

shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging. Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3295 is amended in the table by revising the entry for "Dimethyldibenzylidene sorbitol" to read as follows:

§ 178.3295 Clarifying agents for polymers.

Substances	Limitations
* * *	* *
Dimethyldibenzylidene sorbitol (CAS Reg. No 135861-56-2).	For use only as a clarifying agent at a level not to exceed 0.4 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, and 3.2, where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from polypropylene. The finished polymers shall be used in contact with food under conditions of use A through H described in Table 2 of § 176.170(c) of this chapter.
* * *	* *

Dated: June 12, 1996.
 Fred R. Shank,
 Director, Center for Food Safety and Applied Nutrition.
 [FR Doc. 96-16662 Filed 6-28-96; 8:45 am]
 BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2509, 2520 and 2550

RIN 1210-AA51

Removal of Interpretive Bulletins and Regulations Relating to ERISA

AGENCY: Pension and Welfare Benefits Administration, DOL.

ACTION: Final rule.

SUMMARY: This rule removes from the Code of Federal Regulations certain interpretive bulletins and regulations (or portions thereof) under the Employee Retirement Income Security Act of 1974 (ERISA), that the Department of Labor (the Department) believes are obsolete (collectively, the obsolete regulations). The obsolete regulations generally provided transitional relief for plan sponsors, plan administrators, and others subject to the requirements of title I of ERISA, in coming into compliance with ERISA's requirements in the first several years following ERISA's enactment in 1974. Because the election periods or dates of applicability under these rules have expired, the Department believes that the regulations are no longer needed. In other instances, the obsolete regulations are unnecessary because they merely provide notice of a rescission or withdrawal of prior guidance or regulations, or were rendered ineffective by a subsequent Supreme Court decision.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm. N-5669, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (telephone (202) 219-7461), or Vicki Shteir-Dunn, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Rm. N-4611, 200 Constitution Ave., N.W., Washington, D.C. 20210 telephone (202) 219-8610.

SUPPLEMENTARY INFORMATION: In accordance with the President's Executive Order No. 12866 of September 1993, "Regulatory Planning and Review," and the President's directive of March 4, 1995, "Regulatory Reinvention Initiative," the Department has undertaken to identify and eliminate regulations which are no longer needed. Pursuant to a review of regulations under the Employee Retirement Income Security Act of 1974 (ERISA), the Department identified 28

interpretive bulletins and regulations (or portions thereof) which it believes to be obsolete. Nearly all of these interpretive bulletins and regulations were issued over fifteen years ago. This rule removes these interpretive bulletins, regulations and paragraphs of regulations from the Code of Federal Regulations, and makes conforming amendments where necessary to accommodate the removal of identified provisions. In order to ensure that members of the public had the opportunity to comment, the Department initially published this rule in the Federal Register (61 FR 14690, April 3, 1996) as a notice of proposed rulemaking. The Department received one public comment, which was fully supportive of the proposal.

The rule removes the obsolete regulations prospectively, as of the date of publication of this final rule, and has no effect on their legal effectiveness prior to that date. Following is a brief description of each of the obsolete interpretive bulletins and regulations (or portions thereof) removed by the Department. All of these items were in title 29 of the Code of Federal Regulations.

I. Part 2509—Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

This rule removes interpretive bulletins 75-1, 75-7, 76-2 and 76-3 from subchapter A, part 2509 of the Code of Federal Regulations (29 CFR §§ 2509.75-1, 2509.75-7, 2509.76-2 and 2509.76-3). In addition, the rule removes paragraph (b) of interpretive bulletin 75-2 (29 CFR 2509.75-2).

Interpretive bulletin 75-1 outlined and clarified section 414(c)(4) of ERISA, which provided that sections 406 and 407(a) of ERISA (relating to prohibited transactions) are not applicable to the provision of certain services between a plan and a party in interest before June 30, 1977, if certain conditions described in that section are met. Interpretive bulletin 75-7 supplemented interpretive bulletin 75-1 and provided examples of its application. Interpretive bulletins 76-2 and 76-3 merely gave notice of the rescission or withdrawal of earlier guidance relating to the definition of "seasonal industries," a matter now under the jurisdiction of the Internal Revenue Service pursuant to Reorganization Plan No. 4 of 1978. Paragraph (b) of interpretive bulletin 75-2 took the position that consideration paid for a contract or policy of insurance issued to a plan would not be considered plan assets if placed in the general account of the issuing insurance company, and therefore could not give rise to

prohibited transactions. This interpretation may no longer be relied on as a result of the December 13, 1993 Supreme Court decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 114 S. Ct. 517 (1993), and therefore, has no force or effect.

II. Part 2520—Rules and Regulations for Reporting and Disclosure

The rule removes ten regulations and provisions of two other regulations from subchapter C, part 2520 of the Code of Federal Regulations (29 CFR Part 2520), pertaining to reporting and disclosure under ERISA.

From subpart C of Part 2520, the rule removes § 103–6(b)(1)(ii), which defined the current value of plan assets for purposes of schedules of reportable transactions for plan years beginning in 1975. The remainder of § 103–6(b)(1) is revised to eliminate the reference to § 103–6(b)(1)(ii), and to otherwise conform to this change. The rule also removes § 103–7. This regulation, which provided special accounting rules for plans filing the annual report for plan years beginning in 1975, applied only with respect to plan years beginning in 1975 and not to any subsequent plan years.

The rule removes the following seven regulations from subpart D of part 2520. The Department's regulation at § 104–2 postponed the effective date of annual reporting requirements for non-calendar year plans and extended the reporting requirements under prior legislation for such plans until the end of the first plan year beginning after January 1, 1975. The Department's regulation at § 104–3 deferred certain reporting and disclosure requirements for welfare plans, and provided an alternative method of compliance for pension plans, until May 30, 1976. The Department's regulation at § 104–5 deferred, until no later than November 16, 1977, the application of certain reporting and disclosure requirements relating to the summary plan description for welfare plans. The Department's regulation at § 104–6 provided an alternative method of compliance for pension plans which elected to defer the summary plan description reporting and disclosure requirements. The availability of the deferral expired on November 16, 1977. The Department's regulation at § 104–28 provided an extension of time for filing and disclosure of the initial summary plan description for certain employee benefit plans that became subject to part 1 of title I of ERISA on or before July 17, 1977. The Department's regulation at § 104–45 provided a temporary

exemption and alternative method of compliance with respect to the requirement to report insurance fees and commissions for insured plans with fewer than 100 participants. The regulation applied only to annual reports required to be filed for the plan years beginning in 1975 and 1976.

From subpart F of part 2520, the rule removes and reserves certain paragraphs of § 104b–2 and § 104b–4, and removes §§ 104b–5 and 104b–12.

With respect to § 104b–2, the rule revises paragraphs (b)(1) and (b)(2), and removes and reserves paragraphs (c), (d), (e), (f) and (h). Paragraphs (b)(1) and (b)(2) establish the periods within which updated summary plan descriptions must be furnished to participants and beneficiaries receiving benefits under the plan (which differ depending on whether there have been amendments to the plan). In both cases, the periods for providing an updated summary plan description are no later than 210 days after the end of the plan year within which occurs the later of a date certain (November 16, 1983 or November 16, 1987) or a period of years after the last date a change in the information required to be disclosed by section 102 of ERISA or § 102–3 would have been reflected in the most recently distributed summary plan description. The rule revises paragraphs (b)(1) and (b)(2) to eliminate the references to the dates certain.

Paragraph (c) of § 104b–2 pertained to plans making elections under §§ 2520.104–5 and 2520.104–6, for which the election periods expired in 1977. Paragraph (d) of the regulation provided an alternative method of compliance for plans using a Form EBS–1 with a print date of April 1975 as the summary plan description. The Form EBS–1 was eliminated in 1976. Paragraph (e) of the regulation provided an alternative method of compliance with ERISA's summary plan description requirements for plans which filed and disclosed an initial summary plan description on or before May 30, 1976, in reliance upon earlier guidance of the Department. The availability of the alternative method of compliance was conditioned on the disclosure by such plans, prior to November 16, 1977, of a statement of ERISA rights which complied with § 2520.102–3(t). Paragraph (f) of the regulation provided an alternative method of compliance for plans which were not described in paragraphs (d) or (e) and which met certain requirements. The alternative method of compliance under paragraph (f) expired on November 16, 1977. Paragraph (h) of the regulation merely referred to §§ 2520.104–5 and 2520.104–

6, both of which authorized alternative methods of compliance which expired on November 16, 1977.

With respect to § 104b–4, the rule removes paragraph (d). This paragraph required certain plans to furnish information to certain classes of participants or beneficiaries by November 16, 1977.

The rule also removes § 104b–5 and § 104b–12. The Department's regulation at § 104b–5 created a new disclosure document, the "ERISA Notice", for use as an interim disclosure document by welfare and pension benefit plans electing to use the deferral until November 16, 1977 provided under §§ 2520.104–5 and 2520.104–6. The Department's regulation at § 104b–12 provided multiemployer plans lacking records of covered participants with optional methods of distributing the first summary annual report to participants covered under the plan. The regulation generally applied to reports distributed before February 15, 1977.

III. Part 2550—Rules and Regulations for Fiduciary Responsibility

The rule removes eight regulations from subchapter F, part 2550 of title 29 of the Code of Federal Regulations, pertaining to fiduciary responsibility under ERISA. These include §§ 407a–3, 407a–4, 407c–3, 414b–1, 414c–1, 414c–2, 414c–3 and 414c–4, all of which provided transitional relief for the first several years following ERISA's enactment.

The Department's regulation at § 407a–3 provided plan administrators with prospective guidance clarifying the meaning of section 407(a)(3)(B) of ERISA. This guidance assisted plan administrators in determining whether their plans held qualifying employer securities and/or qualifying employer real property the fair market value of which, on any date between January 1, 1975 and December 31, 1984, did not exceed ten percent of the fair market value of the plan's assets, and thus would not be subject to the ten percent holding limitation contained in section 407(a)(3)(A) of ERISA. The period for which plan administrators needed such prospective guidance was from January 1, 1975 until December 31, 1984. Accordingly, the need for such guidance no longer exists.

The Department's regulation at § 407a–4 clarified the requirements of section 407(a)(4) of ERISA, which required that plans divest, by December 31, 1979, 50 percent of the qualifying employer securities and qualifying real property which they would be required to divest before January 1, 1985, under

section 407(a)(3) or 407(c) of ERISA. Accordingly, the transactions addressed by the regulation were transactions that were required to occur on or before December 31, 1979.

The Department's regulation at § 407c-3 described an election plans could make, prior to January 1, 1976, to utilize an alternate method of calculating the value of employer securities for purposes of satisfying the limitations of section 407(a)(3) of ERISA on the holding of such securities or real property. The regulation also provided that after making such an election, and before January 1, 1985, the plan could not acquire any real property.

The Department's regulation at § 414b-1 provided guidance to plans applying to the Department of Labor, in accordance with section 414(b)(1) of ERISA, for postponement, until no later than January 1, 1976, of the effective date of certain provisions of ERISA. Applications for such postponement generally had to be submitted to the Department on or before December 31, 1974.

The Department's regulations at §§ 414c-1, 414c-2, and 414c-3 provided guidance concerning transitional rules relating to certain types of transactions prior to June 30, 1984, after which the rules became inapplicable. Specifically, § 414c-1 related to certain loans or other extensions of credit prior to June 30, 1984; § 414c-2 related to certain leases or joint uses of property prior to June 30, 1984; and § 414c-3 related to certain sales, exchanges, or other dispositions of property prior to June 30, 1984. The Department's regulation at § 414c-4 provided guidance regarding a transitional rule relating to the provision of certain services until June 30, 1977, after which the rule became inapplicable.

Executive Order 12866

The Department has determined that this regulatory action is not a "significant rule" within the meaning of Executive Order 12866 concerning Federal regulations, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal

or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions; under ERISA, a "small plan" is one with less than 100 participants. ERISA section 104(a)(2), 29 U.S.C. 1024(a)(2).

The Assistant Secretary of the Pension and Welfare Benefits Administration certifies that the modifications set forth in this rule will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

- (1) The rule merely removes obsolete or unnecessary interpretive bulletins and regulations (or portions thereof) from the Code of Federal Regulations, and, where appropriate, makes conforming amendments to accommodate such removal; and
- (2) The rule does not impose any new requirements on any entity.

Paperwork Reduction Act

This rule is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) because it contains no "collection of information" as defined in 44 U.S.C. 3502(3).

List of Subjects

29 CFR Part 2509

Employee benefit plans, Pensions.

29 CFR Part 2520

Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2550

Employee benefit plans, Pensions, Prohibited transactions.

Authority

For the reasons described in the preamble, parts 2509, 2520, and 2550 of chapter XXV of title 29 of the Code of Federal Regulations, are amended as set forth below:

PART 2509—INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

1. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135. Sections 2509.75-10 and 2509.75-2 issued under 29 U.S.C. 1052, 1053, 1054. Secretary of Labor's Order No. 1-87 (52 FR 13139).

§ 2509.75-1 [Removed]

2. Section 2509.75-1 is removed.

§ 2509.75-2 [Amended]

3. Section 2509.75-2 is amended by removing and reserving paragraph (b).

§§ 2509.75-7, 2509.76-2, 2509.76-3 [Removed]

4. Sections 2509.75-7, 2509.76-2 and 2509.76-3 are removed.

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

5. The authority citation for part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93-406, 88 Stat. 840-52 and 894 (29 U.S.C. 1021-25, 1029-31, and 1135); Secretary of Labor's Order No. 27-74, 13-76, 1-87, and Labor Management Services Administration Order No. 2-6.

Subpart C—[Amended]

6. Section 2520.103-6 is amended by revising paragraph (b)(1) to read as follows:

§ 2520.103-6 Definition of reportable transaction for Annual Return/Report.

* * * * *

(b) *Definitions.* (1) Except as provided in paragraphs (c)(2) and (d)(1)(vi) of this section (relating to assets acquired or disposed of during the plan year), "current value" shall mean the current value, as defined in section 3(26) of the Act, of plan assets as of the beginning of the plan year, or the end of the previous plan year.

* * * * *

§ 2520.103-7 [Removed]

7. Section 2520.103-7 is removed.

Subpart D—[Amended]

§§ 2520.104-2, 2520.104-3, 2520.104-5, 2520.104-6, 2520.104-28, 2520.104-45 [Removed and Reserved]

8. Sections 2520.104-2, 2520.104-3, 2520.104-5, 2520.104-6, 2520.104-28, and 2520.104-45 are removed and reserved.

Subpart F—[Amended]

9. Section 2520.104b-2 is amended by revising paragraph (b) to read as follows:

§ 2520.104b-2 Summary plan description.

* * * * *

(b) *Periods for furnishing updated summary plan description.* (1) For

purposes of the requirement to furnish the updated summary plan description to each participant and each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan) required by section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year which occurs five years after the last date a change in the information required to be disclosed by section 102 or 29 CFR 2520.102-3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description) as described in section 102 of the Act.

(2) In the case of a plan to which no amendments have been made between the end of the time period covered by the last distributed summary plan description (or updated summary plan description), described in section 102 of the Act, and the next occurring applicable date described in paragraph (b)(1) of this section, for purposes of the requirement to furnish the updated summary plan description to each participant, and to each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan), required by section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year which occurs ten years after the last date a change in the information required to be disclosed by section 102 or 29 CFR 2520.102-3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description), as described in section 102 of the Act.

* * * * *

§ 2520.104b-2 [Amended]

10. Paragraphs (c), (d), (e), (f) and (h) of § 2520.104b-2 are removed and reserved.

§ 2520.104b-4 [Amended]

11. Paragraph (d) of § 2520.104b-4 is removed.

§§ 2520.104b-5—2520.104b-12 [Removed]

12. Sections 2520.104b-5 and 2520.104b-12 are removed.

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

13. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135. Section 2550.401b-1 also issued under sec. 102,

Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., p. 332. Section 2550.404c-1 also issued under 29 U.S.C. 1104. Section 2550.407c-3 also issued under 29 U.S.C. 1107. Section 2550.408b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., p. 332, and 29 U.S.C. 1108(b)(1). Section 2550.412-1 also issued under 29 U.S.C. 1112. Secretary of Labor's Order No. 1-87 (52 FR 13139).

§§ 2550.407a-3, 2550.407a-4, 2550.407c-3, 2550.414b-1, 2550.414c-1, 2550.414c-2, 2550.414c-3, 2550.414c-4 [Removed]

14. Sections 2550.407a-3, 2550.407a-4, 2550.407c-3, 2550.414b-1, 2550.414c-1, 2550.414c-2, 2550.414c-3, 2550.414c-4 are removed.

Signed at Washington, D.C., this 25th day of June, 1996.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 96-16594 Filed 6-28-96; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AI32

Reestablishing Rulemaking Procedures; Public Participation in Regulatory Development

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: In a document published in the Federal Register on March 20, 1996 (61 FR 11309), the Department of Veterans Affairs (VA) amended 38 CFR Part 1 by promulgating a final rule that included the elimination of § 1.12. The provisions of § 1.12 set forth a policy statement concerning prior notice-and-comment for rulemaking. Judicial review of VA's action eliminating § 1.12 has been sought on the basis that such action did not comply with notice-and-comment provisions. While we believe such a position is not legally correct, we are by this document reestablishing § 1.12, and, in a companion document published in the Proposed Rules section of this issue of the Federal Register, proposing to eliminate § 1.12. This will provide interested parties an opportunity to provide comments concerning this matter, thus mooting the pending litigation.

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of

Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-8605.

SUPPLEMENTARY INFORMATION: This final rule merely concerns VA policy. Accordingly, in accordance with the provisions of 5 U.S.C. 553, it is promulgated without notice-and-comment and without a delayed effective date.

No notice of proposed rulemaking was required in connection with this rulemaking action. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Nevertheless, the Secretary of Veterans Affairs certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: June 21, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. An undesignated center heading and section 1.12 are added to read as follows:

Public Participation

§ 1.12 Public participation in regulatory development.

It is the policy of the Department of Veterans Affairs to afford the public general notice, published in the Federal Register, of proposed regulatory development, and an opportunity to participate in the regulatory development in accordance with the provisions of the Administrative