadian government securities. *See* 1984 Adoption Release, note 3, *supra*. In addition, the Commission has received petitions to add the securities of Australia, France and New Zealand to the list of designated government securities. *See* letters from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, to Richard Ketchum, Director, Division of Market Regulation, SEC, dated August 20, 1986 (Australia) and October 1, 1986 (New Zealand); letter from Eugene W. Boehringer, Managing Director, First Boston Corporation, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 1, 1986 (France). The Commission anticipates publishing for comment appropriate proposed rule amendments regarding these requests in the near future.

[5] *See* letter from Thomas R. Donovan, President, Chicago Board of Trade, to George A. Fitzsimmons, Secretary, SEC, dated July 5, 1983, and letter from Thomas Eric Kilcollin, Vice President of Research and Chief Economist, Chicago Mercantile Exchange, to George A. Fitzsimmons, Secretary, SEC, dated July 28, 1983, located in File No. S7-975.

[6] *Id.*

contended that to do otherwise would confine futures trading to precisely those markets over which United States government agencies have the least regulatory oversight.

The Commission, nevertheless, adopted the location restriction for several reasons. First, the Commission noted that, if the futures were traded only in the country that issued the underlying security, that country "would have a strong interest in ensuring the integrity of the futures market." [7] Second, the Commission noted that a collateral benefit of the restriction was to "reduce the likelihood that some off-shore futures market might be established or utilized for the purpose of disguised marketing of the underlying securities." [8] Finally, the Commission concluded that because "the prospective exempted securities are, in fact, located within the territories of the issuer-government . . . [a] cautious approach is furthered by limiting [the] [R]ule to markets and locations presently known." [9] The Commission stated, however, that it might revisit this issue if proposals by U.S. boards of trade to trade futures contracts on foreign government securities were developed.

On February 13, 1986, the CBT submitted to the Commission a letter in which the CBT stated that it would soon apply to the CFTC for designation as a contract market for trading in futures contracts on yen-denominated Japanese government bonds, pound-denominated British gilt bonds and Canadian dollar-denominated Canadian government bonds.[10] The CBT and Futures Industry Association ("FIA") requested that the Commission amend Rule 3a12–8 to provide that futures contracts on specified foreign government securities may be traded on CFTC-designated markets.[11] In addition, the London International Financial Futures Exchange ("LIFFE") requested that the rule be expanded to permit the marketing to U.S. investors of futures on foreign government debt traded on designated foreign boards of trade outside the country of issuance of the underlying debt.[12] As a result, on July 11, 1986, the Commission issued a release proposing for comment an amendment to Rule 3a12–8 that would remove the condition that the futures be traded on a board of trade located in the country that issued the underlying security ("1986 Proposal Release").[13]

III. Discussion

In response to the 1986 Proposal Release the Commission received one comment letter. In its comment letter, the CFTC endorsed amending the Rule to eliminate the location restriction and addressed three specific issues raised in the 1986 Proposal Release.[14]

First, the Commission had requested comment on whether the Rule would be used as a vehicle to distribute unregistered foreign government securities in the U.S. In its comment letter, the CFTC asserted its continuing belief that the requirement that delivery on the futures contracts on foreign government debt occur outside the United States would help to ensure that sales of the futures contracts will not be used as a way to sell in the U.S. the underlying, unregistered debt instruments.

Second, the CFTC stated that it would consider whether trading futures on the designated securities on domestic boards of trade might require a greater level of disclosure about the underlying securities than simply marketing such foreign futures in the U.S.

Finally, the Commission had solicited comment on whether there are any other legal or policy factors relevant to determining whether the domestic trading of futures on specified unregistered securities or the marketing to U.S. investors of foreign futures on such securities traded on boards of trade outside the country of issuance, for delivery outside the U.S., is appropriate and consistent with the purposes of the federal securities laws, the CEA, and the protection of U.S. securities investors and markets. In response, the CFTC maintained that elimination of the location restriction is consistent with both the federal securities laws and the CEA. According to the CFTC, the Rule, as amended, will continue to provide adequate protection to both U.S. securities investors and the securities markets and U.S. futures traders and the futures markets. The CFTC emphasized that its oversight of domestic boards of trade would provide adequate safeguards to U.S. investors, and that CFTC regulations may in fact provide greater protection to U.S. customers trading through domestic boards of trade than to those trading through foreign boards of trade.

After careful consideration, the Commission has concluded that elimination of the location restriction is consistent with the protection of U.S. investors. With the increasing internationalization of the securities markets, more U.S. investors maintain investment positions denominated in foreign currencies, including debt securities of foreign public and private issuers.[15] The increased availability of foreign government futures could serve valuable hedging and other risk shifting uses for such investors. In this regard, the Commission also believes the amendment will promote competition among boards of trade listing the same or different futures on foreign government debt.

The Commission does not believe that there is a serious risk that foreign government futures will be used to distribute unregistered foreign government securities in the U.S. In this regard, we note that most trading of futures in this country does not result in actual delivery of the underlying commodity through the mechanism of the futures contract. Usually only 2% to 10% of futures positions are held for delivery.[16] As a consequence, the

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[7] 1983 Proposal Release, note 3, *supra*, 48 FR at 24727. The CFTC noted, however, that presumably "any country would have a strong interest in assuring the integrity of its futures markets, even if that country does not produce the commodity or issue the debt obligation." Letter from Kenneth M. Raisler, General Counsel, CFTC, to Richard G. Ketchum, Associate Director, Division, of Market Regulation, SEC, at 4, dated August 1, 1983.

[8] 1984 Adoption Release, note 3, *supra*, 49 FR at 8597 n.15. Similarly, the Commission noted that with respect to domestic boards of trade trading futures on foreign government debt securities, such trading would raise "discrete concerns regarding the expansion of cash trading that might develop if there were present here substantial markets in the overlying futures."

[9] *Id.*, 49 FR at 8597 (footnote omitted).

[10] *See* No-action Request for Domestic Trading of Futures on Japanese Government Bonds, British Gilt Bonds, or Canadian Government Bonds, or Petition to Amend Rule 3a12–8, dated February 3, 1986 ("Petition"). Available in File No. S7–4–86.

[11] *See* Petition, note 10, *supra*, and letter from John M. Damgard, President, FIA, to John Wheeler, Secretary, SEC, dated February 26, 1986.

[12] *See* letter from Brooksley Born, Arnold & Porter, counsel for LIFFE, to Brandon Becker, Assistant Director, Division of Market Regulation, SEC, dated June 20, 1986. LIFFE also indicated that it is actively considering developing a futures contract on the Japanese yen bond.

[13] *See* Securities Exchange Act Release No. 23422 (July 11, 1986), 51 FR 26018. Under the proposal, subsection (a) (2) of Rule 3a12–8 would be amended to remove the location restriction. The Rule would retain the current list of designated foreign government securities, as well as the requirements that the underlying securities be unregistered and that the delivery on the futures contracts occur outside the United States.

[14] Letter from Kenneth M. Raisler, General Counsel, CFTC, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated September 8, 1986 ("CFTC Comment Letter").

[15] *See* Securities Exchange Act Release No. 21958, April 18, 1985, 50 FR 16302. As evidence of this growing internationalization, futures on U.S. Treasury bonds are now being traded on the Sydney Futures Exchange and LIFFE.

[16] The figure for debt futures is at or below 2%. *See* CBT, Statistical Futures Yearbook (1985); CME, International Monetary Market Yearbook (1985).

Commission does not expect that significant numbers of foreign government futures investors will hold their positions for delivery. Further, the availability of a U.S. futures market for foreign bonds would not appear to offer a foreign government a realistic means of efficiently raising capital in the U.S.; if purchase and delivery of the underlying securities is necessary, it most likely would occur in the foreign country's secondary market, not from primary offerings of the government. The Commission thus believes that the other two requirements of the current Rule (*i.e.*, that the underlying securities not be registered in the U.S. and that delivery on the futures contracts occur outside the U.S.) will adequately ensure that futures trading, even domestically, does not disrupt or dilute the registration, disclosure and other requirements of the federal securities laws.

The Commission does not believe it is appropriate to limit an amendment to delete the location restriction to trading on domestic boards of trade regulated by the CFTC. If, as has been indicated, the LIFFE seeks to trade a future on Japanese yen bonds, the Commission does not believe that such trading would be any more likely to contribute to the development of an unregistered securities market in the underlying debt securities in this country then trading such futures on, for example, the CBT. Indeed, it could be argued that futures trading on a domestic board of trade is, in fact, more likely to induce U.S. investors to trade the underlying debt securities. Moreover, the marketing of such LIFFE futures in the United States would be subject to the CFTC's antifraud rules.[17]

Finally, the Commission agrees with the CFTC that the CFTC's oversight of domestic boards of trade will provide effective safeguards against abuse. With respect to non-U.S., non-issuance countries marketing foreign futures in the U.S. (*e.g.*, LIFFE trading futures on Japanese yen bonds), the Commission also believes that the CFTC's antifraud authority regarding such futures trading will permit the CFTC to address abuses in the futures market itself.

For the above-mentioned reasons, the Commission believes the amendment to the Rule to accommodate the trading on domestic as well as foreign boards of trade of futures on designated foreign government securities is consistent with the purposes of the federal securities laws and Section 2(a)(1)(B)(v) of the CEA.[18]

IV. Regulatory Flexibility Act Certification

The Chairman of the Commission certified in connection with the 1986 Proposal Release that the amendment to Rule 3a12–8, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

V. Effects on Competition

Section 23(a)(2) of the Act [19] requires the Commission, in amending rules, to consider their potential impact on competition. The Commission believes that elimination of the location restriction will enhance competition by allowing additional markets to offer competing products.

The Commission has determined to make the foregoing action effective 30 days after publication in the **Federal Register.**

VI. Statutory Basis

The amendment to Rule 3a12–8 is being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Adopted Amendment

The Commission is amending Part 240 of Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.3a12–8 also is issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a). * * *

2. Section 240.3a12–8 is amended by revising paragraph (a)(2) to read as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(2) The term "qualifying foreign futures contracts" shall mean any contracts for the purchase or sale of a designated foreign government security for future delivery, as "future delivery" is defined in 7 U.S.C. 2, provided such contracts require delivery outside the United States, any of its possessions or territories, and are traded on or through a board of trade, as defined at 7 U.S.C. 2.

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By the Commission.

Dated: March 12, 1987.

Shirley E. Hollis,

Assistant Secretary.

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[17] CFTC Comment Letter, note 14, *supra*, at 4. The CFTC cited Section 4(b) of the CEA, which authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents. Rule 30.02, 17 CFR 30.02, promulgated under section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale of futures contracts executed on a foreign exchange. In addition, the CFTC recently proposed a series of regulations governing the domestic offer and sale of regulations governing the domestic offer and sale of futures and options contracts traded on foreign boards of trade. The proposed rules, if adopted, would, among other things, require that the domestic offer and sale of foreign futures be effected through CFTC registrants, or comparably regulated entities, under a regulatory framework similar to that governing domestic futures contracts. *See* 51 FR 12104 (April 8, 1986).

[18] As noted above, the CEA prohibits the sale of futures on individual securities, other than exempted securities.

[19] 15 U.S.C. 78w(a)(2) (1984).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled—Income and Resources; Age 18 and Alien Deeming

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations reflect the provisions of section 203 of Pub. L. 96–265 which amended section 1614(f)(2) of the Social Security Act (the Act) and section 504 of Pub. L. 96–265 which added sections 1614(f)(3) and 1621 to the Act. Section 1614 of the Act as amended by section 203 eliminates deeming of parents' income and resources to a child when he or she becomes age 18. Sections 1614(f)(3) and 1621 of the Act as added by section 504 require that, with a few exceptions, the income and resources of the sponsor of an alien (and of the sponsor's spouse if sponsor and spouse live together) are to be deemed to be the income and resources of the alien. Both provisions were effective October 1, 1980.

EFFECTIVE DATE: These regulations are effective April 1, 1987, but statutory changes which these regulations reflect were effective October 1, 1980.

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 are revising our rules on overpayments, income, resources and family relationships under the Supplemental Security Income (SSI) program. The revisions are necessary because of the provisions of sections 203 and 504 of Pub. L. 96–265. Section 203 amended section 1614(f)(2) and section 504 added sections 1614(f)(3) and 1621 of the Act. The proposed rules were published December 10, 1981 (46 FR 60470). We provided a 60-day comment period and received only one comment. The comment was not relevant to these regulations as it objected to a statutory provision that grants SSI eligibility to aliens admitted as refugees or economic asylees rather than to the sponsor-to-alien deeming provisions that are the subject of these regulations.

Since the SSI program began, section 1614(f) of the Act has required that the income and resources of spouses and parents who are not eligible for SSI be considered as the income and resources of their spouses and children who live with them and are eligible for SSI benefits. This process is called deeming—we deem the income and resources of the ineligible spouse or parent to be those of the SSI beneficiary. The statute authorizes the Secretary to determine income and resources that would be inequitable to deem under the circumstances and thus are excluded before any is deemed to the beneficiary. The deemed income and resources are added to those the claimant already has and the total is subject to the limits and exclusions the statute provides for eligible individuals and couples.

The income and resources of parents not eligible for SSI are deemed to their eligible children in the household. Under section 1614(f)(2) of the Act prior to amendment, parental deeming could apply until a child reached age 21. Section 1614(c) defined child as an unmarried individual under the age of 18 or under the age of 22 if a student. Under former regulations, parental deeming stopped when the children reached age 18 or, if the children were students, when they reached age 21. As of October 1, 1980, the effective date of section 1614(f)(2) as amended by section 203 of Pub. L. 96–265, deeming of parental income and resources stops in all cases when children reach age 18. Under section 203 of Pub. L. 96–265, from October 1, 1980 through September 30, 1983, parental deeming could continue to apply to children who were at least age 18 but under age 21 in September 1980, if they received a Federal SSI benefit for that month, and would have received a lesser benefit if deeming stopped. This policy is not included in these final regulations because all children who were at least age 18 in September 1980 are now over 21.

Sections 1614(f)(3) and 1621 of the Act, as added by section 504 of Pub. L. 96–265, add a new kind of deeming—the income and resources of sponsors of aliens are considered to be those of aliens they sponsor. A sponsor is an individual who has signed an affidavit agreeing to support an alien as a condition of the alien's admission for permanent residence in the United States. Under section 1621 of the Act, the Departments of Justice and State will provide information to SSA about sponsors and aliens, and will inform sponsors that information they supply will be given to SSA and that they may be asked for additional information if the aliens apply for SSI benefits.

There are some exceptions to sponsor-to-alien deeming. Under the terms of the statute we do not deem a sponsor's income and resources to aliens who have been admitted as refugees under certain provisions of the Immigration and Nationality Act or to aliens who have been granted political asylum by the Attorney General of the United States. Nor do we deem to aliens beginning with the month they meet the statutory definition of blindness or disability if this occurs after their admission to the United States. Deeming stops if it applied before the blindness or disability began.

A sponsor's income and resources are deemed to aliens who first apply for SSI benefits after September 30, 1980, and are deemed to aliens for 3 years after their admission to the United States.

Subparts K, L, and R of Regulations No. 16 require revision because section 1614(f)(2) of the Act as amended by section 203 of Pub. L. 96–265 ends deeming of parental income to children who reach age 18. Subparts E, K and L require revision because sections 1614(f)(3) and 1621 of the Act as amended by section 504 of the statute establishes deeming of a sponsor's income and resources to an alien.

Subpart E, Payment of Benefits, Overpayments, and Underpayments, requires revision because section 1621 of the Act establishes conditions for recovery of overpayments made to aliens from both aliens and their sponsors.

Subpart K, Income, explains how the receipt of income affects SSI eligibility. It describes the different types of income, including income deemed from a parent to an eligible child. Subpart L, Resources, provides similar information about resources. We must amend sections in Subpart K, Income, and Subpart L, Resource and Exclusions, to revise the rules on parent-to-child deeming and to include sponsor-to-alien deeming of income and resources. These sections were also revised subsequent to the NPRM to reflect certain provisions regarding retrospective monthly accounting in section 1611 of the Act as amended by section 2341 of Pub. L. 97–35. These changes were published on November 26, 1985 (50 FR 48563) as final rules.

Subpart R, Relationship, requires revision because of the termination of parent-to-child deeming when the child reaches age 18.

Subpart E, Payment of Benefits, Overpayments and Underpayments

Revisions in Subpart E which were not included in the NPRM are included in these final regulations as they are an integral part of carrying out the statute these regulations implement. In § 416.535 we explain that, under certain circumstances, a sponsor is jointly (with the alien) and individually liable for repayment of overpayments which have been made to the alien. This can apply only if the overpayment was caused by the sponsor's failure to supply correct information and only with respect to overpayments made to the alien during the three-year period in which deeming from the sponsor applies. Section 1621 of the Act provides that sponsor liability exists except where the sponsor was without fault or had good cause for failure to report correctly. To establish without fault or good cause, the evidence must show that the sponsor did not knowingly fail to supply pertinent information. Accordingly, we have made clear that waiver of adjustment or recovery of an overpayment under § 416.550 does not apply to a sponsor because the statute does not authorize waiver for a sponsor. In § 416.570 we have added an exception to the general rules on recovery by adjustment of benefits. If recovery of an overpayment for which an alien and the sponsor are jointly and individually liable is not otherwise effected, SSA must recover the overpayment by adjusting other benefits payable under the Act to the alien and

the sponsor. Section 1621 of the Act clearly provides that an overpayment not otherwise repaid or recovered in accordance with section 1631(b) will be withheld from any subsequent payment to which the alien or the sponsor is entitled under any provision of the Act. As of this time, SSA is applying this provision to benefits payable under title II (Social Security insurance benefits) and title XVIII (Medicare benefits) since the administration and record-keeping of these programs are within the control of SSA.

Subpart K, Income

Section 416.1148 is revised to show that, if a beneficiary has income deemed from a sponsor and also receives cash or in-kind support and maintenance (food, clothing, or shelter) from the sponsor, we do not apply the one-third reduction. We count only the deemed income. This change implements section 1621(c) of the Act. Also, this section and § 416.1149 are revised to reflect the change to stop deeming income to children at age 18 rather than at age 21.

Section 416.1160 explains what deeming is, gives the basic steps we follow in deeming income, and defines terms used in connection with deeming. We have added the rules which end deeming from parents to children at age 18 and the rules which require deeming a sponsor's income to an alien. We have also made minor changes in these sections from those published in the NPRM to reflect certain provisions regarding retrospective monthly accounting published on November 26, 1985 (50 FR 48563) as final rules.

In § 416.1160 we have defined "dependent" because the statute provides for an allocation in deeming a sponsor's income to an alien for dependents. The statute does not define "dependent." These regulations use the same criteria used by the Internal Revenue Service for personal income tax purposes. This provides consistency among government agencies, is easy for the public to understand, and provides uniformity of administration for beneficiaries in all locations. We have provided that the term "dependent" does not include the alien or the alien's spouse because of a specific provision of the statute. Section 1621 of the Act states that the amount of a sponsor's income which shall be deemed to be the unearned income of an alien shall be reduced by an allocation for dependents of such sponsor (or sponsor's living with spouse), other than such alien and such alien's spouse.

This section also defines for deeming purposes a "sponsor" as an individual who signs an affidavit of support or similar agreement as a condition of an alien's admission to the United States for permanent residence. The term "sponsor" does not include an organization (such as the congregation of a church or a service club) or an employer who only guarantees employment for an alien but does not sign an affadavit of support. We define an alien's "date of admission or entry" to be the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residence.

This section explains that if a sponsor lives with and is also the spouse or parent of the alien, we apply the rules for deeming from a spouse or parent rather than from a sponsor. The statute does not address this question and we believe we have discretion to decide which deeming rules to apply. It is our position that the objective of sponsor-to-alien deeming is to take care of situations where no deeming previously existed, not to replace existing rules.

Further, this section explains how we deem income when a sponsor of an alien is also the ineligible spouse or ineligible parent of another beneficiary and income is deemable to both the alien and the eligible spouse or eligible child. The statute is very specific regarding how to figure the amount of income to deem from a sponsor to an alien. It provides allocations for the sponsor and all dependents of the sponsor. Other provisions in section 1614(f) of the Act give the Secretary discretion to determine when it would be inequitable to deem from an ineligible spouse or ineligible parent to an eligible individual. SSA, therefore, will figure the amount of income to be deemed to an alien and to a spouse or child independently. The amount produced under the sponsor-to-alien deeming rule will be deemed to the alien. The amount produced for the spouse or child will be deemed to that individual after an allocation for the alien. This method of deeming exercises the Secretary's discretion in an equitable manner by recognizing the sponsor's financial responsibility for the alien as well as for the eligible spouse or child.

Current regulations for spouse-to-spouse and parent-to-child deeming make no allowance for the existence of the alien to whom income is also deemed. These rules, therefore, are being revised to provide an allocation for an alien in the spouse-to-spouse and parent-to-child deeming rules. The allocation is the same amount that has been provided for ineligible children in the household; i.e., the difference between the Federal benefit rate (FBR) for an eligible couple and the FBR for an eligible individual.

Section 416.1161 tells what amounts and types of income are excluded before we deem any of an ineligible individual's income to an applicant or a beneficiary. We have added the rules that apply to the sponsor of an alien. In determining the income of a sponsor, we do not include any income received by or on behalf of children in the sponsor's household. However, we do include income of the sponsor's spouse who lives in the same household. After determining the sponsor's total income, we exclude such types and amounts as are excluded by other Federal statutes. We also discuss in this section the amount of the alien's income which reduces the alien allocation in spouse-to-spouse and parent-to-child deeming.

Section § 416.1162 was added in the NPRM to explain when we do not deem the income of a sponsor to an alien. Upon further consideration, we decided that it would be preferable to add those rules to § 416.1166a(d) which is discussed below.

Section 416.1165 is revised to show that parent-to-child deeming stops the month after the month the child reaches age 18. If we deem parental income, we do not also reduce the benefits because the child receives food, clothing, and shelter (in-kind support and maintenance) or any other type of income from the parents. When deeming stops, we begin to include as a child's income the value of food, clothing, shelter, or other income provided by the parents. If the child receives in-kind support and maintenance from the parents, this may reduce the benefit by an amount equal to one-third of the FBR

Sections 416.1163, 416.1165, and 416.1166 explain the procedures for figuring how much income to deem from an ineligible spouse or ineligible parent to an eligible spouse, eligible child, or both. These sections are amended to provide an allocation for each alien to whom income also is deemed from the ineligible spouse or ineligible parent. We are adding examples to §§ 416.1163 and 416.1165 to illustrate how the allocation affects deemed income. We have updated these examples as they were stated in the NPRM to reflect the benefit increase that applied in January 1986 and to show that benefit amounts depend on the applicability of retrospective monthly accounting.

Section 416.1166a explains how we deem a sponsor's income to an alien. First we determine the amount of the sponsor's income as explained in § 416.1161(b). We next deduct allocations for the sponsor and the

sponsor's dependents. The allocation for the sponsor is the amount of the FBR for an individual and, for each dependent of the sponsor, one-half the FBR for an individual. However, for sponsors who are married and living together, the allocation for each sponsor is the amount of the FBR for an individual. We do not deduct from the sponsor's dependent's allocation the income of the dependent. The statute does not specify that the allocation be reduced by the dependent's income, just as it does not specify a deduction from the sponsor's allocation. In the absence of such a specific statutory directive, the preferable construction is that no deduction be made. After the appropriate allocations have been subtracted, we deem the balance to be the unearned income of the alien.

This section also includes examples to show how deeming rules apply in various situations. These examples have also been updated from the NPRM to reflect the January 1986 increase in benefits and retrospective monthly accounting.

We next explain in § 416.1166a(c) how deemed income is determined if a person sponsors more than one alien. The amount of income deemed to each alien is the same amount which would be deemed if there was only one alien.

In § 416.1166a(d) is an explanation of when sponsor-to-alien deeming is not applicable. We do not deem the income of a sponsor if the alien is admitted as a refugee under certain provisions of the Immigration and Nationality Act, has been given political asylum by the Attorney General of the United States, or becomes disabled or blind after admission to the United States. Under the new rules, sponsor-to-alien deeming does not apply beginning with the month the alien becomes disabled or blind after admission to the United States. It will, therefore, now be necessary to establish when an alien becomes disabled or blind (as defined in existing regulations, § 416.901). We have added statements to §§ 416.1163 and 416.1166a(d) of these final regulations to reflect certain provisions that reflect retrospective monthly accounting which were published as final rules on November 26, 1985 (50 FR 48563).

In the NPRM we revised § 416.1167 to update the paragraph that explained when we stop deeming a parent's income to a child and to add a paragraph that explained when we stop deeming a sponsor's income to an alien. Since publication of the NPRM that covered the rules in these final regulations, § 416.1167 has been rewritten to include rules related to the implementation of retrospective monthly accounting (50 FR 48563 published on November 26, 1985 as final rules) so that the revisions planned for these regulations are no longer appropriate. The information on parent-to-child deeming is already partially covered in the introductory paragraph of § 416.1165 so we have added the balance of the information to that paragraph. The information on sponsor-to-alien deeming has been moved to § 416.1166a as paragraph (c).

Since we have added an alien allocation in § 416.1163(c) which is the difference between the FBR for an eligible couple and the FBR for an eligible individual, we have also made a conforming change in § 416.1163(b) of these final regulations that was not shown in the NPRM. Effective January 1977, our regulations and instructions stated that an allocation for ineligible children in a household was in the amount of the difference between the FBR for an eligible couple and the FBR for an eligible individual. Even though our operating instructions have always provided that the allocation is the difference between the individual and couple FBR's, when Subpart K was recodified in October 1980 (45 FR 65547), we changed the terminology to one-half the FBR for an eligible individual because this was simpler language and, at the time, resulted in the same dollar amount. This is no longer true and there may be minor differences in benefit amounts because of the way we apply cost-of-living adjustments. We have, therefore, reverted to the original terminology in these regulations. Reverting to the original terminology will not disadvantage individuals since our operating policy has always remained the same. (This change does not apply to allocations for dependents of sponsors of aliens since the statute specifically describes the allocation formula to use.)

The appendix to Subpart K is being updated to show how the exclusions provided by other Federal statutes apply to income deemed from a sponsor to an alien. Each listing that differs for sponsor-to-alien deeming is annotated to show how it applies to a sponsor's income. The listings at II(c), IV(b)(3), IV(b)(4), IV(b)(11), IV(c), and IV(d) that provide that the exclusion applies to the sponsor's income only if the alien lives with the sponsor are so limited because the statute authorizing the exclusions apply only to benefits to which the household or member of the household would be eligible. The listings at IV(a) and V(a) that provide that the exclusion does not apply to a sponsor's income are so limited because the statutes authorizing the exclusions only apply to benefits or payments received by the individual receiving Federal assistance. Those that are not annotated apply to a sponsor's income exactly as they apply to that of an eligible individual or an ineligible parent and spouse for other deeming purposes. We have also deleted III(a) since the statutes have been repealed. Item V(a), the reference to the Domestic Volunteer Service Act, is being revised because the law was amended in 1980. Under the amended statute, the exclusion does not apply if the director of the action agency determines that the payment equals the minimum wage. In these final regulations we have also updated the appendix to include several entries regarding distribution of per capita judgment funds to Section IV, Native Americans, Indian tribes, and added a category because of the enactment in 1980 of Pub. L. 96–420, which relates to claims of Maine Indians. These new entries are an update to the appendix to the SSI program, in general, and not to the alien deeming provisions.

Subpart L, Resources and Exclusions

Subpart L, Resources and Exclusions, defines resources and explains which resources we do or do not count to determine SSI eligibility. Resources may include those of a parent that are deemed to an eligible child. Section 416.1202 is being revised to show that deeming of parental resources stops when the child reaches 18.

New § 416.1204 is being added to explain the effects of a sponsor's resources on the eligibility of an alien. With the exception of certain resources excluded under other Federal statutes, a sponsor's resources are subject to the same exclusions that apply to an individual eligible for SSI. The remaining amount is reduced by an allocation for the sponsor or for the sponsor and spouse if they live together. (The amount of the allocation is equal to the applicable resource limit described in § 416.1205 for an eligible individual and an individual and spouse.) The balance of the sponsor's resources is deemed to the alien. The statute does not address resource exclusions for sponsors who are married to each other and living together. This section provides that the resource exclusion for each is the resource limit applicable to an eligible individual. SSA believes that, if INS treats the husband and wife as separate sponsors in those cases, they

should each receive the sponsor's exclusion.

In discussing resources excluded under other Federal statutes in § 416.1204, we cross-refer to the appendix of Subpart K for the listing of specific exclusions. As stated in the current regulations, the same exclusions that apply to income apply when the proceeds become resources. However, this does not include those listed in III (c) of the appendix to Subpart K.

The rest of § 416.1204 deals with the different types of sponsor-to-alien deeming situations; e.g., an alien with multiple sponsors or a person who sponsors more than one alien. The rules for deeming of resources in these situations are similar to the deeming of income rules discussed earlier.

Subpart R, Relationship

Subpart R, Relationship, explains when proof is necessary to establish family relationships. Section 416.1821 currently requires persons under age 21 and living with their parents to show us proof of marriage. This section is revised, because of the statutory change, to show that a child subject to parental deeming rules (rather than children under age 21) will be asked for proof of marriage if we have reason to believe the child is married. Section 416.1851 is revised to clarify which children are subject to deeming rules. Both §§ 416.1821 and 416.1851 cross-refer to the sections in other subparts that explain parent-to-child deeming of income and resources.

Future Regulations

These regulations describe the process of deeming a sponsor's income and resources to an alien and liability of a sponsor when there is an overpayment to an alien. Regulations will be prepared in the future to cover related provisions of the statute such as those dealing with the sponsor's responsibility to provide information and the sponsor's access to the appeals process.

Effective Date of Regulations

These regulations are effective on the first day of the month following publication in the **Federal Register.** This is because these regulations establish new rules for determining SSI eligibility and benefit amount. Since the eligibility and benefit amount factors are generally determined on the first day of every month, the effective date of the new rules should coincide with the date determinations are made.

Regulatory Procedures

Executive Order 12291—These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. The costs of implementing section 1614(f)(2) of the Act as amended by section 203 of Pub. L. 96–265 that revises the parent-to-child deeming rules were estimated to have been $1 million, $4 million, and $9 million for the years 1981 through 1983, and to be $14 million for each year from 1984 through 1986. We expect the costs to stabilize at the 1984 level ($14 million). Implementing sections 1614(f)(3) and 1621 as added by section 504 of Pub. L. 96–265 that establishes sponsor-to-alien deeming was estimated to reduce program costs by $24 million in 1984 and $28 million in 1985. Medicaid costs were expected to decrease by $7 million in 1984 and $9 million in 1985. Administrative costs are estimated at less than $1 million per year. The actual SSI program savings effect has three parts: savings from reduced benefits for those awarded benefits who have deemed income; savings from denials for excess income and/or resources for those who would have been eligible; and savings from aliens discouraged from even applying for SSI because of the provision. Program data are available only for the first type of savings; it is determined to be less than $1 million per year since 1981. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These regulations impose no additional reporting and recordkeeping requirement requiring OMB clearance. SSA has clearance for the form (SSA–8150, OMB No. 0960–0128) on which beneficiaries report changes in income and on the form completed by parents or sponsors of aliens to allow us to determine deemable income (SSA–8010, OMB No. 0960–0124).

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

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

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: March 10, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: March 10, 1987.

Otis R. Bowen,

Secretary, Health and Human Services.

Part 416 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1614, 1621, 1631, 1633 of the Social Security Act, as amended; 49 Stat. 647, 86 Stat. 1465, 1466, 1471, 94 Stat. 471, 86 Stat. 1475, and 1478 ; U.S.C. 1302, 1381, 1381a, 1382, 1382c, 1382j, 1383 and 1383b.

2. Section § 416.535 is revised to read as follows:

§ 416.535 Underpayments and overpayments.

(a) *General.* When an individual receives SSI benefits of less than the correct amount, adjustment is effected as described in §§ 416.542 and 416.543. When an individual receives more than the correct amount of SSI benefits, adjustment is effected as described in § 416.570. Refund of overpayments is discussed in § 416.560 and waiver of recovery of overpayments is discussed in §§ 416.550 through 416.555.

(b) *Additional rules for eligible aliens and for their sponsors.* When an individual who is an alien is overpaid SSI benefits during the 3-year period in which deeming from a sponsor applies (see § 416.1160(a)(3)), the sponsor and the alien may be jointly and individually liable for repayment of the overpayment. The sponsor is liable for the overpayment if he or she failed to report correct information that affected the alien's eligibility or payment amount. This means information about the income and resources of the sponsor and, if they live together, of the sponsor's spouse. However, the sponsor is not liable for repayment if the sponsor was without fault or had good cause for failing to report correctly. A special rule that applies to adjustment of other benefits due the alien and the sponsor to recover an overpayment is described in § 416.570(b).

(c) *Sponsor without fault or good cause exists for failure to report.* Without fault or good cause will be found to exist if the failure to report was not willful. To establish willful failure, the evidence must show that the sponsor knowingly failed to supply pertinent information regarding his or her income and resources.

3. Section 416.550 is revised to read as follows:

§ 416.550 Waiver of adjustment or recovery—when applicable.

Waiver of adjustment or recovery of an overpayment of SSI benefits may be granted when (EXCEPTION: This section does not apply to a sponsor of an alien):

(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.

4. Section 416.570 is amended by revising the section heading, designating existing text as paragraph (a) and adding a heading, and adding a new paragraph (b) to read as follows:

§ 416.570 Adjustment-Overpayments.

(a) *General rule.* * * *

(b) *Exception to the general rule.* Adjustment to recover an overpayment of SSI benefits to an alien shall be made against any subsequent payment under the Social Security Act which is payable to the alien or to the sponsor (in cases which the overpayment was caused by the sponsor's failure to provide correct information) if the overpayment:

(1) Was made during the 3-year period in which the sponsor's income and resources (and those of the sponsor's spouse if they live together) may be deemed to the alien; and

(2) Was not otherwise repaid or recovered under § 416.560 or paragraph (a) of this section.

5. The authority citation for Subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614, 1621, and 1631 of the Social Security Act as amended: Sec. 211 of Pub. L. 93–66; 49 Stat. 647 as amended, 86 Stat. 1465, 1466, 1468, 1470, 1471; 94 Stat. 471, 86 Stat. 1475, 87 Stat. 154; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c, 1382j and 1383.

6. In section 416.1148, paragraphs (a) and (b)(2), are revised to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

(a) *The one-third reduction and deeming of income.* If you live in the household of your spouse, parent, essential person, or sponsor whose income can be deemed to you, the one-third reduction does not apply to you. The rules on deeming income are in §§ 416.1160 through 416.1169. However, if you live in another person's household as described in § 416.1131, and someone whose income can be deemed to you lives in the same household, we must apply both the one-third reduction and the deeming rules to you.

(b) *The presumed value rule and deeming of income.*

* * * * *

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any food, clothing, or shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

7. In § 416.1149, paragraph (c)(2)(ii) is revised to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

* * * * *

(c) * * *

(2) * * *

(ii) However, if you are a child under age 18, and your permanent living arrangement is with an ineligible parent or essential person (§ 416.222), we follow the rules in § 416.1148(b)(2). When you reach age 18, or if you are under age 18 and deeming does not apply, we consider the circumstances of your permanent living arrangement to value any in-kind support and maintenance you receive.

8. Section 416.1160 is revised to read as follows:

§ 416.1160 What is deeming of income.

(a) *General.* We use the term deeming to identify the process of considering another person's income to be your own. When the deeming rules apply, it does not matter whether the income of the other person is actually available to you. We must apply these rules anyway. There are four categories of individuals whose income may be deemed to you.

(1) *Ineligible spouse.* If you live in the same household with your ineligible spouse, we look at your spouse's income to decide whether we must deem some of it to you. We do this because we expect your spouse to use some of his or her income to take care of some of your needs.

(2) *Ineligible parent.* If you are a child to whom deeming rules apply (See § 416.1165), we look at your parent's income (and that of your parent's spouse) to decide whether we must deem some of it to be yours. We do this because we expect your parent to use some of his or her income to take care of your needs.

(3) *Sponsor of an alien.* If you are an alien who has a sponsor and you first apply for SSI benefits after September 30, 1980, we look at your sponsor's income to decide whether we must deem some of it to be yours. This rule applies for 3 years after you are admitted to the United States for permanent residence and regardless of whether you live in the same household as your sponsor. We deem your sponsor's income to you because your sponsor agreed to support you (signed an affidavit of support) as a condition of your admission to the United States. If two deeming rules could apply to you because your sponsor is also your ineligible spouse or parent who lives with you, we use the appropriate spouse-to-spouse or parent-to-child deeming rules instead of the sponsor-to-alien rules. If you have a sponsor and also have an ineligible spouse or parent who is not your sponsor and whose income can be deemed to you, both rules apply. If your sponsor is not your parent or spouse but is the ineligible spouse or parent of another SSI beneficiary, we use the sponsor-to-alien deeming rules for you and the appropriate spouse-to-spouse or parent-to-child deeming rules for the other SSI beneficiary.

(4) *Essential person.* If you live in the same household with your essential person (as defined in § 416.222), we must look at that person's income to decide whether we must deem some of it to you. We do this because we have increased your benefit to help meet the needs of your essential person.

(b) *When we deem.* We deem income to determine whether you are eligible for a benefit and to determine the amount of your benefit. However, we may consider this income in different months for each purpose.

(1) *Eligibility.* We consider the income of your ineligible spouse, ineligible parent, sponsor or essential person in the current month to determine whether you are eligible for SSI benefits for that month.

(2) *Amount of benefit.* We consider the income of your ineligible spouse, ineligible parent, sponsor, or essential person in the second month prior to the current month to determine your benefit amount for the current month. *Exceptions:* (i) To determine your benefit amount for the first month you are eligible or for a month after you have been ineligible for at least a month, we use the same countable income that we use to determine your eligibility. In the following month (the second month)

we use the same countable income that we used in the preceding month to determine your benefit amount. (ii) To determine the amount of your benefit in the current month, if there are certain changes in your situation which we list below, we use only your own countable income in a prior month, excluding any income deemed to you in that month from an ineligible spouse or parent. These changes are the death of your spouse or parent, your attainment of age 18, or your becoming subject to the $25 Federal benefit rate (§ 416.211(b)). (iii) To determine the amount of your benefit for the current month, we do not use income deemed from your essential person beginning with the month you can no longer qualify for the essential person increment (§ 416.413). We use only your own countable income in a prior month to determine the amount of your benefit for the current month.

(c) *Steps in deeming.* Although the way we deem income varies depending upon whether you are an eligible individual, an eligible child, an alien with a sponsor, or an individual with an essential person, we follow several general steps to determine how much income to deem.

(1) We determine how much earned and unearned income your ineligible spouse, ineligible parent, sponsor, or essential person has, and we apply the appropriate exclusions. (See § 416.1161(a) for exclusions that apply to an ineligible parent or spouse, and § 416.1161(b) for those that apply to an essential person or to a sponsor.)

(2) Before we deem income to you from either your ineligible spouse or ineligible parent, we allocate an amount for each ineligible child in the household. (Allocations for ineligible children are explained in § 416.1163(b) and § 416.1165(b).) We also allocate an amount for each eligible alien who is subject to deeming from your ineligible spouse or parent as a sponsor. (Allocations for eligible aliens are explained in § 416.1163(c).)

(3) We then follow the deeming rules which apply to you.

(i) For deeming income from your ineligible spouse, see § 416.1163.

(ii) For deeming income from your ineligible parent, see § 416.1165.

(iii) For deeming income from your ineligible spouse when you also have an eligible child, see § 416.1166.

(iv) For deeming income from your sponsor if you are an alien, see § 416.1166a.

(v) For deeming income from your essential person, see § 416.1168. The rules on when we stop deeming income from your essential person are in § 416.1169.

(vi) For provisions on change in status involving couples see § 416.1163(f) and for those involving parents see § 416.1165(g).

(d) *Definitions for deeming purposes.* For deeming purposes—

"Date of admission to" or "date of entry into the United States" means the date established by the Immigration and Naturalization Service as the date the alien is admitted for permanent residence.

"Dependent" means the same thing as it does for Federal income tax purposes—we mean someone for whom you are entitled to take a deduction on your personal income tax return. *Exception:* An alien and an alien's spouse are not considered to be dependents of the alien's sponsor for the purposes of these rules.

"Essential person" means someone who was identified as essential to your welfare under a State program that preceded the SSI program. (See §§ 416.220 through 416.223 for the rules on essential persons.)

"Ineligible child" means your natural child or adopted child, or the natural or adopted child of your spouse, or the natural or adopted child of your parent or of your parent's spouse (as the terms "child" and "spouse" are defined in § 416.1101), who is under age 21, lives in the same household with you, and is not eligible for SSI benefits.

"Ineligible parent" means a natural or adoptive parent, or the spouse (as defined in § 416.1101) of a natural or adoptive parent, who lives with you and is not eligible for SSI benefits. The income of ineligible parents affects your benefit only if you are a child under age 18.

"Ineligible spouse" means someone who lives with you as your husband or wife and is not eligible for SSI benefits.

"Sponsor" means an individual (but not an organization such as the congregation of a church or a service club, or an employer who only guarantees employment for an alien upon entry but does not sign an affadavit of support) who signs an affidavit of support agreeing to support you as a condition of your admission as an alien for permanent residence in the United States.

9. Section 416.1161 is amended by revising the introductory text, by revising paragraph (b), and by adding new paragraph (d) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, sponsor of an alien, and essential person for deeming purposes.

The first step in deeming is determining how much income your ineligible spouse, ineligible parent (if you are a child), your sponsor (if you are an alien), or your essential person, has. We do not always include all of their income when we determine how much income to deem. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or parent, we must determine the amount of income of any ineligible children in the household.

* * * * *

(b) *For an essential person or for a sponsor of an alien.* We include all the income (as defined in § 416.1102) of an essential person or of a sponsor of an alien and of the spouse of the sponsor (if the sponsor and spouse live in the same household) except for home energy assistance described in §§ 416.1155 and 416.1156, and income excluded under Federal laws other than the Social Security Act. For information on these laws see the appendix to this subpart.

* * * * *

(d) *For an eligible alien.* Although we do not deem any income to you from an eligible alien, if your ineligible spouse or ineligible parent is also a sponsor of an eligible alien, we reduce the alien's allocation if he or she has income (see § 416.1163(c)(2)). For this purpose exclude any of the alien's income listed in paragraph (a) of this section.

10. In § 416.1163, the introductory text of paragraph (b) and paragraph (b)(1) are revised, paragraphs (c), (d), (e) and (f) are revised and redesignated as paragraphs (d), (e), (f), and (g), and a new paragraph (c) is added, to read as follows. The introductory paragraph is republished.

§ 416.1163 How we deem income to you from your ineligible spouse.

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order:

* * * * *

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. *Exception:* We do not allocate for ineligible children who are receiving public income-maintenance payments (see § 416.1142(a)).

(1) The allocation for each ineligible child is the difference between the Federal benefit rate for an eligible

couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in § 416.1160(b)(2) applies.

* * * * *

(c) *Allocations for aliens sponsored by your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and who have income deemed from your ineligible spouse.

(1) The allocation for each alien who is sponsored by and who has income deemed from your ineligible spouse is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to compute your benefit for a current month is based on the Federal benefit rate that applied in the second prior month (unless the current month is the first or second month of eligibility or re-eligibility as explained in §§ 416.420(a) and (b) (2) and (3)).

(2) Each alien's allocation is reduced by the amount of his or her own income as described in § 416.1161(d).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations, we deduct the balance from your ineligible spouse's earned income.

(d) *Determining your eligibility for SSI.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple.

(e) *Determining your SSI benefit.* (1) In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

(2) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the lesser of the amount computed under the rules in paragraph (d)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate.

(f) *Special rules for couples when a change in status occurs.* We have special rules to determine how to deem your spouse's income to you when there is a change in your situation.

(1) *Ineligible spouse becomes eligible.* If your ineligible spouse becomes eligible for SSI benefits, we treat both of you as newly eligible. Therefore, your eligibility and benefit amount for the first month you are an eligible couple will be based on your income in that month. In the second month, your benefit amount will also be based on your income in the first month.

(2) *Spouses separate or divorce.* If you separate from your ineligible spouse or your marriage to an ineligible spouse ends by divorce, we do not deem your ineligible spouse's income to you to determine your eligibility for benefits beginning with the first month following the event. If you remain eligible, we determine your benefit amount by following the rule in paragraph (e) of this section provided deeming from your spouse applied in the prior month.

(3) *Eligible individual begins living with an ineligible spouse.* If you begin to live with your ineligible spouse, we deem your ineligible spouse's income to you in the first month thereafter to determine whether you continue to be eligible for SSI benefits. If you continue to be eligible, we follow the rule in § 416.420(a) to determine your benefit amount.

(4) *Ineligible spouse dies.* If your ineligible spouse dies, we do not deem your spouse's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(5) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible spouse's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(g) *Examples.* These examples show how we deem income from an ineligible spouse to an eligible individual in cases which do not involve any of the exceptions in § 416.1160(b)(2). The income, the income exclusions, and the allocations are monthly amounts. The Federal benefit rates used are those effective January 1, 1986.

Example 1. In September 1986, Mr. Todd, an aged individual, lives with his ineligible spouse, Mrs. Todd, and their ineligible child, Mike. Mr. Todd has a Federal benefit rate of $336 per month. Mrs. Todd receives $252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike $168 (the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual). We subtract the $168 allocation from Mrs. Todd's $252 unearned income, leaving $84. Since Mrs. Todd's $84 remaining income is not more than $168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we do not deem any income to Mr. Todd. Instead, we compare only Mr. Todd's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Mr. Todd's own countable income

is less than his Federal benefit rate, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Mrs. Todd, in July and subtract this income from the appropriate Federal benefit rate for September.

Example 2. In September 1986, Mr. Jones, a disabled individual, lives with his ineligible spouse, Mrs. Jones, and ineligible child, Christine. Mr. Jones and Christine have no income. Mrs. Jones has earned income of $401 a month and unearned income of $252 a month. Before we deem any income, we allocate $168 to Christine. We take the $168 allocation from Mrs. Jones' $252 unearned income, leaving $84 in unearned income. Since Mrs. Jones' total remaining income ($84 unearned plus $401 earned) is more than $168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we compute the combined countable income as we do for a couple. We apply the $20 general income exclusion to the unearned income, reducing it further to $64. We then apply the earned income exclusion ($65 plus one-half the remainder) to Mrs. Jones' earned income of $401, leaving $168. We combine the $64 countable unearned income and $168 countable earned income, and compare it ($232) with the $504 September Federal benefit rate for a couple, and determine that Mr. Jones is eligible. Since Mr. Jones is eligible, we determine the amount of his benefit by subtracting his countable income in July (including any deemed from Mrs. Jones) from September's Federal benefit rate for a couple.

Example 3. In September 1986, Mr. Smith, a disabled individual, lives with his ineligible spouse, Mrs. Smith, who earns $201 per month. Mr. Smith receives a pension (unearned income) of $100 a month. Since Mrs. Smith's income is greater than $168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we deem all of her income to be available to both Mr. and Mrs. Smith and compute the combined countable income for the couple. We apply the $20 general income exclusion to Mr. Smith's $100 unearned income, leaving $80. Then we apply the earned income exclusion ($65 plus one-half of the remainder) to Mrs. Smith's $201, leaving $68. This gives the couple total countable income of $148. This is less than the $504 September Federal benefit rate for a couple, so Mr. Smith is eligible based on deeming. Since he is eligible, we determine the amount of his benefit based on his income (including any deemed from Mrs. Smith) in July.

Example 4. In September 1986, Mr. Simon has a disabled spouse, Mrs. Simon, and has sponsored an eligible alien, Mr. Ollie. Mrs. Simon has monthly unearned income of $100 and Mr. Simon has earned income of $405. From Mr. Simon's earned income we allocate to Mr. Ollie $168, which is the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual. Mr. Ollie has no other income. This reduces Mr. Simon's earned income from $405 to $237. Since $237 is more than $168 (the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual), we deem all of Mr. Simon's remaining income to be available to Mr. and Mrs. Simon and compute the combined countable income for the couple. We apply the $20 general income exclusion to Mrs. Simon's unearned income, leaving $80. Then we apply the general earned income exclusion ($65 plus one-half the remainder) to Mr. Simon's $237 earned income, leaving $86. This gives the couple total income of $166 ($80+$86.). The $166 is less than the $504 Federal benefit rate for a couple so Mrs. Simon would be eligible based on deeming. Since she is eligible, we determine the amount of her benefit based on her income (including any deemed from Mr. Simon) in July . For the way we deem Mr. Simon's income to Mr. Ollie, see the rules in § 416.1166a.

11. Section 416.1165 is revised to read as follows:

§ 416.1165 How we deem income to you from your ineligible parent.

If you are a child living with your parents, we apply the deeming rules to you through the month in which you reach age 18. We follow the rules in paragraphs (a) through (e) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (f) of this section. The rules in paragraph (g) of this section apply to changes in your family situation.

(a) *Determining your ineligible parent's income.* We first determine how much current monthly earned and unearned income your ineligible parents have, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible parent.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible parent as described in § 416.1163(c).

(d) *Allocations for your ineligible parents.* We next deduct allocations for your parents. These vary depending on the type of income they have. We do not allocate for a parent who is receiving public income-maintenance payments (see § 416.1142(a)).

(1) *All parental income is earned.* If your parents have only earned income, we allocate $85 (the sum of the $20 general income exclusion and the $65 earned income exclusion) plus—

(i) Double the Federal benefit rate for the month for a couple if both parents live with you; or

(ii) Double the Federal benefit rate for the month for an individual if only one parent lives with you.

(2) *All parental income is unearned.* If your parents have only unearned income, we allocate $20 (the amount of the general income exclusion) plus—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(3) *Parental income is both earned and unearned.* If your parents have both earned and unearned income, we allocate for them as follows. We first deduct $20 from their combined unearned income. If they have less than $20 in unearned income we subtract the balance of the $20 from their combined earned income. Next, we subtract $65 plus one-half the remainder of their earned income. We total the remaining earned and unearned income, and subtract—

(i) The Federal benefit rate for the month for a couple if both parents live with you; or

(ii) The Federal benefit rate for the month for an individual if only one parent lives with you.

(e)(1) *When you are the only eligible child.* If you are the only eligible child in the household, we deem any of your parents' current monthly income that remains to be your unearned income. We combine it with your own unearned income and apply the exclusions in § 416.1124 to determine your countable unearned income in the month. We add this to any countable earned income you

may have and subtract the total from the Federal benefit rate for an individual to determine whether you are eligible for benefits.

(2) *When you are not the only eligible child.* If your parents have more than one eligible child under age 18 in the household, we divide the parental income to be deemed equally among those eligible children.

(3) *When one child's income makes that child ineligible.* We do not deem more income to an eligible child than the amount which, when combined with the child's own income, reduces his or her SSI benefit to zero. (For purposes of this paragraph, an SSI benefit includes any federally administered State supplement). If the share of parental income that would be deemed to a child makes that child ineligible (reduces the amount to zero) because that child has other countable income, we deem any remaining parental income to other eligible children under age 18 in the household in the manner described in paragraph (e)(2) of this section.

(f) *Determining your SSI benefit.* In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible parents' income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility) we deem your ineligible parents' income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible parents' income in that month to determine whether you are eligible for a benefit but we again use your countable income (including any that was deemed to you) in the first month to determine the amount of your benefit.

(g) *Special rules for a change in status.* We have special rules to begin or stop deeming your ineligible parents' income to you when a change in your family situation occurs.

(1) *Ineligible parent becomes eligible.* If your ineligible parent becomes eligible for SSI benefits, there will be no income to deem from that parent to you to determine your eligibility for SSI benefits beginning with the month your parent becomes eligible. However, to determine your benefit amount, we follow the rule in § 416.420.

(2) *Eligible parent becomes ineligible.* If your eligible parent becomes ineligible, we deem your parents' income to you in the first month of the parents' ineligibility to determine whether you continue to be eligible for SSI benefits. However, if you continue to be eligible, in order to determine your benefit amount, we follow the regular rule of counting your income in the second month prior to the current month.

(3) *Ineligible parent dies.* If your ineligible parent dies, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(b)(2)(B)). However, if you live with two ineligible parents, and one dies, we continue to deem income from the surviving parent.

(4) *Ineligible parent and you no longer live in the same household.* If your ineligible parent and you no longer live in the same household, we do not deem that parent's income to you to determine your eligibility for SSI benefits beginning with the first month following the month in which one of you leaves. However (if you continue to be eligible), to determine your benefit amount we follow the rule in § 416.420 of counting your income including income deemed from your parent in the second month prior to the current month.

(5) *Ineligible parent and you begin living in the same household.* If your ineligible parent and you begin living in the same household, we consider that parent's income to determine whether you continue to be eligible for SSI benefits beginning with the month following the month of change. However (if you continue to be eligible), to determine your benefit amount, we follow the rule in § 416.420 of counting your income in the second month prior to the current month.

(6) *You become subject to the $25 Federal benefit rate.* If you become a resident of a medical care facility and the $25 Federal benefit rate applies, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits beginning with the first month for which the $25 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the $25 Federal benefit rate applies, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent.

(7) *You attain age 18.* In the month following the month in which you attain age 18 and thereafter, we do not deem your ineligible parent's income to you to determine your eligibility for SSI benefits. In determining your benefit amount beginning with the month following your attainment of age 18, we only use your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible parent (see § 416.1160(b)(2)(B)). Your income for the current and subsequent months must include any income in the form of cash or in-kind support and maintenance provided by your parents. If you attain age 18 and stop living in the same household with your ineligible parent, these rules take precedence over paragraph (g)(4) of this section which requires continued use of deemed income in the benefit computation for 2 months following the month you no longer live in the same household.

(h) *Examples.* These examples show how we deem an ineligible parent's income to an eligible child when none of the exceptions in § 416.1160(b)(2) applies. The income, the income exclusions, and the allocations are monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $285 per month and his father earns $955 per month. Henry and his brother have no income. First, we allocate $168 for Henry's brother from the unearned income of $285. This leaves $117 in unearned income. Since the remaining parental income is both earned and unearned, we reduce the unearned income further by $20, leaving $97. We then reduce the $955 of earned income by $65 plus one-half of the remainder, leaving $445. From the total remaining income of $542, we subtract $504 (the Federal benefit rate for a couple), as the allocation for the parents, leaving $38 to be deemed as Henry's unearned income. We then apply Henry's $20 general income exclusion which reduces his countable income to $18. Since that amount is less than the $336 Federal benefit rate for an individual, Henry is eligible. We determine his benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives $416 a month in unearned income. Since all the mother's income is unearned, the amount we allocate for her needs is $356 (the $336 Federal benefit rate for an individual, plus the $20 general income exclusion). After subtracting this allocation from her $416, we divide the remaining $60 equally between the two children ($30 each) as unearned income. We then apply the $20 general income exclusion leaving each child

with $10 countable income. The $10 income is less than the $336 Federal benefit rate for an individual, so the children are eligible. We determine each child's benefit amount by subtracting his countable income (including deemed income) in a prior month from the Federal benefit rate for an individual for the current month.

Example 3. Mrs. Jones is the ineligible parent of two disabled children, Beth and Linda, and has sponsored an eligible alien, Mr. Sean. Beth, Linda, and Mr. Sean have no income; Mrs. Jones has unearned income of $850. We first reduce the mother's income by an allocation of $168 for Mr. Sean which leaves a balance of $682. Next, we allocate $356 for the mother's own needs (the $20 general income exclusion plus $336, the amount of the Federal benefit rate payable to an individual). The balance of $326 ($682 − $356 = $326) to be deemed is divided equally between Beth and Linda. Each now has unearned income of $163 from which we deduct the $20 general income exclusion ($163 − $20 = $143). Since this is less than the $336 Federal benefit rate for an individual, the girls are eligible. We will use income in a prior month to compute their benefits if retrospective accounting applies. (For the way we deem the mother's income to Mr. Sean, see examples No. 3 and No. 4 in § 416.1166a.)

12. In § 416.1166 existing paragraphs (c), (d), and (e) are redesignated (d), (e), and (f), a new paragraph (c) is added, and the introductory paragraph is revised to read as follows:

§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child. For the purpose of this section, SSI benefits include any federally administered State supplement. We then follow the rules in § 416.1165(e) to determine the child's eligibility for SSI benefits and in § 416.1165(f) to determine the benefit amount.

* * * * *

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible spouse as described in § 416.1163(c).

* * * * *

13. Section 416.1166a is added to read as follows:

§ 416.1166a How we deem income to you from your sponsor if you are an alien.

Before we deem your sponsor's income to you if you are an alien, we determine how much earned and unearned income your sponsor has under § 416.1161(b). We then deduct allocations for the sponsor and the sponsor's dependents. This is an amount equal to the Federal benefit rate for an individual for the sponsor (or for each sponsor even if two sponsors are married to each other and living together) plus an amount equal to one-half the Federal benefit rate for an eligible individual for each dependent of the sponsor. An ineligible dependent's income is not subtracted from the sponsor's dependent's allocation. We deem the balance of the income to be your unearned income.

(a) *If you are the only alien applying for or already eligible for SSI benefits who has income deemed to you from your sponsor.* If you are the only alien who is applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(b) *If you are not the only alien who is applying for or already eligible for SSI benefits and who has income deemed from your sponsor.* If you and other aliens applying for or already eligible for SSI benefits are sponsored by the same sponsor, we deem the income to each of you as though you were the only alien sponsored by that person. The income deemed to you becomes your unearned income.

(c) *When you are an alien and income is no longer deemed from your sponsor.* If you are an alien and have had your sponsor's income deemed to you, we stop deeming the income with the month in which the third anniversary of your admission into the United States occurs.

(d) *When sponsor deeming rules do not apply to you if you are an alien.* If you are an alien, we do not apply the sponsor deeming rules to you if—

(1) *You are a refugee.* You are a refugee admitted to the United States as the result of application of one of three sections of the Immigration and Nationality Act: (1) Section 203(a)(7), effective before April 1, 1980; (2) Section 207(c)(1), effective after March 31, 1980; or (3) Section 212(d)(5);

(2) *You have been granted asylum.* You have been granted political asylum by the Attorney General of the United States; or

(3) *You become blind or disabled.* If you become blind or disabled as defined in § 416.901 (at any age) after your admission to the United States, we do not deem your sponsor's income to you to determine your eligibility for SSI benefits beginning with the month in which your disability or blindness begins. However, to determine your benefit payment, we follow the rule in § 416.420 of counting your income in the second month prior to the current month.

(e) *Examples.* These examples show how we deem a sponsor's income to an eligible individual who is an alien when none of the exceptions in § 416.1160(b)(2) applies. The income, income exclusions, and the benefit rates are in monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Mr. John, an alien who has no income, has been sponsored by Mr. Herbert who has monthly earned income of $1,300 and unearned income of $70. Mr. Herbert's wife and three children have no income. We add Mr. Herbert's earned and unearned income for a total of $1,370 and apply the allocations for the sponsor and his dependents. Allocations total $1,008. These are made up of $336 (the Federal benefit rate for an eligible individual) for the sponsor, plus $672 (one-half the Federal benefit rate for an eligible individual, $168 each) for Mr. Herbert's wife and three children. The $1,008 is subtracted from Mr. Herbert's total income of $1,370 which leaves $362 to be deemed to Mr. John as his unearned income. Mr. John's only exclusion is the $20 general income exclusion. Since the $342 balance exceeds the $336 Federal benefit rate, Mr. John is ineligible.

Example 2. Mr. and Mrs. Smith are an alien couple who have no income and who have been sponsored by Mr. Hart. Mr. Hart has earned income of $1,350 and his wife, Mrs. Hart, who lives with him, has earned income of $150. Their two children have no income. We combine Mr. and Mrs. Hart's income ($1,350 + $150 = $1,500). We deduct the allocations of $336 for Mr. Hart (the Federal benefit rate for an individual) and $504 for Mrs. Hart and the two children ($168 or one-half the Federal benefit rate for an eligible individual for each), a total of $840. The allocations ($840) are deducted from the total $1,500 income which leaves $660. This amount must be deemed independently to Mr. and Mrs. Smith. Mr. and Mrs. Smith would qualify for SSI benefits as a couple in the amount of $504 if no income had been deemed to them. The $1,320 ($660 each to Mr. and Mrs. Smith) deemed income is unearned income to Mr. and Mrs. Smith and is subject to the $20 general income exclusion, leaving $1,300. This exceeds the couple's rate of $504 so Mr. and Mrs. Smith are ineligible for SSI benefits.

Example 3. Mr. Bert and Mr. Davis are aliens sponsored by their sister Mrs. Jean, who has earned income of $800. She also receives $250 as survivors' benefits for her two minor children. We do not consider the $250 survivors' benefits to be Mrs. Jean's income because it is the children's income. We exclude $336 for Mrs. Jean (the Federal benefit rate for an individual) plus $336 ($168, one-half the Federal benefit rate for an eligible individual for each child), a total of $672. We subtract the $672 from Mrs. Jean's income of $800, which leaves $128 to be deemed to Mr. Bert and Mr. Davis. Each of the brothers is liable for rent in the boarding house (a commercial establishment) where they live. Each lives in his own household, receives no in-kind support and maintenance,

and is eligible for the Federal benefit rate of $336. The $128 deemed income is deemed both to Mr. Bert and to Mr. Davis. As a result, each has countable income of $108 ($128 minus the $20 general income exclusion). This is less than $336, the Federal benefit rate for an individual, so that both are eligible for SSI. We use their income in a prior month to determine their benefit payments.

Example 4. The same situation applies as in example 3 except that one of Mrs. Jean's children is disabled and eligible for SSI benefits. The eligibility of the disabled child does not affect the amount of income deemed to Mr. Bert and Mr. Davis since the sponsor-to-alien and parent-to-child rules are applied independently. The child's countable income is computed under the rules in § 416.1165.

14. The appendix following Subpart K is amended by revising paragraph (c) in category II, deleting paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b) in category III, revising category IV and revising paragraph (a) in category V to read as follows:

Appendix—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act

* * * * *

II. Housing and Utilities * * *

(c) Value of any assistance paid with respect to a dwelling unit under—

(1) The United States Housing Act of 1937;

(2) The National Housing Act;

(3) Section 101 of the Housing and Urban Development Act of 1965; or

(4) Title V of the Housing Act of 1949.

Note.—This exclusion applies to a sponsor's income only if the alien is living in the housing unit for which the sponsor receives the housing assistance.

* * * * *

IV. Native Americans

(a) Revenues from the Alaska Native Fund paid under section 21(a) of the Alaska Native Claims Settlement Act, Pub. L. No. 92–203 (85 Stat. 713, 43 U.S.C. 1620(a)).

Note.—This exclusion does not apply in deeming income from sponsors to aliens.

(b) Indian tribes—Distribution of per capita judgment funds to members of—

(1) The Blackfeet and Gros Ventre Tribes under section 4 of Pub. L. No. 92–254 (86 Stat. 265, 25 U.S.C. 1264) and under section 6 of Pub. L. No. 97–408 (96 Stat. 2036);

(2) The Papago Tribe of Arizona Indians under section 8(d) of Pub. L. No. 97–408 (96 Stat. 2038);

(3) The Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40–K under section 6 of Pub. L. No. 94–540 (90 Stat. 2504);

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(4) Tribes or groups under section 7 of Pub. L. No. 93–134 (87 Stat. 468, 25 U.S.C. 1407);

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(5) The Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation as authorized by section 2 of Pub. L. No. 95–433 (92 Stat. 1047, 25 U.S.C. 609c–1);

(6) The Wyandot Tribe of Indians under section 6 of Pub. L. No. 97–371 (96 Stat. 1814, 42 U.S.C. 1305);

(7) The Shawnee Tribe of Indians under section 7 of Pub. L. No. 97–372 (96 Stat. 1816, 42 U.S.C. 1305);

(8) The Indians of the Miami Tribe of Oklahoma and Indiana under section 7 of Pub. L. No. 97–376 (96 Stat. 1829, 42 U.S.C. 1305);

(9) The Clallam Tribe of Indians under section 6 of Pub. L. No. 97–402 (96 Stat. 2021);

(10) The Pembina Chippewa Indians under section 9 of Pub. L. No. 97–403 (96 Stat. 2025);

(11) The Confederated Tribes of the Warm Springs Reservation under section 4 of Pub. L. No. 97–436 (96 Stat. 2284);

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(12) The Red Lake Band of Chippewa Indians under section 3 of Pub. L. No. 98–123 (97 Stat. 816); and

(13) The Assiniboine Tribe of Fort Peck Montana under section 5 of Pub. L. No. 98–124 (97 Stat. 818, 42 U.S.C. 1305) and the Assiniboine Tribe of Fort Belknap under section 5 of Pub. L. No. 98–124 (97 Stat. 818, 42 U.S.C. 1305) and section 6 of Pub. L. No. 97–408 (96 Stat. 2036).

(c) Receipts from land held in trust by the Federal government and distributed to members of certain Indian tribes under section 6 of Pub. L. No. 94–114 (89 Stat. 579).

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

(1) The Pueblo of Santa Ana Indians of New Mexico under section 6 of Pub. L. No. 95–498 (92 Stat. 1677, 42 U.S.C. 1305);

(2) The Pueblo of Zia Indians of New Mexico under section 6 of Pub. L. No. 95–499 (92 Stat. 1680, 42 U.S.C. 1305); and

(3) The Shoshone and Arapahoe Tribes of the Wind River Reservation of Wyoming under section 2 of Pub. L. No. 98–64 (97 Stat. 365, 25 U.S.C. 117).

(d) Revenues from the Maine Indian Claims Settlement Fund and the Maine Indian Land Acquisition Fund paid under section 5 of the Maine Indian Claims Settlement Act of 1980, Pub. L. No. 96–420 (94 Stat. 1796, 25 U.S.C. 1728(c)).

Note.—This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household.

V. Other

(a) Compensation provided volunteers in the foster grandparents program and other similar programs, unless determined by the Director of the Action Agency to constitute the minimum wage, under sections 404(g) and 418 of the Domestic Volunteer Service Act of 1973 (87 Stat. 409, 413), as amended by Pub. L. No. 96–143; (93 Stat. 1077); 42 U.S.C. 5044(g) and 5058).

Note.—This exclusion does not apply to the income of sponsors of aliens.

* * * * *

15. The authority citation for Subpart L of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631(d), 49 Stat. 647, as amended, 86 Stat. 1465, 1466, 1468, 1470, 94 Stat. 471, 86 Stat. 1476; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383(d), unless otherwise noted.

16. In § 416.1202, paragraph (b) is revised to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) *Child under age 18.* In the case of a child (defined in § 416.1101) who is under age 18, the child's resources will be deemed to include resources of ineligible parents who live in the same household. Deeming of a parents' resources does not apply the month after the month the child reaches age 18. The resources of parents are subject to the same exclusions that apply to an eligible individual or couple (see §§ 416.1205 through 416.1237) before any amount of their resources is deemed to the child. For purposes of this section, a parent may be a natural or adoptive parent or the spouse of a parent.

* * * * *

17. Section 416.1204 is added to read as follows:

§ 416.1204 Deeming of resources of the sponsor of an alien.

The resources of an alien who first applies for SSI benefits after September 30, 1980, are deemed to include the resources of the alien's sponsor for 3 years after the alien's date of admission into the United States. The "date of admission" is the date established by the Immigration and Naturalization Service as the date of admission for permanent residence. The resources of the sponsor's spouse are included if the sponsor and spouse live in the same household. Deeming of these resources applies regardless of whether the alien and sponsor live in the same household and regardless of whether the resources are actually available to the alien. For rules that apply in specific situations, see § 416.1166a(d).

(a) *Exclusions from the sponsor's resources.* Before we deem a sponsor's resources to an alien we exclude the same kinds of resources that are excluded from the resources of an individual eligible for SSI benefits. The applicable exclusions from resources are explained in §§ 416.1210 (paragraphs (a) through (i) and (k)) through 416.1237. For resources excluded by Federal statutes other than the Social Security Act, as applicable to the resources of sponsors deemed to aliens, see the

appendix to Subpart K, Income. We next allocate for the sponsor or for the sponsor and spouse (if living together). (The amount of the allocation is the applicable resource limit described in § 416.1205 for an eligible individual and an individual and spouse.)

(b) *An alien sponsored by more than one sponsor.* The resources of an alien who has been sponsored by more than one person are deemed to include the resources of each sponsor.

(c) *More than one alien sponsored by one individual.* If more than one alien is sponsored by one individual the deemed resources are deemed to each alien as if he or she were the only one sponsored by the individual.

(d) *Alien has a sponsor and a parent or a spouse with deemable resources.* Resources may be deemed to an alien from both a sponsor and a spouse or parent (if the alien is a child) provided that the sponsor and the spouse or parent are not the same person and the conditions for each rule are met.

(e) *Alien's sponsor is also the alien's ineligible spouse or parent.* If the sponsor is also the alien's ineligible spouse or parent who lives in the same household, the spouse-to-spouse or parent-to-child deeming rules apply instead of the sponsor-to-alien deeming rules. If the spouse or parent deeming rules cease to apply, the sponsor deeming rules will begin to apply. The spouse or parent rules may cease to apply if an alien child reaches age 18 or if either the sponsor who is the ineligible spouse or parent, or the alien moves to a separate household.

(f) *Alien's sponsor also is the ineligible spouse or parent of another SSI beneficiary.* If the sponsor is also the ineligible spouse or ineligible parent of an SSI beneficiary other than the alien, the sponsor's resources are deemed to the alien under the rules in paragraph (a), and to the eligible spouse or child under the rules in §§ 416.1202, 1205, 1234, 1236, and 1237.

18. The authority citation for Subpart R of part 416 is revised to read as follows:

Authority: Sec. 1102, 1614 (b), (c), (d), and 1631(d)(1) of the Social Security Act as amended, 49 Stat. 647, 86 Stat. 1473 and 1476; 42 U.S.C. 1302, 1382c (b), (c), and (d) and 1383(d)(1).

19. Section 416.1821 is amended by revising paragraphs (a) and (b) to read as follows:

§ 416.1821 Showing that you are married when you apply for SSI.

(a) *General Rule: Proof is unnecessary.* If you tell us you are married we will consider you married unless we have information to the contrary. We will also consider you married, on the basis of your statement, if you say you are living with an unrelated person of the opposite sex and you both lead people to believe you are married. However, if we have information contrary to what you tell us, we will ask for evidence as described in paragraph (c).

(b) *Exception: If you are a child to whom parental deeming rules apply.* If you are a child to whom the parental deeming rules apply and we receive information from you or others that you are married, we will ask for evidence of your marriage. The rules on deeming parental income are in §§ 416.1165 and 416.1166. The rules on deeming of parental resources are in § 416.1202.

* * * * *

20. Section 416.1851(c) is revised to read as follows. The introductory paragraph is republished for reader convenience.

§ 416.1851 Effects of being considered a child.

If we consider you to be child for SSI purposes, the rules in this section apply when we determine your eligibility for SSI and the amount of your SSI benefits.

* * * * *

(c) If you are under age 18 and live with your parent or stepparent who is not eligible for SSI benefits, we consider (deem) part of his or her income and resources to be your own. Sections 416.1165 and 416.1166 explain the rules and the exception to the rules on deeming your parent's income to be yours, and § 416.1202 explains the rules and the exception to the rules on deeming your parent's resources to be yours.

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SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1621, 1630,1633, 1648, and 1656

Registrant Processing

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are revised to assure greater fairness and efficiency in the processing of registrants.

EFFECTIVE DATE: March 20, 1987.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435. Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These regulations implement the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

Analysis of Comments

The proposed amendments to Selective Service Regulations were published in the **Federal Register** on December 10, 1986 (51 FR 44485) for public comment. Ten cards or letters of comment were received during the comment period which expired February 9, 1987. None of the cards or letters of comment received was from a person who claimed to be or otherwise could be identified as a registrant of the Selective Service System. For convenience each letter or card will be referred to as a comment.

Many comments addressed matters beyond the scope of the proposed amendments to Selective Service Regulations. Many of such comments reflected disagreement with or proposals for change in the Military Selective Service Act. Consideration of possible amendments to the Military Selective Service Act is not currently being given. The proposed amendments to Selective Service Regulations are based on the assumption that if and when inductions are resumed that will occur without change in the Military Selective Service Act other than with respect to the date July 1, 1973 when general induction authority expired.

Several commentators appeared to fail to appreciate that Class 1-O identifies registrants who, under section 6(j) of the Military Selective Service Act, are entitled to perform civilian work in lieu of induction. Thus, for a registrant to be entitled to perform civilian work (alternative service) he must be qualified for induction.

Comments received prompted several changes in the regulations as proposed for public comment. The introductory clause in paragraphs 6 and 8 is changed by substituting "revised" for "added." In § 1630.16(b) the language is clarified. In § 1633.1(f) and 1640.3(c) Class 4-A is inserted in the enumeration. In § 1656.2 postponement of the reporting date of an order to perform alternative service is also made available because of religious holidays of the religion of which a registrant is a member and entitlement to the statutory student postponement is