inspections, replacement of the lower engine mount fitting with a serviceable part, if necessary; installation of new safety links, bolts, and nuts; and installation of a new tangential link upper bolt.) Thereafter, repeat the visual inspection at intervals not to exceed 18 months.

(2) Perform an inspection to verify that the torque value of the tangential link upper bolt (on both sides of the mount) is within the limits specified in the alert service bulletin.

(i) If the torque value of the tangential link upper bolt nut is within the limits specified in the alert service bulletin, repeat the inspection (verification) at intervals not to exceed 18 months.

(ii) If the torque value of the tangential link upper bolt nut is outside the limits specified in the alert service bulletin, prior to further flight, perform a visual inspection of the tangential link upper bolt and washer for any damage or discrepancy, in accordance with the alert service bulletin.

(A) If no damage or discrepancy of the tangential link upper bolt and washers is found, prior to further flight, replace the bolt nut with a new or serviceable part in accordance with the alert service bulletin. Thereafter, repeat the inspection (verification) specified in paragraph (a)(2) of this AD at intervals not to exceed 18 months.

(B) If any damage or discrepancy of the tangential link upper bolt and washers is found, prior to further flight, replace the damaged or discrepant part with a new or serviceable part, and replace the bolt nut with a new or serviceable part, in accordance with the alert service bulletin. Thereafter, repeat the inspection (verification) specified in paragraph (a)(2) of this AD at intervals not to exceed 18 months.

(b) Replacement of the safety links with modified safety links in accordance with Boeing Service Bulletin 747–71–2206, dated April 16, 1987; or Boeing Service Bulletin 747–71–2206, Revision 1, dated November 12, 1987, as revised by Boeing Notice of Status Change No. 747–71–2206 NSC 1, dated December 4, 1987, and Boeing Notice of Status Change No. 747–71–2206 NSC 2, dated March 17, 1988; constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, replacement, and follow-on actions shall be done in accordance with Boeing Alert Service Bulletin 747–71A2277, dated November 29, 1995. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of February 16, 1996 (61 FR 3550, February 1, 1996). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment is effective on February 16, 1996.

Issued in Renton, Washington, on March 6, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–5856 Filed 3–12–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–AWP–43]

Amendment of Class E Airspace; Vacaville, CA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the Federal Register on February 13, 1996 (61 FR 5504), Airspace Docket No. 95–AWP–43. The final rule revised the description of the Class E airspace at Vacaville, CA.

EFFECTIVE DATE: 0901 UTC April 25, 1996.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–3175, Airspace Docket No. 95–AWP–43, published on February 13, 1996 (61 FR 5504), revised the description of the Class E airspace area at Vacaville, CA. An error was discovered in the geographic coordinates for the Sacramento VORTAC in the Vacaville, CA, Class E airspace area. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the graphic coordinates for the Sacramento VORTAC in the Class E airspace area at Vacaville, CA, as published in the Federal Register on February 13, 1996 (61 FR 5504), (Federal Register Document 96–3175), are corrected as follows:

§ 71.1 [Corrected]

* * * * *

AWP CA E5 Vacaville, CA [Corrected]

On page 5505, in the second column, the geographic coordinates for the Sacramento VORTAC are corrected as follows:

By removing ''(lat. 38°38′26″ N., long. 121°33′06″ W.)'' and adding ''(lat. 38°26′37″ N., long. 121°33′06″ W.)'' in its place.

* * * * *

Issued in Los Angeles, California, on March 1, 1996.

Harvey R. Riebel,

Acting Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 96–6022 Filed 3–12–96; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–36940, International Series Release No. 948, File No. S7–34–95]

RIN 3235–AG68

Exemption of the Securities of the Federative Republic of Brazil, the Republic of Argentina, and the Republic of Venezuela Under the Securities Exchange Act of 1934 for Purposes of Trading Futures Contracts on those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate debt obligations issued by the Federative Republic of Brazil (''Brazil''), the Republic of Argentina (''Argentina''), and the Republic of Venezuela (''Venezuela'') (collectively the ''Additional Countries'') as ''exempted securities'' for the purpose of marketing and trading futures contracts on those securities in the United States. The purpose of this amendment is solely to permit futures on the sovereign debt of the Additional Countries to be traded in the United States. This change is not intended to have any substantive effect on the operation of the Rule.

EFFECTIVE DATE: March 13, 1996.

FOR FURTHER INFORMATION CONTACT: James T. McHale, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Securities and Exchange Commission (Mail Stop 5–1), 450 Fifth Street, N.W., Washington, D.C. 20549, at (202) 942–0190.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act (''CEA''), it is unlawful to trade a futures contract on any individual security, unless the security in question is an exempted security (other than a municipal security) for the purposes of the Securities Act of 1933 (''Securities Act'') or the Securities Exchange Act of 1934 (''Exchange Act'').[1] Debt obligations of foreign governments are not exempted securities under either of these statutes. The Commission, however, has adopted Rule 3a12–8 under the Exchange Act (''Rule'')[2] to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States. The foreign governments currently designated in the Rule are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, the Republic of Ireland, Italy, the Kingdom of Spain, and Mexico (the ''Designated Foreign Governments''). As a result of being included in the Rule, futures contracts on the debt obligations of these countries may be sold in the United States, as long as the other terms of the Rule are satisfied.

On December 13, 1995, the Commission issued a release proposing to amend Rule 3a12–8 to designate the debt obligations of the Additional Countries as exempted securities, solely for the purpose of futures trading.[3] No comment letters were received in response to the proposal.

The Commission is adopting this amendment to the Rule, adding Brazil, Argentina and Venezuela to the list of countries whose debt obligations are exempted by Rule 3a12–8. In order to qualify for the exemption, futures contracts on debt obligations of the Additional Countries would have to meet all the other requirements of the Rule.

II. Background

Rule 3a12–8 was adopted in 1984[4] pursuant to the exemptive authority in Section 3(a)(12) of the Exchange Act in order to provide a limited exception to the CEA's prohibition on the trading of futures overlying individual securities.[5] As originally adopted, the Rule provided that debt obligations of the United Kingdom and Canada would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of ''qualifying foreign futures contracts'' on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American depositary receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a ''qualifying foreign futures contract'' if delivery under the contract is settled outside the United States and is traded on a board of trade.[6]

The conditions imposed by the Rule were intended to facilitate the trading of futures contracts on foreign government securities in the United States while requiring offerings of foreign government securities to comply with the federal securities laws. Accordingly, the conditions set forth in the Rule were designed to ensure that markets for futures on these instruments would not be used to avoid the securities law registration requirements.

Subsequently, the Commission amended the Rule to include the debt securities issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, Germany, Ireland, Italy, Spain, and, most recently, Mexico.[7]

The Chicago Mercantile Exchange (''CME'') has informed the Commission that U.S. citizens may be interested in futures products based on the debt obligations of the Additional Countries, and has requested that Rule 3a12–8 be amended to facilitate such trading.[8] The CME has represented that it intends to develop a futures contract market in Brady bonds issued by the Additional Countries.[9] Brady bonds are issued pursuant to the Brady plan, which allows developing countries to restructure their commercial bank debt by issuing long-term dollar denominated bonds.[10] The Commission

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[1] The term ''exempted security'' is defined in Section 3 of the Securities Act, 15 U.S.C. § 77c, and Section 3(a)(12) of the Exchange Act, 15 U.S.C. § 78c(a)(12).

[2] 17 CFR 240.3a12–8

[3] *See* Securities Exchange Act Release No. 36580 (''Proposing Release'') (December 13, 1995), 60 FR 65607 (December 20, 1995).

[4] *See* Securities Exchange Act Release Nos. 20708 (''Original Adopting Release'') (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 (''Original Proposing Release'') (May 25, 1983), 48 FR 24725 (June 2, 1983).

[5] In enacting the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission (''CFTC'') had intended to bar the sale of futures contracts on debt obligations of the United Kingdom of Great Britain and Northern Ireland (''United Kingdom'') to U.S. persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Original Proposing Release, *supra* note 4, 48 FR at 24725 [citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)].

[6] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987. *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[7] As originally adopted, the Rule applied only to British and Canadian government debt securities. *See* Original Adopting Release, *supra* note 4. In 1986, the Rule was amended to include Japanese government debt securities. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 25996 (July 18, 1986). In 1987, the Rule was amended to include debt securities issued by Australia, France and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the Rule was amended to include debt securities issued by Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988). In 1992 the Rule was again amended to (1) include debt securities offered by the Republic of Ireland and Italy, (2) change the country designation of ''West Germany'' to the ''Federal Republic of Germany,'' and (3) replace all references to the informal names of the countries listed in the Rule with references to their official names. *See* Securities Exchange Act Release No. 30166 (January 6, 1992), 57 FR 1375 (January 14, 1992). In 1994, the Rule was amended to include debt securities issued by the Kingdom of Spain. *See* Securities Exchange Act Release No. 34908 (October 27, 1994), 59 FR 54812 (November 2, 1994). Finally, in 1995 the Rule was amended to include Mexican sovereign debt. *See* Securities Exchange Act Release No. 36530 (November 30, 1995) 60 FR 62323 (December 6, 1995) (''Mexico Adopting Release'').

[8] *See* Letter from William J. Brodsky, President and Chief Executive Officer, CME, to Arthur Levitt, Jr., Chairman, Commission, dated November 10, 1995 (''CME Petition''). The Commission subsequently received a request from the New York Cotton Exchange (''NYCE'') to amend the Rule to include the same Additional Countries. *See* Letter from Philip McBride Johnson, Esq., Skadden, Arps, Slate, Meagher & Flom, to Jonathan G. Katz, Secretary, Commission, dated November 30, 1995.

[9] The marketing and trading of foreign futures contracts is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to U.S. residents, and Rule 9 (17 CFR 30.9), promulgated under Section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale to U.S. persons of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through the CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991).

[10] There are several types of Brady bonds, but ''Par Bradys'' and ''Discount Bradys'' represent the great majority of issues in the Brady bond market. In general, both Par Bradys and Discount Bradys are secured as to principal at maturity by U.S. Treasury

understands that Brady bonds issued by the Additional Countries are currently traded primarily in the over-the-counter market in the United States.

The Commission is amending Rule 3a12–8 to add Brazil, Argentina, and Venezuela to the list of countries whose debt obligations are deemed to be ''exempted securities'' under the terms of the Rule. Under this amendment, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the United States,[11] that the futures contracts require delivery outside the United States,[12] and that the contracts be traded on a board of trade) would continue to apply.

III. Discussion

For the reasons discussed below, the Commission finds that it is consistent with the public interest and the protection of investors that Rule 3a12–8 be amended to include the sovereign debt obligations of the Additional Countries. The Commission believes that the trading of futures contracts on the sovereign debt of the Additional Countries could provide U.S. investors and dealers with a vehicle for hedging the risks involved in holding debt instruments of the Additional Countries and that the sovereign debt of the Additional Countries should be subject to the same regulatory treatment under the Rule as that of the Designated Foreign Governments.

In determining whether to amend the Rule to add proposed countries, the Commission has considered whether there is an active and liquid secondary trading market in the particular sovereign debt. In this regard, the amount of outstanding sovereign debt of Brazil, Argentina, and Venezuela is large and secondary trading appears to be active and liquid. According to the CME, as of December 31, 1993, the total public and publicly guaranteed debt[13] of Brazil, Argentina, and Venezuela was approximately US$86 billion, US$55 billion, and US$74 billion, respectively.[14] Moreover, the cash market for Brady bonds issued by the Additional Countries evidences relatively active trading. Based on data provided by the CME, the total 1994 trading volume in the Brady bonds of Brazil, Argentina, and Venezuela was approximately US$371 billion, US$360 billion, and US$320 billion, respectively.[15] As is the case for all sovereign issuers, there are less actively traded sovereign debt instruments issued by the Additional Countries, but the Commission believes that as a whole the sovereign debt market for the Additional Countries is sufficiently liquid and deep for purposes of Rule 3a12–8. Accordingly, the Commission believes that it is appropriate to exempt the sovereign debt of Brazil, Argentina, and Venezuela because of the overall depth and liquidity of the existing cash market in the Additional Countries sovereign debt.

The Commission also believes that the amendment offers potential benefits for U.S. investors. As stated above, the amendment will allow U.S. boards of trade to offer in the United States, and U.S. investors to trade, a greater range of futures contracts on foreign government debt obligations. Specifically, the trading of futures on the sovereign debt of Brazil, Argentina, and Venezuela should provide U.S. investors with a vehicle for hedging the risks involved in holding positions in the underlying sovereign debt of the Additional Countries. The Commission does not anticipate that the amendment will result in any direct cost for U.S. investors or others. The amendment will impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws. The restrictions imposed under the amendment are identical to the restrictions currently imposed under the terms of the Rule and are designed to protect U.S. investors.

In the Proposing Release the Commission solicited comment on the general application and operation of the Rule given the increased globalization of the securities markets since the Rule was adopted. The Commission intends to consider this issue further, but does not believe it should delay the inclusion of the Additional Countries in the list of countries whose debt obligations are exempted under Rule 3a12–8. Nevertheless, the Commission continues to welcome suggestions on potential restructuring of Rule 3a12–8 to adapt to the ever-increasing internationalization of the securities markets.

IV. Regulatory Flexibility Act Consideration

Chairman Levitt has certified in connection with the Proposing Release that this amendment, 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 and Other Findings

Section 23(a)(2) of the Exchange Act[16] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to balance any impact with the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendment to the Rule in light of the standards cited in Section 23(a)(2) and believes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As stated above, the amendment is designed to assure the lawful availability in this country of futures contracts on the government debt of the Additional Countries that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. Insofar as the Rule contains limitations, they are designed to promote the purposes of the Exchange Act by ensuring that futures trading on government securities of the Additional Countries is consistent with the goals and purposes of the federal securities

zero-coupon bonds. Additionally, usually 12 to 18 months of interest payments are also secured in the form of a cash collateral account, which is maintained to pay interest in the event that the sovereign debtor misses an interest payment.

[11] The Commission notes that while no Brady bonds issued by the Additional Countries are currently registered in the United States, certain sovereign debt issues of Argentina and Venezuela have been so registered. Futures on U.S.-registered debt securities of Argentina and Venezuela (or any sovereign debt which in the future becomes so registered) would not be deemed exempt securities under Rule 3a12–8.

[12] The CME's proposed futures contracts will be cash-settled (*i.e.*, settlement of the futures contracts will not entail delivery of the underlying securities). The Commission has recognized that a cash-settled futures contract is consistent with the requirement of the Rule that delivery must be made outside the United States. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987).

[13] Public debt is an external obligation of a public debtor, including the national government, a political subdivision (or any agency of either) and autonomous public bodies. Publicly guaranteed debt is an external obligation of a private debtor that is guaranteed for repayment by a public entity.

[14] *See* Letter from Carl A. Royal, Senior Vice President and Special Counsel, CME, to James T. McHale, Attorney, OMS, Division, Commission, dated November 30, 1995 (citing the World Bank's 1995 World Debt Tables as the source for this information) (''November 30 letter''). As mentioned earlier, the Commission recently amended the Rule to include the debt securities of Mexico. As of March 31, 1995 there was approximately US$87.5 billion face amount Mexican government debt issued and outstanding of various classes and maturities. *See* Mexico Adopting Release, *supra* note 7.

[15] *See* November 30 letter, *supra* note 14. The total 1994 dollar-based trading volume in Mexican Brady bonds was approximately US$282.3 billion. *See* Mexico Adopting Release, *supra* note 7.

[16] 15 U.S.C § 78w(a)(2).

laws by minimizing the impact of the Rule on securities trading and distribution in the United States.

Because the amendment to the Rule is exemptive in nature, the Commission has determined to make the foregoing action effective immediately upon publication in the Federal Register.[17]

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) and 23(a), 15 U.S.C. §§ 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Adopted Amendment

For the reasons set forth above, the Commission is amending Part 240 of Chapter II, Title 17 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 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.3a12–8 is amended by removing the word ''or'' at the end of paragraph (a)(1)(xv), removing the ''period'' at the end of paragraph (a)(1)(xvi) and adding ''; '' in its place, and adding paragraph (a)(1)(xvii), paragraph (a)(1)(xviii), and paragraph (a)(1)(xix) to read as follows:

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

(a) * * *

(1) * * *

(xvii) the Federative Republic of Brazil;

(xviii) the Republic of Argentina; or

(xix) the Republic of Venezuela.

* * * * *

Dated: March 7, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–5968 Filed 3–12–96; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. § 553(d).

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AC55

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Full Benefit Standard for Persons Temporarily Institutionalized

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: These final rules are being issued to reflect section 3 of the Employment Opportunities for Disabled Americans Act and section 9115 of the Omnibus Budget Reconciliation Act of 1987. These statutory provisions amended the Social Security Act (the Act) to permit certain recipients to receive payments based on the full supplemental security income (SSI) benefit rate for a limited period after becoming residents of medical or psychiatric institutions.

EFFECTIVE DATE: These final rules are effective May 13, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations and Rulings, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: SSI regulations generally require the suspension of SSI benefits when a recipient is a resident of a public institution throughout a month, except that the recipient may receive a reduced benefit if he or she is a resident throughout a month in a public or private institution where over 50 percent of the cost of care is paid for by Medicaid. The following legislative provisions, however, now allow for benefits based on the full SSI Federal benefit rate to continue during months of residency in an institution under certain circumstances.

Benefits Payable Based on Section 1611(e)(1)(E) of the Act

Section 3 of Public Law 99–643 (the Employment Opportunities for Disabled Americans Act) added subparagraph (E) to section 1611(e)(1) of the Act. Based on this added provision, a recipient, whose SSI eligibility is based on section 1619 (a) or (b) of the Act for the month preceding the first full month of residence in (1) a public medical or psychiatric institution or (2) a public or private institution where Medicaid is paying more than 50 percent of the cost of care, can remain eligible for an SSI benefit based on the full Federal benefit rate for up to 2 months after entering the institution. This statutory provision also provides that payment is conditioned on an agreement by the institution that these benefits are to be retained by the recipient and cannot be used to defray the cost of institutional care.

Section 1902(o) of the Act requires that all State Medicaid plans provide for disregarding any SSI payments paid by reason of section 1611(e)(1)(E) or 1611(e)(1)(G) of the Act in computing the post-eligibility contribution of the individual to the cost of care. Therefore, if the institution is receiving Medicaid payments for the recipients, we will rely on the agreement the institution signed with the State Medicaid agency to ensure that this condition is met.

Benefits Payable Based on Section 1611(e)(1)(G) of the Act

Section 9115 of Public Law 100–203 (the Omnibus Budget Reconciliation Act of 1987) added subparagraph (G) to section 1611(e)(1) of the Act. Based on this added provision, a recipient is eligible for continued benefits for up to 3 full months after entering the institution if the following conditions are met:

1. A physician certifies that the recipient's stay in the institution or facility is likely not to exceed 3 months;

2. The recipient demonstrates a need to continue to maintain and provide for the expenses of a home or other living arrangement to which he or she may return after leaving the facility; and

3. The recipient was eligible for Federal SSI cash benefits or federally administered State supplementation in the month before the month benefits would otherwise be reduced or suspended because of residence in an institution.

The following policies implement the provisions of section 1611(e)(1)(G) of the Act.

We state in these final rules at § 416.212(b) that, in order for a recipient to be eligible for these benefits, the physician's certification and the evidence of the need to pay home or living arrangement expenses must be submitted to the Social Security Administration (SSA) no later than the day of discharge or the 90th full day of confinement, whichever is earlier. We will determine the date of submission to be the date we receive it or, if mailed, the date of the postmark. This time frame for submission of the needed evidence to establish eligibility for continued payments represents what we believe is the best balance between the statutory language and Congressional intent that: