Name	Title
Joseph V. Wilson III	Director.
Michael A. Flick	Director.
William J. Harper	Director, President, and CEO.
Paul F. Griffin	Senior Vice President.
Michael P. Kirby	Vice President.
Elizabeth W. Storms	Secretary.
Jane B. Truett	Treasurer.

All outside directors are officers of First Commerce Corporation.

The applicant will have Regulatory Capital of $5.0 million in the first year rising to $24.0 million in year five. It will be a source of debt and equity financing for qualified small business concerns throughout the United States concentrating primarily in states around the Gulf of Mexico.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New Orleans, Louisiana.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment companies)

Dated: June 6, 1994.

[FR Doc. 94-14473 Filed 6-14-94; 8:45 am]

BILLING CODE 8025-01-M

[Application Number: 99000107]

Chesapeake Capital Lending Fund, L.P.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661, *et seq.*) has been filed by Chesapeake Capital Lending Fund, L.P. ("Applicant"), 629 E. Main Street, suite 1200, Richmond, Virginia 23219, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1994).

The partners and their respective partnership interest in the Applicant are as follows:

Name and address	Title	Partnership interest (percent)
Several Unidentified Corporations and/or Individuals.	Limited Partners (no limited partner will have greater than 10% interests).	70
CCLF, L.C., 629 E. Main Street, Suite 1200, Richmond, VA 23219.	General Partner	30

The proposed members and officers of CCLF, L.C., a limited liability company, are as follows:

Name and address	Position	Percentage of ownership
Charles E. Coudriet, 10221 Navarre Court, Richmond, VA 23233.	Member, President and Chief Executive Officer.	50
Carter Kaplan & Company, L.P. 629 E. Main Street, Suite 1200, Richmond, VA 23219.	Member	50
Robert R. Kaplan, 3808 Old Gun Road, West, Midlothian, VA 23113.	Chairman	0
William P. Carter, 2902 Fincastle Court, Midlothian, VA 23113.	Secretary-Treasurer.	0

CKC Advisors, L.C. is proposed to be the Applicant's Investment Advisor. The proposed members and officers of CKC Advisors, L.C., also a limited liability company, are as follows:

Name and address	Position	Percentage of ownership
Charles E. Coudriet, 10221 Navarre Court, Richmond, VA 23233.	Member, President and Chief Executive Officer.	50
Carter Kaplan & Company, L.P. 629 E. Main Street, Suite 1200, Richmond, VA 23219.	Member	50
Robert R. Kaplan, 3808 Old Gun Road, West, Midlothian, VA 23113.	Chairman	0
William P. Carter, 2902 Fincastle Court, Midlothian, VA 23113.	Executive Vice President.	0

The Applicant proposes to begin operations with a capitalization of $10,000,000 and will be a source of long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business operations primarily in the States of Maryland, North Carolina, Virginia and the District of Columbia.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the Applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in Richmond, Virginia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 7, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-14472 Filed 6-14-94; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 99000099]

SBIC Partners, L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by SBIC Partners, L.P., 201 Main Street, suite 2302, Fort Worth, Texas 76102, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder. SBIC Partners, L.P. is a Texas limited partnership.

SBIC Partners, L.P. will have two general partners: Forrest Binkley & Brown Venture Co., the managing general partner, located at 201 Main Street, Fort Worth, Texas 76102; and FW–SBIC, Inc. located at 201 Main Street, Forth Worth, Texas 76102. The officers, directors, and owners of Forrest Binkley & Brown Venture Co. are:

Name	Title	Ownership (percent)
Gregory J. Forrest.	Co-President and Chairman.	33.3
Nicholas B. Binkley.	Co-President and Director.	33.3
Jeffrey J. Brown	Co-President, Secretary, and Director.	33.3

All these officers and directors have offices at 201 Main Street, Fort Worth, Texas 76102.

The officers, directors, and owners of FW–SBIC, Inc. are:

Name	Title	Ownership (percent)
William Hallman, Jr..	President and Director.	50
Peter Sterling ...	Chairman	50
W.R. Cotham ...	Vice President, Secretary, and Treasurer.	0

All these officers and directors have offices at 201 Main Street, Fort Worth, Texas 76102.

The following limited partners own or control 10 percent or more of the proposed SBIC's Regulatory Capital:

Name	Percentage of ownership
Michael Eisner, 500 South Buena Vista Street, Burbank, California 91521	27.2
Lee M. Bass, 201 Main Street, suite 3200, Fort Worth, Texas 76102	17.1
Alamo Partners, 201 Main Street, suite 3200, Fort Worth, Texas 76102	10.5

The following investor owns or controls 10 percent or more of the applicant's private capital: William Hallman, Jr., 201 Main Street, suite 3200, Fort Worth, Texas 76102.

The applicant has total committed capital of $30.0 million. It will be a source of debt and equity financings for qualified small business concerns, and will invest primarily in the states of Texas and California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Fort Worth, Texas.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 8, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–14474 Filed 6–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Modesto City-County Airport (MOD) Modesto, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the City of Modesto for Modesto City-County Airport (MOD), Modesto, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR part 150 for Modesto City-County Airport were in compliance with applicable requirements effective February 26, 1993. The proposed Noise Compatibility Program will be approved or disapproved on or before November 23, 1994.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is May 27, 1994. The public comment period ends July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph B. Rodriguez, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone: (415) 876–2805. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Modesto City-County Airport which will be approved or disapproved on or before November 23, 1994. This notice also announces the availability of this program for public review and comment.

An airport who has submitted Noise Exposure Maps are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Modesto City-County Airport, effective on May 27, 1994. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under

Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 23, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 615, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 Aviation Boulevard, room 3012, Hawthorne, California, Mail: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009

Mr. Howard L. Cook, AAE/CAE, Airport Manager, Modesto City-County Airport, 617 Airport Way, Modesto, California 95354–3916.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 27, 1994.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 94–14577 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 93–48; Notice 3]

Cosco, Inc.; Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

Cosco, Inc. (Cosco), of Columbus, Indiana, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied Cosco's petition that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," be deemed inconsequential as it relates to motor vehicle safety (Docket No. 93–48, Notice 2; 59 FR 14443; March 28, 1994).

This notice of receipt of Cosco's appeal is published in accordance with NHTSA regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ["Flammability of Interior Materials"] (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 "[W]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

Cosco determined that some of its child safety seats failed to comply with FMVSS No. 213, and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Cosco petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (Act) (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** on July 7, 1993 (58 FR 36510). On March 28, 1994, NHTSA published a notice in the **Federal Register** denying Cosco's petition, stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential as it relates to motor vehicle safety. The reader is referred to these notices for a further discussion of the noncompliance and the agency's rationale in denying the petition.

In Cosco's original petition and part 573 report, it stated that it produced 133,897 child restraint seats with shoulder harness straps that do not comply with the flammability requirements of FMVSS No. 213. In its appeal it states that, due to an error in its data processing system, this number was incorrect. The correct number of seats covered by the noncompliance determination is 23,449.

In its appeal, Cosco contends that it is extremely unlikely that straps of its child restraints would ignite independently of an interior fire that was already in progress from another source. It argues that NHTSA based its denial of the petition on hypothetical situations rather than confirmed reports of child restraint fires.

Interested persons are invited to submit written data, views, and arguments on the appeal of Cosco, described above. Comments should refer to the docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. All comments received after the closing date will also be filed and will be considered to the extent feasible. When the appeal is granted or denied, notice will be published in the **Federal Register.**

Comment closing date: July 15, 1994.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50.

Issued on: June 9, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–14521 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–59–M

Corrections

Federal Register
Vol. 59, No. 114
Wednesday, June 15, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-05; N-57882]

Notice of Realty Action; Lease/Purchase for Recreation

Correction

In notice document 94-4687 appearing on page 9963, in the issue of Wednesday, March 2, 1994, make the following correction:

In the first column, in the land description, in Sec. 26, the second line should read "N½SE¼NE¼NW¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Prescriptions—Transmission by Facsimile

Correction

In rule document 94-12173 beginning on page 26109 in the issue of Thursday, May 19, 1994 make the following corrections:

§ 1306.11 [Corrected]

1. On page 26111, in the third column, in § 1306.11, paragraph (a), in the third line, insert "a" after "is".

2. On page 26112, in the first column, in the same section, in paragraph (f), in the second line, "§ 1304.05" should read "1306.05".

§ 1306.31 [Corrected]

3. On page 26112, in the second column, in § 1306.31, paragraph (c), in the fifth line from the bottom, insert "individual" before "practitioner".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-94-018]

Special Local Regulations for Marine Events; Norfolk Haborfest 1994; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

Correction

In rule document 94-11982 appearing on page 26120, in the issue of Thursday, May 19, 1994, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 Part 71

[Airspace Docket No. 93-AWP-21]

Modification of Class D Airspace; Mojave, CA

Correction

In rule document 94-6101 beginning on page 12159 in the issue of March 16, 1994, make the following correction:

§ 71.1 [Corrected]

On page 12160, in the second column, § 71.1, *paragraph 5000*, under **AWP CA D Mojave, California [Revised]**, in the second line, "(lat. 35°03'30" N, long. 118°90'03"W)" should read "(lat. 35°03'30" N, long. 118°09'03"W)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-ASO-11]

Proposed Amendment of Class E Airspace; Nashville, TN

Correction

In proposed rule document 94-13446 beginning on page 28498 in the issue of Thursday, June 2, 1994 make the following correcttions:

§ 71.1 [Corrected]

On page 28499, in the third column, in § 71.1, *paragraph 6005*, in the last paragraph, in the second line "minute" should read "mile" and in the fourth line "90" should read "9".

BILLING CODE 1505-01-D

Wednesday
June 15, 1994

Part II

Department of Labor

Office of Labor-Management Standards

29 CFR Part 452
Eligibility Requirements for Candidacy for Union Office; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 452

RIN 1294–AA09

Eligibility Requirements for Candidacy for Union Office

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Office of Labor-Management Standards is requesting comments from the public on how its interpretative regulations on labor organization officer elections should be modified. The regulations may need to be modified in order to accommodate a decision of the Court of Appeals for the District of Columbia Circuit regarding the reasonableness of meeting attendance requirements set by labor organizations for eligibility for union office.

DATES: Interested parties may submit comments on or before August 15, 1994.

ADDRESSES: Written comments should be submitted to Edmundo A. Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, D.C. 20210, (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), sets forth standards and requirements for the election of labor organization officers. Section 401(e), 29 U.S.C. 481(e), provides in part that every member in good standing has the right to be a candidate subject "to reasonable qualifications uniformly imposed."

The Department is responsible for enforcing LMRDA title IV. After receipt of a timely complaint from a member and a finding that a violation may have affected the outcome of an officer election, the Secretary brings civil action in U.S. district court where the union is located seeking a new election supervised by the Secretary.

The Department does not have formal rulemaking authority to set standards and requirements regarding LMRDA title IV. However, the Department has issued interpretative regulations, 29 CFR part 452, in order to provide the public with information as to the Secretary's "construction of the law which will guide him in performing his [enforcement] duties." 29 CFR 452.1.

Two provisions in the Department's interpretative regulations regarding LMRDA title IV discuss in general terms the issue of reasonable candidate qualifications, and one provision deals specifically with meeting attendance requirements. The first general provision on candidate qualifications, 29 CFR 452.35, provides that although labor organizations may have a legitimate interest in setting minimum standards for office-holding, a basic principle of the free and democratic elections which the LMRDA is intended to ensure is that members will exercise good judgment and common sense in voting for officers. Consequently, qualifications for candidacy must be closely scrutinized to determine that they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.

The second general provision dealing with reasonable candidate qualifications is 29 CFR 452.36. Section 452.36(a) states that although the question of whether a qualification is reasonable is not subject to precise definition and will ordinarily depend on the facts of each case, court decisions furnish some general guidelines. In particular, § 452.36(a) cites *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 (1968), in which the Supreme Court stated that the term " 'reasonable qualifications uniformly imposed' should not be given a broad reach," *Id.*, at 499, and "Congress' model of democratic elections was political elections in this country." *Id.*, at 502. Consequently, § 452.36(a) states that

> [U]nion qualifications for office should not be based on assumptions that certain experience or qualifications are necessary * * * and a qualification may not be required without a showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members.

29 CFR 452.36(b) goes on to enumerate five factors to be considered in determining whether a qualification for candidacy is reasonable: (1) The relationship of the qualification to the union's legitimate needs and interests; (2) the relationship of the qualification to the demands of the union office; (3) the impact of the qualification in reducing the number of eligible members in light of the LMRDA's purpose in fostering membership participation in union affairs; (4) the appropriateness of the qualification in view of requirements prescribed by other unions; and (5) the difficulty in meeting the qualification.

In addition to the general discussions of candidate qualifications in 29 CFR 452.35 and § 452.36, 29 CFR 452.38 deals specifically with meeting attendance requirements. This provision states that it may be reasonable to require attendance at a certain number of meetings immediately preceding an officer election in order to insure that candidates have an interest in and familiarity with the union's affairs, and that the reasonableness of a meeting attendance requirement must be gauged in light of all the circumstances of the particular case, including not only the frequency of meetings, the number of meetings which must be attended and the period of time over which the requirement extends, but also such factors as the nature, availability and extent of excuse provisions, whether all or most members have the opportunity to attend meetings, and the impact of the rule, i.e., the number or percentage of members who would be rendered ineligible by its application.

Sections 452.38(a–1) and 452.38(b) cite a number of specific court decisions which provide guidance on the type of meeting attendance requirements that would be held unreasonable. § 452.38(a–1) discusses the Supreme Court decision in *Steelworkers, Local 3489 v. Usery*, 429 U.S. 305 (1977). The Court held that a candidate qualification requiring attendance at half the meetings for three years preceding the election which made 96.5% of the members ineligible was unreasonable. The Court also stated that the standard set forth in § 452.38(a) for determining the reasonableness of meeting attendance eligibility requirements is the type of flexible rule which Congress contemplated in using the word "reasonable" in LMRDA § 401(e).

Finally, § 452.38(b) cites four court decisions which held the meeting attendance requirement at issue unreasonable because of several of the factors cited in the standard established in § 452.38(a). One candidate qualification required attendance at one meeting each quarter for three years prior to the election and disqualified

99% of the membership. Another candidate qualification required attendance at 75% of the meetings for two years before the election, had a very limited excuse provision, and disqualified 97% of the members. A third candidate qualification required attendance at all of the eight meetings between the nomination and the election, which were held at widely scattered locations in the state. The final candidate qualification discussed in § 452.38(b) required attendance at six meetings per year for two years before the election, which would require that a member decide to be a candidate at least 18 months before the election.

In summary, §§ 452.35 and 452.36 discuss the basic issues involved in reviewing all types of qualifications for candidacy for union office, and § 452.36 in particular lists five factors to be considered in making determinations. Section 452.38 deals specifically with meeting attendance requirements. It states at the outset that this type of qualification may serve legitimate union purposes. It then sets forth a flexible standard, which elaborates upon the factors established in § 452.36, for determining whether a meeting attendance requirement is unreasonable: (1) The terms of the requirement itself, i.e., whether it requires a member to decide to meet the qualification in order to be a candidate an excessively long period in advance of the election, (2) the difficulty of meeting the requirement, i.e., the opportunity to attend meetings held at times and places that are not excessively inconvenient and the availability of excuse provisions, and (3) the impact of the requirement.

These regulations may need to be revised as a result of the ruling of the United States Court of Appeals for the District of Columbia Circuit in *Doyle v. Brock*, 821 F.2d 778 (D.C. Cir. 1987). *Doyle* deals with a case in which the Secretary, after investigating a complaint filed by a member regarding his union's meeting attendance requirement, decided not to bring civil action against the union even though the requirement (half the meetings during the year prior to the election) disqualified 97% of the members. The Secretary's position, relying on the "all the circumstances" language set forth in 29 CFR 452.38, was that since the requirement was not on its face unreasonable (i.e., it did not require a member to decide to become a candidate an excessively long period before the election) and it was not difficult to meet (i.e., the meetings were held at convenient times and locations and the union provided liberal excuse provisions), the large impact of the requirement was not by itself sufficient to render it unreasonable.

The member then filed suit against the Secretary in the U.S. District Court for the District of Columbia, in accordance with the Supreme Court's decision in *Dunlop v. Bachowski*, 421 U.S. 560 (1975). (In *Bachowski*, the Court held that judicial review of the Secretary's decision not to bring litigation in LMRDA title IV cases is available under the Administrative Procedure Act.) The district court held that the Secretary's decision not to bring litigation against the union was arbitrary and capricious, *Doyle v. Brock*, 641 F. Supp. 223 and 632 F. Supp. 256 (D.D.C. 1986).

The court of appeals in *Doyle* affirmed the district court's decision. It rejected the Secretary's position summarized above, emphasizing the importance of the impact of the requirement in this case in disqualifying 97% of the membership.

There is no basis, in [the Supreme Court's decision in *Steelworkers, Local 3489*] or in any other case, for the notion that an attendance requirement that has a large antidemocratic effect can be reasonable on its face, and that some additional factor is necessary to find the requirement violative of the LMRDA. *Id.*, at 785.

The court of appeals also rejected the Secretary's reliance on the fact that the Supreme Court in *Steelworkers, Local 3489* (where 96.5% of the membership was disqualified by the requirement to attend half of the meetings in the preceding three years) did not adopt a per se rule based on impact, but in fact cited with approval the flexible standard set forth in 29 CFR § 452.38. The court stated that

> [I]t is true that *Steelworkers* did not adopt a *per se* effects test. Nonetheless, it came "close to doing so. The fact that 96.5% of Local 3489's members chose not to comply with its rule was given controlling weight." [Quoting from the dissenting opinion in *Steelworkers, Local 3489;* citations omitted.] Thus, although one must read *Steelworkers* as holding that attendance requirements are to be subjected to a case-by-case analysis, the analysis is limited to determining only if "the anti-democratic *effects* of the meeting-attendance rule outweigh the *interests* urged in its support." [Quoting from *Steelworkers, Local 3489;* citations omitted.] * * * In fact, it appears that the "all the circumstances" language is included to help assess the reasonableness of a requirement in which the antidemocratic effect is not as dramatic as the one in *Steelworkers* or the instant case. *Id.*, at 785.

The court of appeals, again citing the Supreme Court decision in *Steelworkers, Local 3489*, also rejected "the argument that the reasonableness of a requirement is to be judged by the burdensomeness of compliance." *Id.*, at 784. Candidacy qualifications must be judged by their effect on free and democratic elections.

The court of appeals further stated that only a demonstration that a rule serves important union interests can justify a candidate qualification having a large antidemocratic effect. The union's interest cited in *Doyle* (encouraging participation in union affairs by potential candidates) has not been served by the meeting attendance requirement, and the existence of liberal excuse provisions "severely *undercuts* both the legitimacy of the claim and the effectiveness of the provision in achieving its alleged objective." *Id.*, at 786.

In summary, the court emphasized the importance of the impact of meeting attendance requirements, especially where the number of members excluded results in a "large" antidemocratic effect. The court's discussion also raised questions about the relevance of other factors such as the availability of excuse provisions and the difficulty of complying with meeting attendance requirements.

After the *Doyle* decision was issued, the union did not apply the meeting attendance requirement in the next (1987) regularly scheduled election, and it subsequently eliminated the requirement. Nonetheless, the interpretative regulations may need to be modified in order to be consistent with the court's holdings in *Doyle*. The provision of the regulations which is most directly affected by *Doyle* is 29 CFR 452.38. In addition, *Doyle* and its construction of *Steelworkers, Local 3489* may have implications for 29 CFR 452.35 and 452.36, which deal generally with candidate qualifications and the factors to be considered in determining whether they are reasonable.

II. Request for Comments

There are several general ways in which the regulations can be modified in light of *Doyle*. The option which would require the greatest change in the regulations is to hold that meeting attendance requirements are per se unreasonable. The basis for this position would be that this type of qualification does not serve union interests of such importance to justify limiting the rights of members to be candidates and vote for candidates of their choice, and/or that this type of qualification often excludes large numbers of members.

This option provides the simplest resolution (in that case-by case determinations would not be necessary), results in no uncertainty (in that unions and members would know in advance that the Department will challenge all meeting attendance requirements), and is most consistent with the free and open elections which the LMRDA is intended to foster; it would also eliminate any perceived advantage of incumbent officers who attend meetings as part of their duties. A disadvantage of this option is that adopting a flat prohibition in place of the current case-by-case approach may be too broad a reading of *Doyle*, and would eliminate a rule which may provide some benefits to unions and their members.

The option which would require the least change in the regulations would retain language to the effect that the reasonableness of a meeting attendance requirement is determined by reviewing a number of factors on a case-by-case basis, and add a statement to the effect that there is an inverse relationship between the portion of the membership that is disqualified by the requirement and the probability that the requirement will be considered reasonable. That is, the greater the portion of the membership that is disqualified by a meeting attendance requirement, the less likely the union will be able to justify the requirement.

The advantages of this option are that it is intended to closely follow the court decisions in *Doyle* and it retains the case-by-case approach approved by the Supreme Court in *Steelworkers, Local 3489*. A disadvantage is that it provides little guidance to labor organizations and members as to whether a particular rule will be considered unreasonable. (In this connection, however, it should be noted that the Supreme Court in *Steelworkers, Local 3489* recognized that a flexible rule, which "Congress clearly contemplated" in using the word "reasonable," leads to uncertainty. The Court also stated that the "contention that [one would have] no way of knowing that a rule disqualifying 90% of a local's members from office would be regarded as unreasonable in the absence of substantial justification is unpersuasive." 429 U.S. 305, at 313–4 (1977).)

A third option, actually a combination of the first two, would be to generally retain the case-by-case analysis of multiple factors, but add a statement to the effect that once the portion of the disqualified membership reaches a certain percentage (such as 50%, 75%, or 90%), the meeting attendance rule will be considered unreasonable per se. The advantages of this approach are that it retains the case-by-case approach as in the second option but provides more guidance. The disadvantage is that any particular number which is chosen would be somewhat arbitrary.

Specific comments are requested on the merits of each of these three options for revising § 452.38, as well as suggestions for other options. Most helpful would be comments, especially by those unions which have meeting attendance requirements, providing detailed information and data on

—The nature and importance of the union interests which are claimed to be served by meeting attendance requirements,

—Whether (and if so, how) those interests have in fact been served by the requirements,

—The impact of those requirements on the percentage of members disqualified from candidacy, especially with regard to non-incumbents, and

—With regard to the third option, what the appropriate threshold percentage of disqualified members should be for the qualification to be considered unreasonable.

Comments are also specifically requested on whether changes are necessary and/or appropriate to make §§ 452.35 and 452.36 consistent with *Doyle*, particularly in connection with the references in those provisions to factors to be considered in assessing the reasonableness of a qualification for candidacy such as

—The impact of candidate qualifications,

—The difficulty in meeting a candidate qualification, and

—The candidate requirements of other unions.

Finally, suggestions are requested for the specific language of revised § 452.38 and, if appropriate, §§ 452.35 and 452.36.

III. Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that any revision to the regulations considered in this rulemaking process will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Any regulatory revision will only apply to labor organizations, and the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no information collection requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects Affected in 29 CFR Part 452

Labor unions.

Signed in Washington, DC, this 9th day of June 1994.

Martin Manley,

Assistant Secretary for the American Workplace.

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