

attorney is similar to a durable special power of attorney in that it survives the principal's incompetence, but differs in that it does not become effective until such time that the principal is determined to be incompetent. A springing durable special power of attorney is created by the principal's use of words explicitly stating that the power of attorney is to become effective upon a determination that the principal is incompetent. The proposed rule allows durable special powers of attorney and springing durable special powers of attorney to be used for a period of six months following the date that a payee/beneficiary of a check is determined to be incompetent.

The new provisions at §§ 240.13 and 240.16(d) and (e) of NPRM II are intended to serve as a six-month bridge from the time a payee/beneficiary is determined to be incompetent until a guardian or other fiduciary is named. As with special powers of attorney, durable special powers of attorney and springing durable special powers of attorney may be executed in favor of an individual, a financial institution or any other entity as attorney-in-fact, but must state that they are not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to another person. Durable special powers of attorney and springing durable special powers of attorney automatically are revoked, for purposes of negotiating Treasury checks, upon the death of the payee/beneficiary.

c. The proposed rule deletes Appendix A to Part 240 which discusses the various Treasury power of attorney forms. Negotiating checks under a power of attorney no longer will require the use of a Treasury power of attorney form. Individual powers of attorney now will be governed by applicable law to the extent that such powers of attorney are consistent with the limitations provided in this Part, including, but not limited to, the following: (1) That special powers of attorney, durable special powers of attorney, and springing durable special powers of attorney must include a recitation that the power of attorney is not executed to effect an assignment of the right to receive payment either to the attorney-in-fact or to any other person; and (2) that for purposes of negotiating checks covered by this Part, all powers of attorney automatically are revoked upon the death of the beneficiary of the check.

d. Current paragraphs 240.16(f), (g) and (h) are deleted. They no longer are necessary because the descriptions of the types of powers of attorney all require that powers of attorney be

executed in accordance with applicable Federal or state law.

7. *Definitions.* Section 240.2 is amended by adding a definition of "disbursing official." This definition is necessary due to revisions to redesignated § 240.9 (Offset) of NPRM II which allow Treasury to refer delinquent debts to any disbursing official of the United States for offset. The definition of "protest" has been deleted, and the substance of the definition moved to the protest provisions in §§ 240.6 and 240.8 of NPRM II. The definitions of the terms "commissioner" and "item" were deleted because the terms are not used in NPRM II.

The definition of "unauthorized indorsement" is amended to clarify that it includes forged as well as unauthorized indorsements. As such, the proposed rule uses the term "forged or unauthorized indorsement," and specifically states that it includes situations where the payee's name is signed by another without the authority to do so. The definition is also amended by deleting the reference to 31 CFR Part 209, which was removed from the CFR on December 27, 1996 (61 FR 68155-01). Other definitions were added to improve the readability of Part 240.

8. *Other changes.* The substance of current paragraph 240.3(a)(2) has been moved to paragraph 240.4(a)(1) of NPRM II and has been revised by deleting the language "unless it is negotiated to a financial institution no later than October 1, 1990." The deleted language pertains to checks that were outstanding at the time Part 240 was revised and provided notice that the Secretary of the Treasury, in accordance with 31 U.S.C. 3328(a), would not be required to pay such checks if they were not negotiated by the specified date. Due to the passage of time, the deleted language no longer is necessary. Similarly, the language in current paragraph 240.4(b) is deleted because it relates to the cancellation of checks that were issued before October 1, 1989, and had not been negotiated within 12 months. The deleted language no longer is necessary because all such checks have been paid or canceled pursuant to law.

Redesignated paragraphs 240.8(b) and 240.13(b) of NPRM II are revised to update addresses. In addition, § 240.8 is revised to clarify that a reclamation may be sent to any indorser, not just financial institutions in general or presenting banks in particular. Section 240.8 also is revised to clarify that monthly statements will include all outstanding amounts including unpaid portions of the original claim, interest,

penalties, and administrative costs. (See definitions of "reclamation debt" and "reclamation debtor" in § 240.2 of NPRM II.)

The substance of current § 240.10, concerning the release of original checks, is deleted in order to reflect Treasury's practice of not releasing original checks to indorsers. Paragraph 240.11(a)(5) of NPRM II authorizes a Federal Reserve Bank to release a copy of a check to the indorser.

Redesignated § 240.11 includes the substance of current § 240.9 (Processing of checks). The substance of these rules is revised to clarify that depositories outside the United States are to make reclamation refunds by checks drawn on or payable through U.S. financial institutions located in the United States, not by making a deposit directly to Treasury's General Account. Reclamation refunds initiated by banks outside the United States shall be sent through their headquarters or U. S. correspondent bank only. The proposed rule also clarifies that all reclamation refunds should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement).

Redesignated § 240.12 of NPRM II is revised to clarify that no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated after the death of a payee.

New § 240.19 of NPRM II incorporates a general reservation of rights provision.

Rulemaking Analysis

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Clarity of Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material in this proposed rule to suit your needs?
- Are the requirements in the proposed rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- What else could we do to make this proposed rule easier to understand?

Please send any comments you have on the clarity of this proposed rule to the address specified in the **ADDRESSES** section.