Drug labeler code	Firm name and address
033008	Veterinary Service, Inc., 416 North Jefferson St., P.O. Box 2467, Modesto, CA 95354.

PART 544—OLIGOSACCHARIDE CERTIFIABLE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. The authority citation for 21 CFR Part 544 continues to read as follows:

Authority: Secs. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10, 5.83.

§ 544.170b [Amended]

4. Section 544.170b *Streptomycin hydrochloride/streptomycin sulfate oral solution* is amended in paragraph (c)(2) by removing "[Reserved]" and replacing it with "See 033008 in § 510.600(c) of this chapter."

Dated: December 19, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88–29889 Filed 12–28–88; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 1010

[Docket No. 86N–0211]

Performance Standards for Electronic Products: General; Variances From Performance Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is making minor clarifying changes in its variance regulations. FDA is also discontinuing its procedure of publishing in the **Federal Register** notices of the availability of approved variances from performance standards for electronic products. FDA believes there is minimal public interest in the variance procedure, as evidenced by the fact that no one has ever responded to published notices of availability of approved variances. Issuance of this final rule will help conserve FDA's resources.

EFFECTIVE DATE: This final rule will become effective January 30, 1989.

FOR FURTHER INFORMATION CONTACT: Arlene Underdonk, Center for Devices and Radiological Health (HFZ–83), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 1981 (46 FR 36333), FDA announced the agency's plan for conducting a systematic review of its rules and asked the public to comment on those FDA regulations that are perceived to be the most burdensome. The purpose of the review was to identify regulations that impose unnecessary burdens on the public generally or on specific segments of the public such as small business and, for such regulations, to explore alternative measures for protecting the public health. Subsequently, as a result of the assessment of public comments received in response to FDA's notice and of other available information, the agency published a notice in the **Federal Register** of July 2, 1982 (47 FR 29004), that identified the rules initially selected for highest priority review. The July 2, 1982, notice also advised that FDA intended to select other rules for review.

Although the July 2, 1982, notice did not identify the regulation concerning the procedure used to grant variances from performance standards for electronic products, FDA's experience in implementing the regulation since 1974 indicated a need for its review. Therefore, FDA conducted a comprehensive review of this regulation in light of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Order 12291, and FDA's experience in implementing the regulation for the past 14 years.

On June 2, 1988 (53 FR 20137), FDA proposed to revise its variance regulations. Based upon review of correspondence and applications for variances received from manufacturers of electronic products, FDA proposed to make minor clarifying changes to help applicants more readily understand FDA's requirements and thus to expend fewer resources in the submission of applications. Also, the agency proposed to remove the requirement in the variance procedure (21 CFR 1010.4(c)(2)) that a notice of availability of the approved variance be published in the **Federal Register**. The agency believes that publication of the notice of approval is not necessary because there is a lack of public interest in the variance procedure as evidenced by a complete absence of responses to published notices of availability of approved variances.

Interested persons were given until August 1, 1988, to submit comments, but no comments were received. Accordingly, FDA is adopting the amendments as proposed.

FDA will continue to maintain the administrative record of each variance action, which record will include the applications for variances and for any amendments and extensions of variances as well as all correspondence on the applications. The administrative record will be on file at FDA's Dockets Management Branch, and all nonconfidential documents in it will be available under the Freedom of Information Act (5 U.S.C. 552). Removing the requirement for announcement of the approval of a variance in the **Federal Register** will not speed up approval of a variance, because approval of a variance takes place before FDA's publication of a notice of availability of a variance. Issuance of this final rule will, however, help conserve FDA's resources by eliminating unnecessary **Federal Register** documents.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Order.

List of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic projects, Exports, Radiation protection.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act, and under authority delegated to the Commissioner of Food and Drugs, Part 1010 is amended as follows:

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

1. The authority citation for 21 CFR Part 1010 is revised to read as follows:

Authority: Sec. 358, 82 Stat. 1177; 42 U.S.C. 263f; 21 CFR 5.10.

2. Section 1010.4 is amended by revising paragraph (a), by removing paragraph (c)(2), and by redesignating paragraphs (c) (3) and (4) as paragraphs

(c) (2) and (3), respectively, to read as follows:

§ 1010.4 Variances.

(a) *Criteria for variances.* (1) Upon application by a manufacturer (including an assembler), the Director, Center for Devices and Radiological Health, Food and Drug Administration, may grant a variance from one or more provisions of any performance standard under Subchapter J of this chapter for an electronic product subject to such standard when the Director determines that granting such a variance is in keeping with the purposes of the Radiation Control for Health and Safety Act of 1968, and:

(i) The scope of the requested variance is so limited in its applicability as not to justify an amendment to the standard, or

(ii) There is not sufficient time for the promulgation of an amendment to the standard.

(2) The issuance of the variance shall be based upon a determination that:

(i) The product utilizes an alternate means for providing radiation safety or protection equal to or greater than that provided by products meeting all requirements of the applicable standard, or

(ii) The product performs a function or is intended for a purpose which could not be performed or accomplished if required to meet the applicable standards, and suitable means for assuring radiation safety or protection are provided, or

(iii) One or more requirements of the applicable standard are not appropriate, and suitable means for assuring radiation safety or protection are provided.

* * * * *

Dated: December 8, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-29887 Filed 12-28-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2584

Allocation of Fiduciary Responsibility, Federal Retirement Thrift Investment Board

AGENCY: Department of Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation under section 8477(e)(1)(E) of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act). That section provides that any fiduciary with respect to the Thrift Savings Fund [1] who, pursuant to procedures prescribed by the Secretary of Labor, allocates a fiduciary responsibility to another fiduciary shall not be liable for any act or omission of such fiduciary except in specified circumstances. Section 8477(e)(1)(E) specifically contemplates the issuance of regulations by the Department of Labor. This regulation describes the procedures which a fiduciary with respect to the Thrift Savings Fund must follow in order to allocate fiduciary responsibility to another fiduciary.

DATE: This regulation is effective December 29, 1988. The final regulation will apply to transactions occurring on or after December 29, 1988.

FOR FURTHER INFORMATION CONTACT: Shelby J. Hoover, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-9590; or Debra Silver, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-8671.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Director, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This document contains a final regulation under section 8477(e)(1)(E) of FERSA.[2] That section provides that any fiduciary with respect to the Thrift Savings Fund who, pursuant to procedures prescribed by the Secretary of Labor, allocates a fiduciary responsibility to another fiduciary shall not be liable for an act or omission of such fiduciary except in specified circumstances. This regulation supersedes the interim regulations promulgated by the Executive Director of the Federal Retirement Thrift Investment Board which appear at Title 5, Code of Federal Regulations, Chapter IV, Section 1660.1-1660.5 (52 FR 38221, October 15, 1987).

On July 22, 1988, the Department of Labor (the Department) published for notice and comment a proposed regulation outlining procedures for fiduciary allocation under FERSA section 8477(e)(1)(E). The Department received comments only from the Executive Director of the Federal Retirement Thrift Investment Board concerning this proposal. The following discussion summarizes the proposed regulation and the issues raised by that commentator, and explains the Department's reasons for adopting the final regulation.

Discussion

A. General Considerations

Subchapter III of FERSA provides for the creation of a retirement savings plan for federal employees to be known as the Thrift Savings Plan. As provided at section 8437 of FERSA, the plan is to be funded by the Thrift Savings Fund (Fund). The Fund consists of all employee and government contributions, increased by the total net earnings of the Fund or reduced by the total net losses of the Fund, and reduced by the total amount of payments made from the Fund.

Under the system of plan management prescribed at Subchapter VII of the Act, the authority and responsibility for the management and administration of the Fund is apportioned between the Federal Retirement Thrift Investment Board (the Board) and its Executive Director. Section 8472 of the Act charges the Board with broad responsibility to establish policies for the investment and management of the Thrift Savings Fund and the administration of Subchapter III of FERSA. Section 8474 assigns the Executive Director the responsibility to implement the policies established by the Board and to invest and manage the Fund assets in accordance with those policies and the provisions of the Act.

Pursuant to section 8474 (b)(5) and (c)(1) of the Act, the Executive Director is also granted authority to prescribe

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[1] The Thrift Savings Fund is established and defined at 5 U.S.C. 8437.

[2] Section 8401 through 8479 of Title 5, United States Code (U.S.C.) were enacted by Congress at section 101(a) of FERSA. The Act itself provides no independent numbering system for these provisions, but directly assigns the chapter and section numbers under which those provisions are to be codified in Title 5 of the U.S.C. For purposes of clarity and convenience, therefore, this preamble references the provisions of FERSA by using the U.S.C. section numbers which Congress assigned to them in the Act. Thus, for example, the above reference to "section 8477(e)(1)(E) of FERSA" is to Title 5 U.S.C. 8477(e)(1)(E).

such regulations as may be necessary for the administration of the Fund. However, these statutory provisions expressly prohibit the Executive Director from prescribing any regulations relating to fiduciary responsibilities with respect to the Fund. Instead, at section 8477 of the Act, that regulatory authority is assigned to the Secretary of Labor. At section 8477(e)(1)(E), the Secretary is directed to prescribe, in regulations, procedures by which fiduciary responsibilities may be allocated among fiduciaries, including investment managers. An exception to the limitation on the Executive Director's rulemaking authority, however, was included at section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986 (Pub. L. 99–556). That section authorizes the Board to establish interim procedures concerning the allocation of fiduciary responsibilities. The Executive Director published such procedures in the **Federal Register** at 52 FR 38221 on October 15, 1987. According to the Act, those procedures are to be effective only with respect to transactions which occur prior to the effective date of the final regulations prescribed by the Secretary of Labor under subparagraph (E) of section 8477(e)(1) of the Act; moreover, the authority to make allocations using the interim procedures must expire no later than December 31, 1988.

B. The Final Regulation

In summary, the proposal was divided into seven sections which basically describe the fiduciary duties which may be allocated, and to whom, the procedures for allocating those duties, the procedures for revoking such allocations, and the effect of an allocation made pursuant to these procedures. Only two areas of concern were raised by the commentator, and they are discussed in the following first two subsections.

1. Allocation Among Board Members

The Act initially vests all fiduciary responsibility for the Thrift Savings Fund with either the members of the Board or the Executive Director. Sections 2584.8477(e)–2 and 3 of the proposal provided a procedure by which the Board members could allocate among themselves those responsibilities which had been charged to them collectively as members of the Board. This would permit the Board to adopt, if it chose, an arrangement whereby a collective fiduciary responsibility could be assigned to and discharged by one or a subgroup of the members, provided such allocation would not violate an express policy of the Board or constitute an invalid delegation according to the Act or any other law. See § 2584.8477(e)–2(d) of the proposal.

In this regard, the Executive Director of the Federal Retirement Thrift Investment Board submitted a comment stating the conclusion that an allocation of fiduciary responsibilities among Board members would be an invalid delegation under the provisions of FERSA. In support of this conclusion, the Executive Director cited 5 U.S.C. 8476(b)(1), which requires the Board to perform its functions and exercise its powers on a majority vote of a quorum of the Board, and 5 U.S.C. 8474(c)(8) and 8472. Section 8474(c)(8) of FERSA specifically provides for the Executive Director to delegate his functions while section 8472, which delineates the powers and responsibilities of the Board, contains no express authority to delegate.

The Department proposed these allocation procedures pursuant to the authority provided in 5 U.S.C. 8477(e)(1)(E), which contains no limitation concerning permissible delegations. This procedural regulation is not intended to define what constitutes a permissible delegation. Thus, the Department has determined to adopt the procedures as proposed, retaining the procedural flexibility for allocations among Board members, if such allocation would not result in an invalid or impermissible delegation as described in § 2584.8477(e)–2(d) of the regulation. The Department notes in this regard that while nothing in these procedures restricts the ability of a Fund fiduciary to assign any task or function to another person, such Fund fiduciary will continue to bear fiduciary responsibility for the acts and omissions of such other persons unless such responsibility of such other person has been allocated pursuant to these procedures. Also, in those instances where the delegation by a Fund fiduciary of a particular task or function would violate an express Board policy or a provision of law, that Fund fiduciary may not allocate the fiduciary responsibility for such task or function to another so as to relieve himself of his related fiduciary liability.

2. Allocation of the Responsibilities of the Executive Director

In addition to the allocation procedure for Board members described above, section 2584.84777(e)–2 of the proposal provided a procedure by which the Executive Director could allocate certain fiduciary responsibilities in connection with the management and investment of the assets of the Thrift Savings Fund. With respect to assets held in the Fixed Income Investment Fund (F Fund), it was proposed that such allocations be made only to a qualified professional asset manager or managers (QPAMs). The proposal incorporated by reference the definition of "qualified professional asset manager or manager" which appears at section 8438(a)(7) of the Act. With respect to assets held in the Government Securities Investment Fund or the Common Stock Index Investment Fund,[3] it was proposed that such allocation may be made only to an investment manager. The proposal incorporated the definition of "investment manager" which appears at section 3(38) of the Employee Retirement Income Security Act of 1974 (ERISA). No other allocations, whether by a Board member, the Executive Director, or any other person who has or may acquire fiduciary responsibility in connection with the Thrift Savings Fund, were authorized. Thus, as proposed, an investment manager to whom fiduciary responsibility had been allocated could not in turn allocate any part of that responsibility to a second investment manager. However, allocation to the second investment manager could be achieved by action of the Executive Director, who, under the proposed regulation, was provided the authority to revoke an allocation and then reallocate that fiduciary responsibility to another fiduciary.

In this regard, the Executive Director of the Board expressed concern that section 8477(e)–2(b) of the proposal, which provided that the Executive Director could allocate authority and responsibility for investment and management of the F Fund only to a QPAM, is more restrictive than 5 U.S.C. 8438(b)(1). Section 8438(b)(1) of FERSA requires that the selection of assets to be held by the Fixed Income Investment Fund (other than certificates of deposit and insurance contracts) be made by a qualified professional asset manager. The commentator argued that if the Executive Director so desired, he should have the ability to separate the investment selection function from other aspects of asset management and allocate such aspects of fiduciary asset management.

It is the opinion of the Department that the authority to select includes the actual selection as well as the decision to retain or sell any assets previously

[3] Section 8438(b) provides that the Board is to establish three funds within the Thrift Savings Fund into which sums available for investment are to be invested. They are the Government Securities Investment Fund, the Fixed Income Investment Fund and the Common Stock Index Investment Fund.

selected. Thus, the Department proposed that, with respect to this fund, all allocations of management and investment authority must be made to QPAMs. After due consideration of the commentator's concerns, the Department is not convinced that there are any fiduciary asset management functions not encompassed by the statutory selection requirement which should be allocated to someone other than a QPAM. Thus, the Department adopts § 2584.8477(e)–2 of the regulation as proposed.

3. Procedures for Allocation

Section 2584.8477(e)–3 of the proposal imposed specific procedural requirements to assure that, as to any allocation: (1) Both the allocating fiduciary and the receiving fiduciary are expressly and clearly informed of the fact of any allocation and the pertinent terms thereof; and (2) the participants and the beneficiaries of the Thrift Savings Funds are informed of the identity of any person or persons to whom fiduciary responsibility has been allocated, and the nature of that responsibility. Also, the proposal required that any allocation made by the Board must be authorized by majority vote of the Board.

In order to avoid confusion, the Department has made an amendment to the language of § 2584.8477(e)–3(a)(1) and section 2584.8477(e)–4(c)(1) clarifying that any allocation made by the Board or revocation of such allocation must be authorized by the concurring vote of a majority of the total membership of the Board. If such a vote is taken and authorization is given, the Chairman of the Board will evidence such authorization by signing on behalf of the Board the written authorization which, in turn, must be acknowledged in writing by the receiving Board member or members.

As in the proposal, the final regulation states that all allocations, whether by the Board or the Executive Director, must identify in writing the responsibilities to be allocated and must be signed by both the allocating and the receiving fiduciaries. The signature of the receiving fiduciary represents his acknowledgement that, in accepting the allocated responsibilities, he becomes a fiduciary with respect to the Fund as to those responsibilities. The final regulation also requires that all allocations must be communicated in a written form to the participants and beneficiaries of the Fund.

4. Revocation and Termination of Allocations

To assure that the Board and the Executive Director may retain the necessary control over the management of the Fund which is consistent with their responsibilities under the Act, section 2584.8477(e)–4 of the proposal set forth procedures for expeditious revocations and terminations of allocations. Thus, the proposed regulation required that any allocation of fiduciary responsibility must be revocable at will by the allocating fiduciary. The proposal did not mandate a minimum notice period in order that a revocation may be effected quickly where circumstances reasonably require prompt action. In all cases, a revocation must set forth in writing the responsibilities which are the subject of the revocation and must be signed by the revoking fiduciary (in the case of the Board, by its Chairman).

As proposed, the termination of an allocation by a person to whom responsibility has been allocated must follow similar procedures. In addition to setting forth the pertinent facts in writing, a termination must be acknowledged in writing by the fiduciary to whom the subject duties are being restored.

The proposed regulation assigned to the Executive Director the responsibility to communicate to the Fund participants and beneficiaries the occurrence of any revocation or termination. This communication must include information which identifies the fiduciaries who are to assume the responsibilities which were the subject of the revocation or termination.

The Department received no comments on this section and, thus, adopts it as proposed, modified, as previously described, only to the extent necessary to clarify the voting requirement of a revocation of a Board function.

5. Effect of Allocation

In general, section 2584.8477(e)–5 of the proposal stated that where fiduciary responsibility has been allocated to another person pursuant to these procedures, the allocating fiduciary will be relieved of any fiduciary liability for any act of that person. However, the proposed regulation incorporated the provisions on fiduciary liability which are set forth at section 8477(e)(1)(E) of the Act so that an allocating fiduciary would retain liability for an allocated responsibility where he or she has violated the prudence standard set forth at section 8477(b)[4] of the Act with respect to: (a) the allocation or the continuation of the allocation; or (b) the implementation of the procedures set forth in the final version of this regulation. The duty to monitor the performance of a person to whom fiduciary responsibility has been allocated, which is implicit in the duty to discontinue any allocation where prudence so dictates, was explicitly imposed by the proposal, and the allocating fiduciary must prudently monitor.

FERSA section 8477(e)(1)(E) also imposes liability on an allocating fiduciary where such fiduciary would otherwise be liable under FERSA section 8477(e)(1)(D). FERSA section 8477(e)(1)(D) imposes joint and several liability upon a fiduciary with respect to the Fund who: (1) Participates knowingly in, or knowingly attempts to conceal, conduct which the fiduciary knows to be a breach of fiduciary duty by another Fund fiduciary; (2) by failing to comply with the prudence standard of FERSA seciton 8477(b) in the performance of his fiduciary duties, enables another Fund fiduciary to commit a breach; or (3) has knowledge of a breach by another Fund fiduciary and fails to make reasonable efforts to remedy that breach. Thus, the proposal provided that an allocating fiduciary would retain the co-fiduciary liability described in section 8477(c)(1)(D) of the Act. The Department adopts section 2584.8477(e)–5 as proposed.

6. Effective Date

Pursuant to § 2584.8477(e)–7 of the proposal, the regulation would be effective thirty days after publication in final form. Fiduciary liability for transactions occurring after that date would be determined by reference to this regulation regardless of whether any associated allocation may have been made before or after this effective date. As stated in the preamble to the proposal, liability for transactions occurring before the effective date of this regulation would continue to be governed by the interim regulation which appears at title 5, CFR, Chapter

[4] Section 8477(b)(1) of the Act provides in relevant part: "(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of participants and beneficiaries and—

* * * (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives * * *."

IV, Sections 1660.1 through 1660.5. Thus, the Department stated its intent to recognize as valid, until the effective date of the Department's allocation regulation, any allocation made both in accordance with the requirements of the interim regulation (5 CFR 1660.1–1660.5) and during the statutorily defined effective period of that interim procedural regulation.[5] In order to better effectuate this expressed intent, the Department has amended the last sentence of § 2584.8477(e)–7. The Department has also amended § 2584.8477(e)–7 in general to make the procedure effective upon the date of publication. The Department believes the immediate effective date meets the requirements of 5 U.S.C. 553(d) because: this procedure relieves a restriction on the ability to allocate fiduciary responsibility under FERSA; by publishing this procedure for notice and comment the Department put all interested persons on notice of the contents of this regulation and it received comments only from the Executive Director of the Board which were addressed earlier; and to delay unnecessarily the effective date of this regulation beyond the effective period of the interim procedures would only serve to create unnecessary administrative disruptions of the ability to allocate fiduciary responsibility under FERSA.

Executive Order 12291 Statement. The Department has determined that this final regulation is not a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The action will impose no additional costs on the Thrift Savings Fund.

Regulatory Flexibility Act Statement. The Department has determined that this regulation would have no significant economic impact on small entities. In conducting the analysis required under the Regulatory Flexibility Act, it was estimated that the implementation of this regulation would pose no additional costs to the Thrift Savings Fund. The only burden attributable to this regulation is the burden of written communication of an allocation by the Board or Executive Director to plan participants and beneficiaries, which may be incorporated in other disclosure documents already required under current law. The regulation does not otherwise affect any small entities.

Paperwork Reduction Act Statement. Sections 2584.8477(e)–3(a)(4), 3(b)(3) and 4(e) of the final regulation contain paperwork requirements. Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the Office of Management and Budget has assigned this regulation control number 1210–0071.

Statutory Authority. The final regulation set forth herein is issued pursuant to section 8477(e)(1)(E) (Pub. L. 99–335, 100 Stat. 585, 5 U.S.C. 8477(e)(1)(E)) of the Act and under Secretary of Labor's Order No. 1–87.

List of Subjects in 29 CFR Part 2584

Employee benefit plans, Fiduciary, Government employees, Retirement, Pensions.

In view of the foregoing the Department amends Chapter XXV of Title 29 as follows:

By adding in the appropriate place, the following new Part 2584 to Subchapter J:

SUBCHAPTER J—FIDUCIARY RESPONSIBILITY UNDER THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

PART 2584—RULES AND REGULATIONS FOR THE ALLOCATION OF FIDUCIARY RESPONSIBILITY

Sec.

2584.8477(e)–1 General.
2584.8477(e)–2 Allocation of fiduciary duties.
2584.8477(e)–3 Procedures for allocation.
2584.8477(e)–4 Revocation and termination of allocation.
2584.8477(e)–5 Effect of allocation.
2584.8477(e)–6 Definitions.
2584.8477(e)–7 Effective date.

Authority: 5 U.S.C. 8477(e)(1)(E) and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

§ 2584.8477(e)–1 General.

5 U.S.C. 8477(e)(1)(E) provides that any fiduciary with respect to the Thrift Savings Fund of the Federal Employees Retirement System who allocates a fiduciary responsibility to another person pursuant to procedures prescribed by the Secretary of Labor shall not be liable for an act or omission of such person except in specified circumstances. This Part sets forth the procedures which have been prescribed by the Secretary of Labor for the allocation of fiduciary responsibilities.

§ 2584.8477(e)–2 Allocation of Fiduciary Duties.

(a) The fiduciary duties of the Board as set forth at 5 U.S.C. 8472 may not be allocated to any person other than a member or members of the Board.

(b) The Executive Director may allocate authority and responsibility for the investment and management of the Fixed Income Investment Fund to a qualified professional asset manager(s).

(c) The Executive Director may allocate authority and responsibility for the investment and management of the Government Securities Investment Fund and the Common Stock Index Investment to an investment manager(s).

(d) Notwithstanding any other provision of this part, no allocation may be made which would constitute:

(1) A violation of an express policy of the Board; or

(2) An invalid delegation according to the Act or any other law.

(e) Except as provided in this part, no person who has or may acquire fiduciary responsibility in connection with the Thrift Savings Fund may allocate such responsibility to another person.

§ 2584.8477(e)–3 Procedures for Allocation.

(a) Any allocation made by the Board must—

(1) Be authorized by the concurring vote of a majority of the total membership of the Board;

(2) Be made in writing, signed by the Chairman of the Board and acknowledged in writing by the receiving Board member or members;

(3) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(4) Be communicated in an appropriate written form to the Executive Director, the participants and the beneficiaries of the Thrift Savings Fund.

(b) Any allocation made by the Executive Director must—

(1) Be made in writing, signed by the Executive Director and acknowledged in writing by the receiving fiduciary;

(2) Set forth the duties and responsibilities allocated, either in the body of the document or by reference to another document existing at the time of the allocation; and

(3) Be communicated in an appropriate written form to the

[5] Neither this statement nor the corresponding operative language of the regulation should be read as relieving the allocating fiduciary of responsibility ascribed to him pursuant to FERSA sections 8477 (b), (e)(1)(D), or (e)(1)(E) with regard to the continuation of any such allocation.

participants and beneficiaries of the Thrift Savings Fund.

§ 2584.8477(e)–4 Revocation and termination of allocation.

(a) Any allocation made pursuant to this part must be revocable at will by the allocating fiduciary, subject only to notice which is reasonable under the circumstances.

(b) Any revocation by the allocating fiduciary or termination of an allocation by the fiduciary to whom duties have been allocated must set forth in writing the duties and responsibilities as to which the revocation or termination is effective, either in the body of the document or by reference to another document existing at the time of the revocation or termination.

(c) Any revocation of an allocation must—

(1) In the case of an allocation which was made by the Board, be authorized by the concurring vote of a majority of the total membership of the Board and be signed by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the Executive Director.

(d) Any termination of an allocation, to be effective, must—

(1) In the case of an allocation which was made by the Board, be signed by the terminating fiduciary and acknowledged in writing by the Chairman of the Board, or

(2) In the case of an allocation which was made by the Executive Director, be signed by the terminating fiduciary and acknowledged in writing by the Executive Director.

(e) Any revocation or termination of an allocation must be communicated by the Executive Director in an appropriate written form to the participants and beneficiaries of the Thrift Savings Fund in a manner which identifies the person(s) assuming the responsibilities which were the subject of the revocation or termination.

§ 2584.8477(e)–5 Effect of allocation.

Where fiduciary responsibility has been allocated to another person or persons pursuant to the procedures contained in this part, the allocating fiduciary shall not be liable for any act or omission of such person or persons unless:

(a) The allocating fiduciary has violated 5 U.S.C. 8477(b) with respect to—

(1) The allocation or the continuation of the allocation,

(2) The implementation of these procedures, or

(3) The duty to monitor the performance of such person or persons in a reasonable manner during the life of the allocation, or

(b) The allocating fiduciary would otherwise be liable in accordance with 5 U.S.C. 8477(e)(1)(D).

§ 2584.8477(e)–6 Definitions.

As used in this Part:

(a) "Act" means the Federal Employees' Retirement System Act of 1986, 5 U.S.C. § 8401 *et seq* (Supp. IV 1986);

(b) "Board" means the Federal Retirement Thrift Investment Board established pursuant to 5 U.S.C. 8472;

(c) "Common Stock Index Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(C);

(d) "Executive Director" means the executive director of the Federal Retirement Thrift Investment Board as appointed pursuant to 5 U.S.C. 8474;

(e) "Fiduciary duty" and "fiduciary responsibility" mean any duty or responsibility which involves the exercise of discretionary authority or discretionary control over—

(1) The management or disposition of the assets of the Thrift Savings Fund, or

(2) The administration of the Thrift Savings Fund.

(f) "Fixed Income Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(B);

(g) "Government Securities Investment Fund" means the fund established under 5 U.S.C. 8438(b)(1)(A);

(h) "Investment manager" means any fiduciary who—

(1) Has the power to manage, acquire or dispose of any asset of the plan,

(2) Is (i) registered as an investment adviser under the Investment Advisers Act of 1940, (ii) a bank, as defined in that Act, or (iii) an insurance company qualified to perform services described in paragraph (h)(1) of this section under the laws of more than one state, and

(3) Has acknowledged in writing that he or she is a fiduciary with respect to the Thrift Savings Fund;

(i) "Qualified professional asset manager" has the meaning which is prescribed at 5 U.S.C. 8438(a)(7).

(j) "Thrift Savings Fund" means the fund established under 5 U.S.C. 8437.

§ 2584.8477(e)–7 Effective Date.

This section is effective December 29, 1988, and liability for any transaction which occurs on or after this date will be governed by this section only. In accordance with section 114(a) of Pub. L. 99–556, the interim regulations promulgated by the Board appearing at Title 5, CFR, Chapter VI, § § 1660.1 through 1660.5 will no longer be effective as of December 29, 1988.

Liability for transactions which occur before the effective date of this regulation, however, will continue to be governed by allocations made both during the statutorily defined effective period of the previously cited interim regulations and pursuant to the requirements of those regulations.

Signed at Washington, DC this 23rd day of December, 1988.

David M. Walker,

Assistant Secretary for Pension and Welfare Benefits.

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29 CFR Part 2585

Final Interim Rule Relating to the Prohibited Transaction Exemption Procedures Under the Federal Employee's Retirement System Act

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Interim final regulation.

SUMMARY: This document contains a final interim regulation that describes the procedures for filing and processing applications for exemptions from the prohibited transaction provisions of The Federal Employees' Retirement System Act of 1986 (FERSA). The Secretary of Labor is authorized to grant exemptions from these restrictions and to establish a procedure to process such exemptions. For applications for exemptions filed under FERSA, this interim final regulation adopts the procedures currently followed by applicants for exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1986 (the Code).

DATES: *Effective Date:* This regulation is effective December 29, 1988. The interim regulation would be effective with respect to all applications for exemptions filed with the Department under 5 U.S.C. 8477(c)(3) at any time after December 29, 1988.

Applications for exemptions filed before that date would be governed by ERISA Procedure 75–1.

Expiration Date: This Interim Final Rule shall expire on the effective date of the revised Prohibited Transaction Procedure Regulation, published in proposed form for comment on June 28, 1988. See 53 FR 24422. The Department will publish a document removing these interim regulations when it adopts final