

to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 crop year begins on October 1, 1996, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 is revised to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new Subpart—Assessment Rates and a new § 987.339 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 987.339 Assessment rate.

On and after October 1, 1996, an assessment of \$0.0556 per hundredweight is established for California dates.

Dated: September 16, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-24238 Filed 9-23-96; 8:45 am]

BILLING CODE 3410-02-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 230, 239, 240, 249, 250, 259, 270, 274, and 275

[Release Nos. 33-7331; 34-37692; 35-26575; IC-22224; IA-1578; File No. S7-14-96]

RIN 3235-AG79

Changes Selected Rules In Order To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (Commission), in order to eliminate user fees currently adopted under the Independent Offices Appropriations Act of 1952 is changing various rules pertaining to the Securities Act of 1933 (Securities Act), the Securities Exchange Act of 1934 (Exchange Act), the Public Utility Holding Company Act of 1935 (Public Utility Holding Company Act), the Investment Company Act of 1940

(Investment Company Act), and the Investment Advisers Act of 1940 (Investment Advisers Act). The fees being eliminated were first adopted in 1972 to contribute towards the cost of agency operations. Since that time, however, the amount of fees collected by the Commission has increased dramatically. In 1995, the Commission collected nearly double the amount of fees required to fund the agency's operations. The fees being eliminated represented just two percent of the Commission's total fiscal 1995 fee revenue, but more than one-half of the total number of fee payments processed.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Henry I. Hoffman, Office of the Comptroller, at (202) 942-0343.

SUPPLEMENTARY INFORMATION: In 1972, to offset the cost to the government of Commission operations, the Securities and Exchange Commission established through rulemaking a fee schedule for numerous types of applications, statements and reports.¹ These regulatory fees, authorized under Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), are commonly referred to as IOAA fees.²

On May 22, 1996, a proposed rule titled Proposal To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952 was published in the Federal Register. (Vol. 61, No. 100, pages 25601-25604). The proposed rule invited interested parties to submit comments on or before July 8, 1996. Three comment letters were received, one each from two mutual fund complexes and one trade association.³ Each response supported

¹ Securities Act, Release No. 5229, January 25, 1972.

² The Independent Offices Appropriations Act of 1952, specifically 31 U.S.C. 9701, authorizes independent agencies of the federal government to prescribe fees and charges for activities that provide benefits to individuals and businesses. This statute states that "[i]t is the sense of Congress that each service * * * provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible." The statute also authorizes the head of each agency to prescribe regulations establishing the charge for a service. Notably, a separate provision of the Exchange Act specifically authorizes the Commission to impose fees authorized by this Act. 15 U.S.C. 78n(g)(4).

³ The three respondents to the Commission's elimination of IOAA fees were T. Rowe Price Associates, Inc. in a June 7, 1996, letter signed by Henry H. Hopkins, Managing Director and Legal Counsel, Federated Investors in a June 27, 1996, letter signed by Jay S. Neuman, Corporate Counsel, and the Investment Company Institute in a June 25, 1996, letter signed by Alexander C. Gavis, Assistant Counsel. These letters are available for public

the proposal to eliminate the Commission's IOAA fees. One respondent noted that their experience with the IOAA fees was similar to the Commission's experience, *i.e.* " * * * while the aggregate dollar amounts of these fees are relatively insignificant * * * the recordkeeping and processing costs associated with them are disproportionately high * * * ." ⁴ Further, the respondent stated that the " * * * adoption of the proposal would simplify and enhance the efficiency of (its) servicing operations." ⁵ Effective October 7, 1996, the Commission is eliminating each of its current IOAA fees. ⁶ The collection of these fees is no longer appropriate since the amount of revenue currently generated by statutory fees imposed under the securities laws far exceeds the annual cost of Commission operations, and the additional revenue added by the IOAA fees is an insignificant portion of the total revenue received.

In fiscal 1972, the Commission collected \$19 million in fees and cost \$27 million to operate. IOAA fees represented 12 percent of the total 1972 revenue. In fiscal 1995, the Commission collected \$559 million in fees and was appropriated \$297 million for operating costs. IOAA fees represented just 2 percent of the total 1995 revenue. ⁷

This significant difference between the amount of fee revenue collected by the Commission and the amount of its

annual funding level has been of continuing concern to Congress. In 1988, the Securities Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs directed the Commission to study its fee structure and funding status (Commission Fee Study). ⁸

As a result of the Commission Fee Study and continuing Congressional concerns about the level of the Commission's annual fee collections, in 1993 the House passed H.R. 2239, the Securities and Exchange Commission Authorization Act of 1993. One of the stated purposes of this bill was to "establish a system for the annual adjustment of fees collected by the Commission so that the total amount appropriated to the Commission for any fiscal year will be offset by the amount collected during such fiscal year * * * ." ⁹

Although Congress did not enact H.R. 2239, in 1995, members of the Commission's authorization committee in the Senate stated that the total amount of fees collected annually by the agency far exceed the cost of its regulation and, therefore, should be reduced. ¹⁰

On March 12, 1996, the House passed H.R. 2972, the Securities and Exchange Commission Authorization Act of 1996. One of this bill's major purposes is "to reduce over time the rates of fees charged under the Federal securities laws." ¹¹ Notably, H.R. 2972 contains a sense of the Congress resolution that the Commission should eliminate its fees imposed under the IOAA. ¹² The Securities and Exchange Commission Authorization Act of 1996, H.R. 2972, has since been repassed as Title 3 of H.R. 3005, the securities bill that was passed by the House on June 19, 1996. The Senate counterpart to H.R. 3005, S. 1815, does not contain the SEC reauthorization bill.

The Commission is eliminating its IOAA fees for two additional reasons. First, the Commission is committed, consistent with its mission of protecting

investors, to eliminating unnecessary regulations imposed on the capital formation process. The Commission has determined that this elimination of its IOAA fees will reduce such burdens but will not harm investors nor the Commission's mission to protect them. Second, the collection of these IOAA fees imposes a disproportionate cost on the Commission. In 1995, IOAA fees represented less than 2% of the total fee revenue collected by the Commission, but more than one-half of the total number of fee payments processed by Commission staff, making recordkeeping for these fees disproportionately costly.

Cost/Benefit Analysis

This elimination of IOAA fees will provide an obvious benefit to persons obligated to pay such fees, *i.e.*, they will no longer have to pay the fees. In addition, the Commission will avoid the costs associated with processing and auditing the collection of such fees; Commission resources spent on those tasks will be reallocated to other mandated tasks. Other costs and benefits are expected to be *de minimis*.

Regulatory Flexibility Act

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding the proposed rule changes. The analysis reiterates the reasons and objectives for the proposed rule changes discussed above in this release. The analysis also describes the legal basis for the proposal and discusses its effect on small entities as defined by the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The rules impose no additional reporting, recordkeeping or other compliance requirements on small businesses, and the Commission believes that there are no overlapping or conflicting federal rules. In addition, the Commission does not believe that any significant alternative to the proposal would both accomplish the stated objectives and minimize any significant impact on small companies. In fact, the alternatives to eliminating the fee would be to maintain or increase the current fees. Neither alternative provides any increased benefit nor is appropriate in the public interest. An Initial Regulatory Flexibility Analysis was prepared in connection with the proposed rule changes which were published in the Federal Register on May 22, 1996. No comments were received regarding the analysis. A copy of the Final Regulatory

inspection under File S7-14-96 in the Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

⁴Federated Investors.

⁵*Id.*

⁶The Commission's action only eliminates the collection of regulatory fees imposed under the IOAA; it does not affect other fees imposed by statute which are also collected by the Commission. These statutory fees include registration fees collected pursuant to section 6(b) of the Securities Act and section 307(b) of the Trust Indenture Act of 1939, going private fees collected pursuant to section 13 of the Exchange Act, proxy and tender offer fees collected pursuant to section 14 of the Exchange Act, and transaction fees collected pursuant to section 31 of the Exchange Act.

⁷The vast increase in Commission fee revenue between 1972 and 1995 has developed from two basic sources. First is a significant increase in the underlying value of the securities on which the statutory fees are based. The underlying value of securities registered with the Commission under section 6(b) of the Securities Act increased from \$62 billion to \$1.2 trillion from 1972 to 1995. Further, during the same period, the value of shares transacted on the U.S. securities exchanges and subject to a fee under Section 31 of the Exchange Act increased from \$196 billion to \$3 trillion. Second is the increased use of offsetting collections under section 6(b) of the Securities Act to fund agency operations since 1990. The amount of offsetting revenue collected under section 6(b) in 1991, the first year fee revenue was used to directly offset Commission funding, was \$37 million at a fee rate of 1/40 of one percent, and in 1995 was \$157 million at an increased fee rate of 1/29 of one percent.

⁸Senate Report 100-105, 100th Cong., 1st Session. In response, the Commission issued findings in a U.S. Securities and Exchange Commission "Self Funding Study" (January 1989) and accompanying "Legislative Proposals and Fee Options" (January 1989).

⁹H.R. 2239, section 31A.(a).

¹⁰Letter dated April 6, 1995, from Senator D'Amato, Chairman of the Senate Banking Committee, to Senators Domenici and Exon, respectively Chairman and Ranking Member of the Senate Committee on the Budget.

¹¹H.R. 2972, section 2(2).

¹²*Ibid*, section 7(1) states that "the fees authorized by the amendments made by this Act are in lieu of, and not in addition to, any fees that the Securities and Exchange Commission is authorized to impose or collect pursuant to section 9701 of title 31, United States Code * * *."

Flexibility Analysis may be obtained by contacting Henry I. Hoffman, Securities and Exchange Commission, Office of the Comptroller, Room 2080, Washington, D.C. 20549.

Effective Date

The final amendments to the Commission's rules shall be effective on October 7, 1996, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(1) and (d)(3). The Commission finds good cause for the rules to be effective on October 7, 1996, in order to coordinate the elimination of the user fees with the beginning of the fiscal year.

Statutory Basis

The Commission's authority for this action is 31 U.S.C. 9701 and 15 U.S.C. 78n(g)(4).

The amendments to the Commission's rules, forms and schedules under the Securities Act and amendments to the Commission's rules under the Exchange Act are being adopted pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act and sections 3, 4, 10, 12, 13, 14, 15, 16 and 23 of the Exchange Act. The revisions to the Commission's rules and forms under the Public Utility Holding Company Act of 1935 are being adopted pursuant to section 20 of the Public Utility Holding Company Act. The revisions to the Commission's rules and forms under the Investment Company Act are being adopted pursuant to sections 8(b) and 38(a) under the Investment Company Act, as amended. And the revisions to the Commission's rules and forms under the Investment Advisers Act of 1940 are being adopted pursuant to sections 203(c) and 211(a) of the Investment Advisers Act.

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Securities.

17 CFR Parts 230, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 239, 240, 249, 250, 259 and 275

Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set out in the preamble, Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d-1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a-37, 80a-41, 80b-9, and 80b-11, unless otherwise noted.

* * * * *

2. The first sentence of the introductory text of § 202.3a is revised to read as follows:

§ 202.3a Instructions for filing fees.

Payment of filing fees specified by the following rules shall be made according to the directions listed in this part: § 230.111 (17 CFR 230.111), § 240.0-9 (17 CFR 240-0.9), § 260.7a-10 (17 CFR 260.7a-10), and § 270.0-8 (17 CFR 270.0-8).

* * * * *

3. The fourth sentence of the introductory text of § 202.3a is revised to read as follows:

§ 202.3a Instructions for filing fees.

* * * Personal checks cannot be accepted for payment of fees. * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

§ 230.111 [Amended]

5. By amending § 230.111 by removing the last sentence of paragraph (a).

§ 230.236 [Amended]

6. By amending § 230.236 by removing the second sentence of paragraph (a) and the last sentence of paragraph (c)(4).

§ 230.252 [Amended]

7. By amending § 230.252 by removing and reserving paragraph (f).

§ 230.604 [Amended]

8. Paragraph (a) of § 230.604 is amended by removing the last sentence.

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

9. 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, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

10. By revising § 240.0-9 to read as follows:

§ 240.0-9 Payment of fees.

All payment of fees shall be made in cash, certified check or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

11. By amending § 240.0-11 by revising paragraph (c)(1)(ii) to read as follows:

§ 240.0-11 Filing fees for certain acquisitions, dispositions and similar transactions.

* * * * *

(c) * * *

(1) * * *

(ii) Notwithstanding the above, where the acquisition, merger or consolidation is for the sole purpose of changing the registrant's domicile, no filing fee is required to be paid.

* * * * *

§ 240.12b-7 [Removed]

12. Section 240.12b-7 is removed.

§ 240.13a-1 [Amended]

13. By amending § 240.13a-1 by removing the last sentence.

§ 240.13d-7 [Removed]

14. Section 240.13d-7 is removed.

§ 240.13d-101 [Amended]

15. By amending § 240.13d-101 by removing the second paragraph on the cover page that appears after the first check box and immediately before the "Note:".

§ 240.13d-102 [Amended]

16. By amending § 240.13d-102 by removing the first paragraph on the cover page that appears after the "(CUSIP Number)".

17. By amending § 240.14a-6 by revising paragraph (i) to read as follows:

§ 240.14a-6 Filing requirements.

* * * * *

(i) *Fees.* At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than investment companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee:

(1) For preliminary proxy material involving acquisitions, mergers, spinoffs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11 (§ 240.0-11 of this chapter) shall be paid. No refund shall be given.

(2) For all other proxy submissions and submissions made pursuant to § 240.14a-6(g), no fee shall be required.

* * * * *

18. By amending § 240.14a-101 by revising the cover page to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant []

Filed by a party other than the Registrant []

Check the appropriate box:

[] Preliminary Proxy Statement

[] Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

[] Definitive Proxy Statement

[] Definitive Additional Materials

[] Soliciting Material Pursuant to § 240.14a-11(c) or § 240.14a-12

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

[] No fee required

[] Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

[] Fee paid previously with preliminary materials.

[] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Notes. * * *

* * * * *

§ 240.14a-101 [Amended]

19. Item 22 of § 240.14a-101 is amended by removing and reserving paragraph (a)(2).

20. By amending § 240.14c-5 by revising paragraph (g) to read as follows:

§ 240.14c-5 Filing Requirements.

* * * * *

(g) *Fees.* At the time of filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee, no part of which shall be refunded, established in accordance with § 240.0-11.

* * * * *

21. By amending § 240.14c-101 by revising the cover page to read as follows:

§ 240.14c-101 Schedule 14C. Information required in information statement.

Schedule 14C Information

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

(Amendment No.)

Check the appropriate box:

[] Preliminary Information Statement

[] Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))

[] Definitive Information Statement

(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

[] No fee required

[] Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11 (1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

[] Fee paid previously with preliminary materials.

[] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Note * * *

* * * * *

§ 240.15d-11 [Amended]

22. By amending § 240.15d-1 by removing the last sentence.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

23. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78, *et seq.*, unless otherwise noted;

* * * * *

§ 249.240 [Amended]

24. By amending Form 40-F (referenced in § 249.240f) by removing paragraph D.(5) of General Instructions and redesignating paragraphs D.(6), D.(7), D.(8), D.(9) and D.(10) as paragraphs D.(5), D.(6), D.(7), D.(8) and D.(9).

Note: The text of Form 40-F does not appear and this amendment will not appear in the Code of Federal Regulations.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

25. The authority citation for Part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

§ 250.1 [Amended]

26. Section 250.1 is amended by removing paragraph (d).

§ 250.94 [Amended]

27. Section 250.94 is amended by removing paragraph (b).

§ 250.106 [Removed]

28. Section 250.106 is removed and reserved.

§ 250.107 [Removed]

29. Section 250.107 is removed and reserved.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

30. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

§ 259.404 [Amended]

31. The preamble to the Instructions for Form U-7D (referenced in § 259.404) is revised to read as follows:

Note: The text of Form U-7D does not and this amendment will not appear in the Code of Federal Regulations.

Form U-7D

* * * * *

Instructions

This form must be filed in triplicate within 30 days after execution of any lease of a utility facility to an operating public-utility company. Rules 21 and 22 under the Act govern the specifications. Official Form U-7D and these instructions specify the contents.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

32. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted;

* * * * *

§ 270.0-5 [Amended]

33. Section 270.0-5 is amended by removing paragraph (d).

34. By revising § 270.0-8 to read as follows:

§ 270.0-8 Payment of fees.

All payment of fees shall be made in cash, certified check or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

* * * * *

§ 270.8b-6 [Removed]

35. Section 270.8b-6 is removed and reserved.

36. § 270.24f-2 is amended by removing paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(3), and revising newly designated paragraph (a)(3) to read as follows:

§ 270.24f-2 Registration under the Securities Act of 1933 of an indefinite number of certain investment company securities.

* * * * *

(a) * * * * *
(3) If such registration statement also registers a definite number or amount of securities, there shall be paid to the Commission with respect to such definite amount of securities a registration fee calculated in the manner specified in section 6(b) of the Securities Act of 1933, (15 U.S.C. 77f(b)) and the rules and regulations thereunder.

* * * * *

§ 270.30a-1 [Amended]

37. Section 270.30a-1 is amended by removing the third sentence.

§ 270.30b1-1 [Amended]

38. Section 270.30b1-1 is amended by removing the second sentence.

§ 270.30b1-3 [Amended]

39. Section 270.30b1-3 is amended by removing the last sentence.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

40. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

41. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

§ 239.15A [Amended]

§ 274.11A [Amended]

42. General Instruction B of Form N-1A (referenced in §§ 239.15A and 274.11A) is amended by removing the second and third sentences.

Note: The text of Form N-1A does not and these amendments will not appear in the Code of Federal Regulations.

§ 239.14 [Amended]

§ 274.11a-1 [Amended]

43. General Instruction B of Form N-2 (referenced in §§ 239.14 and 274.11a-1) is amended by removing the second and third sentences.

Note: The text of Form N-2 does not and these amendments will not appear in the Code of Federal Regulations.

§ 239.17a [Amended]

§ 274.11b [Amended]

44. General Instruction B of Form N-3 (referenced in §§ 239.17a and 274.11b) is amended by removing the second and third sentences.

Note: The text of Form N-3 does not and these amendments will not appear in the Code of Federal Regulations.

§ 239.17b [Amended]

§ 274.11c [Amended]

45. General Instruction B of Form N-4 (referenced in §§ 239.17b and 274.11c) is amended by removing the second and third sentences.

Note: The text of Form N-4 does not and these amendments will not appear in the Code of Federal Regulations.

§ 249.330 [Amended]

§ 274.101 [Amended]

46. General Instruction C of Form N-SAR (referenced in §§ 249.330 and 274.101) is amended by removing the third undesignated paragraph.

§ 249.330 [Amended]

§ 274.101 [Amended]

47. General Instruction G of Form N-SAR (referenced in §§ 249.330 and 274.101) is amended by removing paragraph (5).

Note: The text of Form N-SAR does not and these amendments will not appear in the Code of Federal Regulations.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

48. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b-3, 80b-4, 80b-6A, 80b-11, unless otherwise noted.

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§ 275.0-5 [Amended]

49. Section 275.0-5 is amended by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

§ 275.203-3 [Removed]

50. Section 275.203-3 is removed.

Dated: September 17, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AE22

Income Exclusions in the Supplemental Security Income Program

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These supplemental security income (SSI) regulations update existing regulations to reflect the statutory amendment of the exclusion from income of Alaska Longevity Bonus (ALB) payments. They also update existing regulations to reflect the statutory exclusion from income of hostile fire pay received by an SSI claimant or recipient and reflect the current operating procedure of excluding hostile fire pay when determining the countable income of an ineligible spouse or ineligible parent. In addition, they update existing regulations to reflect the current operating procedure of excluding impairment-related work expenses, interest on excluded burial funds, appreciation in the value of excluded burial arrangements, and interest on the value of excluded burial space purchase agreements, when determining the countable income of an ineligible spouse or ineligible parent.

EFFECTIVE DATE: These regulations are effective October 24, 1996.

FOR FURTHER INFORMATION CONTACT: Regarding this Federal Register document—Henry D. Lerner, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1762; regarding

eligibility or filing for benefits—our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION: For purposes of the SSI program, income is defined in our regulations to mean anything that is received in cash or in kind which can be used to meet an individual's needs for food, clothing, or shelter. These regulations include certain provisions which address items that are excluded from income.

Alaska Longevity Bonus Payments

Under section 1612(b)(2)(B) of the Social Security Act (the Act), ALB payments are excluded from income under certain circumstances.

Originally, the ALB program made monthly payments to residents of Alaska who had attained age 65 and had lived in the State continuously for at least 25 years. The SSI income exclusion applied to such payments if made under a program established before July 1, 1973. However, following a decision by the Alaska State Supreme Court that the 25-year residency requirement was unconstitutional, in 1984 the State legislature changed the residency requirement to 1 year.

Concerns were raised that since the revised (1984) ALB program was established after July 1, 1973, the controlling date of the original section 1612(b)(2)(B) provision, payments made under the revised ALB program could no longer be excluded for SSI purposes. Section 2616 of Public Law (Pub. L.) 98-369 was enacted on July 18, 1984 to address those concerns. Section 2616 amended section 1612(b)(2)(B) of the Act in such a way as to:

- Continue the ALB exclusion for persons who, prior to October 1985, became eligible for SSI and satisfied the 25-year residence requirement of the program as in effect prior to January 1, 1983; and
- Preclude extending the ALB exclusion to ALB payments based on the 1-year residency requirement.

Current regulations at §§ 416.1124(c)(7) and 416.1161(a)(12) follow the wording of the original statutory exclusion in section 1612(b)(2)(B) of the Act. Regulations at § 416.1124(c)(7) presently provide for excluding from the income of a claimant or recipient "[p]eriodic payments made by a State under a program established before July 1, 1973, and based solely on your length of residence and attainment of age 65 * * *." Regulations at § 416.1161(a)(12) presently provide for excluding from the income of an ineligible spouse or ineligible parent "[p]eriodic payments made by a State under a program established before July

1, 1973, and based solely on duration of residence and attainment of age 65 * * *."

These regulations change the wording of the above referenced regulations so that they conform to the 1984 legislation. The regulatory language will not change current operating procedures since those procedures already conform to the 1984 legislation.

Hostile Fire Pay

Although it is unlikely that an active member of the uniformed services would apply or be eligible for SSI benefits, some military service members have spouses and children who apply for and receive SSI benefits.

Under section 209(d) of the Act, basic pay is the only form of compensation to members of the uniformed services that is treated as wages for title II purposes. Under section 1612(a)(1) of the Act, earned income in the form of wages for SSI purposes is the same as wages for the title II annual earnings test.

Therefore, basic pay is the only form of military compensation that is treated as wages, and hence, as earned income, for SSI purposes.

All other forms of compensation to members of the uniformed services are considered unearned income. These other forms of compensation include allowances paid in cash for food, clothing, and shelter; free food, clothing, and shelter; and special and incentive pay.

One form of special pay is hostile fire pay, which is authorized under 37 U.S.C. 310. Hostile fire pay is a type of special pay to a service member who, for any month he/she is entitled to basic pay, is:

- Subject to hostile fire or explosion of hostile mines; or
- On duty in an area in which he/she is in imminent danger of being exposed to hostile fire or explosion of hostile mines, and

While on duty in that area, other service members in the same area are subject to hostile fire or explosion of hostile mines; or

- Killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

Section 13733(b) of the Omnibus Budget Reconciliation Act of 1993 (OBRA), Public Law 103-66, amended section 1612(b) of the Act to exclude from income any hostile fire pay received in or after October 1993.

Current regulations do not reflect the exclusion from income of hostile fire pay for eligible individuals, but hostile fire pay has been excluded under SSI operating procedure since October 1, 1993. Moreover, under these