

**COMMITTEE ON SUBORDINATE LEGISLATION
(FOURTEENTH LOK SABHA)
(2005-2006)**

EIGHTH REPORT

(PRESENTED ON 6 DECEMBER, 2005)

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LOK SABHA SECRETARIAT

NEW DELHI

PRICE :

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2005-2006)**

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| 2. Shri Omar Abdullah | | |
| 3. Shri Ajoy Chakraborty | | |
| 4. Shri Bikram Keshari Deo | | |
| 5. Shri N.Y. Hanumanthappa | | |
| 6. Shri Ram Singh Kaswan | | |
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| 8. Shri Sudam Marandi | | |
| 9. Shri Anantha Venkata Rami Reddy | | |
| 10. Shri Chandra Shekhar Sahu | | |
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| 13. Shri Ramjilal Suman | | |
| 14. Shri P.C. Thomas | | |
| 15. Shri Madhu Goud Yaskhi | | |

SECRETARIAT

- | | | |
|----------------------|---|------------------|
| 1. Shri John Joseph | - | Secretary |
| 2. Shri R. C. Ahuja | - | Joint Secretary |
| 3. Shri R.K. Bajaj | - | Deputy Secretary |
| 4. Shri J.V.G. Reddy | - | Under Secretary |

(iii)

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to submit the report on their behalf, present this Eighth Report.

2. The matters covered by this Report were considered by the Committee on Subordinate Legislation at their sitting held on 10.8.2005.

3. The Committee considered and adopted this Report at their sitting held on 3.10.2005. The Minutes of the First and Third sittings (2005-2006) relevant to this Report are included in Appendix-II.

4. For facility of reference and convenience, recommendations/observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in Appendix I of the Report.

**NEW DELHI;
OCTOBER, 2005
ASVINA, 1927 (SAKA)**

**N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION**

I

Infirmities in the Export of Bivalve Molluscs (Quality Control, Inspection and Monitoring) Rules, 2003

The Export of Bivalve Molluscs (Quality Control, Inspection and Monitoring) Rules, 2003 (SO 668-E of 2003) were published in the Gazette of India, Extraordinary, Part-II, Section 3 (ii) dated 10 June, 2003. There were certain infirmities in the Rules which were referred to the Ministry of Commerce and Industry (Department of Commerce) for their comments. The infirmities and the comments of the Ministry thereon are brought out in the following paragraphs: -

A. Discretionary power conferred on the Competent Authority.

1.2 Sub-Rules (5), (9), (10), (13) & (15) of Rule 6 of the Export of Bivalve Molluscs (Quality Control, Inspection and Monitoring) Rules, 2003 empower the Competent Authority to take appropriate action under these sub-rules in case requirement of the standards are not being met by despatch centers and purification centers. These sub-rules are as follows: -

- 6(5) If such inspection and monitoring reveal that the requirements of these standards are not being met, the competent authority shall take appropriate action.
- 6(9) If such monitoring reveals that the requirements of the standards are no longer being met, the competent authority shall close the production or relaying area concerned until the situation has been restored to normal.
- 6(10) The competent authority may prohibit any production and harvesting of bivalve molluscs in area considered unsuitable for these activities for health reasons.
- 6(13) The competent authority shall take necessary measures including withdrawal of approval, if the requirements cease to be met.
- 6(15) If such inspections and monitoring reveal that the requirements of these rules are not being met, the competent authority shall take appropriate action.

1.3 There was no safeguard in the rule against any misuse of the power. When this point was taken up with the Ministry of Commerce & Industry (Department of Commerce), the Ministry have stated in their response dated November 3, 2004 as under: -

“During regular monitoring and surprise checks, if any approved facility is found not meeting the requirements of the notification, the Competent Authority may take appropriate actions depending upon the severity of the defects noticed, which may include suspension of activities till the

rectification of defects is done or even withdrawal of approval granted to establishment. While taking such actions, a show cause notice giving reasons is issued to the unit in which the reasons for the same are given in writing. Further, in the case of imposition of penalties, the reasons are given for the same. Therefore, there is expected to be no arbitrary exercise of Power.”

1.4 When it was pointed out to the Ministry that the rules did not reflect the position stated by them, the Ministry of Commerce and Industry conveyed that they have no objection to amend the rules to provide for recording of reasons in writing to make the rules more explicit.

1.5 The Committee observe that Sub-Rules (5), (9), (10), (13) & (15) of Rule 6 of the Export of Bivalve Molluscs (Quality Control, Inspection and Monitoring) Rules, 2003 empower the Competent Authority to take appropriate action under these sub-rules in case requirement of the standards are not being met by despatch centers and purification centers. The Committee desire that in order to ensure that the rules do not provide any scope for arbitrary exercise of discretionary powers by the Executive, the Ministry of Commerce & Industry should amend the rules by incorporating suitable provisions in the rules for recording of reasons in writing before taking any punitive action against despatch centers and purification centers.

B. Legislation by reference.

1.6 Para 4, Part-III of Chapter IV appended to the Rules deals with special requirements for purification centres. It has been stated, among other things, that potable water used to prepare sea water from its major constituent chemicals must comply with the requirements laid down in European Commission Directive 778/80/EEC. The contents of this Directive have, however, not been spelt out along with the rules. According to the Ministry of Commerce & Industry, the quality of water for using in fish processing establishments has been specified in their EC Directive 80/778/EEC, which is available in the Commission Website and is accessible to the public. The Ministry have stated that the text of the Directive is quite comprehensive and inclusion of the same would make the notification quite unwieldy. It has been further stated that the requirements of European Commission keep on changing and to continually notify the requirement by the Government would not only be cumbersome but also not be practicable. When asked to furnish a copy of the EC Directive, the Ministry furnished a copy of EC Directive of 15 July, 1980.

1.7 The Committee do not find the Ministry’s contention that the requirements of EC Directive keep on changing, to be borne out by facts. The copy of the EC Directive furnished by the Ministry dates back to 15 July, 1980 and it is evident that the directive has not undergone frequent changes as claimed by the Ministry. The Committee in the past have time and again emphasized that rules should as far as possible be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing the rules and that legislation by reference should be avoided. The Committee observe that the EC Directive requires Member States to establish strict quality standards for more than 60 parameters, to monitor drinking water quality and to take the necessary steps to ensure

compliance to the established values and stress that authoritative information regarding these requirements ought to be published by the Government instead of leaving it to the public to access the EC website especially in the age of growing importance attached to the quality of drinking water.

C._ Non-specifications of periodicity of inspection.

1.8 Sub-rule 8(4) and (14) of Rule 6 provide for inspection and monitoring of despatch centres and purification centres regularly by the Competent Authority. However, the periodicity of inspection had not been specified. Unless the number of minimum inspections required to be undertaken in a year is specified, no responsibility can be fixed in the event of any lapse. According to the Ministry, “a three tier surveillance system is being followed by the Competent Authority to assess the adequacy of the establishment in meeting the laid down requirements – namely monitoring visits, supervisory visits and corporate audit. However, the frequency of such visits are being fixed depending upon the performance of the establishments. The frequency varies from once in 15 days to once in 3 months in the case of monitoring and in the case of supervisory visits, it varies from once in 3 months to once in 6 months , depending upon the performance of the establishment. Instructions laying down the frequency of surveillance visits are being issued by the Competent Authority through the executive instructions, thereby to make it possible to fix responsibilities on the officers concerned in case of any lapse.”

1.9 When the Committee’s recommendation was pointed out that executive instructions are no substitute to statutory rules which escape the scrutiny of the Parliament and that the periodicity of inspection ought to be clearly specified in the rules, the Ministry stated as under :

“As regards incorporation of frequency of inspection and monitoring of plants and processing centres in the Rules, it is submitted that the executive instructions, which are operating instructions, are issued for the use of inspecting officers of Export Inspection Agencies in line with the directives contained in the Notification. These instructions contain additional details, which assist in implementing the Notification and also to ensure uniformity in interpretation of the Notification at the field level. The frequency of inspection and monitoring of plants is variable and dependent on the performance of individual plants. It is, therefore, felt that there is no need to incorporate instructions on the frequency of inspection in the Notification as they are executive instructions which are not of legislative character.”

1.10 The Committee do not find the Ministry’s reply convincing. The rules ought to indicate the minimum number of inspections that should be carried out mandatorily in a year. The number may vary depending on the type of inspection, namely monitoring visits, supervisory visits or corporate audit. The Committee feel that unless the periodicity of inspection is specified, the provision in the rule that the inspection and monitoring shall be carried out regularly would be a mere rhetoric without any substance. The Committee, therefore, desire that the Ministry should amend the rules to provide for periodicity of inspection and monitoring.

D Establishment of sampling plans by Competent Authority

1.11 The sub-para (b) of the first para in Chapter VI provides that for the purpose of clearing the possible presence of toxin producing plankton in production and relaying water and biotoxin in live bivalve molluscs and for checking the possible presence of chemical contaminants, sampling plans will be established by the Competent Authority. It was not clear whether the sampling plans to be established would be notified separately as part of these rules. As per the reply of the Ministry, the sampling plans in such cases are being established by the Competent Authority and vary widely depending upon the climatic and environmental conditions and also the level of contamination of water. The Ministry have contended that as the sampling plans have to be reviewed periodically and changed if necessary, it would not be necessary to notify the same separately as a part of the rules and that as these are part of the executive instructions, these do not have legislative character.

1.12 **The Committee are not convinced of the reply of the Ministry. It is not clear whether the sampling plans have already been established or not. The Committee feel that the Ministry's contention that the plans will have to be changed periodically is presumptuous. Further, the Ministry have also not indicated the expected periodicity of such changes. Whether the sampling plans are executive or legislative in nature depends on their application. If the instructions lay down norms or standards according to which the control and monitoring of production of bivalve molluscs is to be done, the plans would be legislative in character and will have to be incorporated as part of the rules. The Committee desire that the Ministry should incorporate the factual position in the rules to make them self-explanatory.**

II

Validity of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2002.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2002 (SO 5 of 2003) was published in the Gazette of India, Part-II, Section 3 (ii) dated 4 January, 2003. It was observed therefrom that the year in the short title did not tally with the year of the Publication of Gazette Notification. The short title to the order denoted the year as 2002 whereas the order was published in the year 2003. Normally, for facilitating easy referencing, the year in the short title to the rules/regulations should conform to the year of their publication in the Gazette Notification.

2.2 To a query whether the Ministry of Finance (Department of Economic Affairs) have any objection in issue of corrigendum to rectify the aforesaid error, the Ministry in their communication dated 12 December, 2003 stated as under:-

“The matter was taken up with the Legislative Department and Department of Legal Affairs, Ministry of Law for their advice. Legislative Department and Department of Legal Affairs have advised that there is no printed/typographical error in the above notification, therefore, it may not be appropriate to issue the corrigendum in the instant case. It is basically a reflection of the facts that the order in question was signed by the concerned authority in 2002 and was published in the Gazette in 2003. The order issued by this Ministry on 21.12.2002 has been printed by the Government of India Press on 4.1.2003. In view of the advice of the Ministry of Law (Legal Department and Legislative Department), it may not be possible to change the date of the order.”

2.3 The Committee on Subordinate Legislation have time and again emphasised that the year of the short title should correspond to the year in which they are published in order to facilitate easy reference. When the attention of the Ministry of Finance (Department of Economic Affairs) was drawn to this recommendation of the Committee, the Ministry stated in their O.M. dated 6.2.2004 as under:-

“In accordance with the proviso of Section 3 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance (now Act), 2002, all the securitisation and reconstruction companies existing at that time were required to make an application to RBI for a certificate of registration within six months from the ordinance taking effect. The ordinance became effective from 21.6.2002 and therefore, all the existing securitisation and reconstruction companies were required to apply for registration to RBI latest by 20.12.2002. RBI was in the process of finalizing the guidelines to be issued to securitisation/reconstruction companies as this process was likely to entail some time. RBI

felt that it might take some time before the guidelines were made public, which could result in the companies that were required to apply to Bank for issue of registration certificate not being able to apply to bank with the deadline of 20th December, 2002 specified in the ordinance. It was, therefore, felt that with a view to ensuring that companies had a reasonable time to complete the application formalities, the deadline might be extended for such companies to make their applications to RBI. Accordingly, after consulting Ministry of Law, the time limit was extended by notification dated 21.12.2002.

The matter has been examined in consultation of Ministry of Law (Department of Legal Affairs and Legislative Department) and it has not been found appropriate to change the date of notification as there is no printed/typographical error in the notification. It is basically a reflection of the fact that that the order in question was signed by the concerned authority in 2002 and was published in the Gazette in 2003.”

2.4 The above position was also confirmed by the Ministry of Law & Justice (Department of Legal Affairs) vide their O.M. dated 9 June, 2004.

2.5 When asked to clarify the reasons as to why the notification was not published in the gazette Extraordinary since the subject matter of the order was of urgent nature, the Ministry vide their O.M. dated 7 October, 2004 stated that the order had been inadvertently sent to Government of India Press for publishing in the Ordinary Gazette.

2.6 The Committee note that the **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2002** was notified on 21 December, 2003. According to sub-para (2) of para 1, the order was to come into force at once. It is observed from the preamble to the order that the time limit prescribed for making application to RBI for registration of securitisation/reconstruction of companies was upto 20.12.2002 and the order extended the time limit from 21 December, 2002 to 20 March, 2003. For any order to be effective, it must be duly and properly published. The order was, however published in the Ordinary Gazette on 4th January 2003, i.e. two weeks after the order was to come into force. It may be seen that the order was a matter of urgent importance and should have been published in the Extraordinary Gazette which is used to publish urgent material and made available on the appointed date. According to the Ministry of Finance (Department of Economic Affairs) the order had been inadvertently sent to the Government of India Press for being published in the Ordinary Gazette. The Committee take serious note of the fact that due attention has not been paid to proper publication of the notification in the Gazette. The Committee feel that the delay in publication raises the question of the validity of the order during the intervening period from 21st December, 2002 to 3 January, 2003 .

2.7 Incidentally, the Committee also note that the delay in publication has also led to a discrepancy in the year shown in the short title of the order. The Committee on Subordinate Legislation have time and again stressed that the year in short title should correspond to the year of publication of the order in the official Gazette. In this case, the short title indicates the year as 2002 while the year of publication as 2003. The Ministry of Finance in consultation with the Department of Legal Affairs and Legislative Department have taken the

stand that any correction in the year of the short title at this stage may have legal implications. The Committee are not convinced with the stand taken by the Ministry.

2.8 The Committee are of the view that the matter has not been taken seriously by the Ministry of Finance. Due to delay in publication, the legal validity of the order as regards its enforcement during the period from 21 December, 2002 to 3 January, 2003 is doubtful. The Committee therefore urge the Ministry to examine the issue afresh from all angles and issue a suitable amendment to the order, if necessary.

III

The Securities and Exchange Board of India (Central Listing Authority) (Amendment) Regulations, 2003.

The Securities and Exchange Board of India (Central Listing Authority) (Amendment) Regulations, 2003 (SO 443-E of 2003) published in the Gazette of India, Extraordinary, Part-II, Section 3 (ii) on 17 April, 2003 sought to omit the proviso to regulation 6 of the said regulations. The proviso to regulation 6 read as follows:-

“Provided that no President or Member shall hold office as such after he has attained the age of sixty-five years”

3.2 The omission of the proviso would imply that there would be no upper age limit for the President or Member of the Central Listing Authority for holding the office as the age limit of 65 as laid down in the said regulation would be removed. The notification, however, did not specify anything about the requirement of agility and physical capability of the person to hold office while removing the restriction on upper age limit.

3.3 The Ministry of Finance (Department of Economic Affairs) were, therefore, requested to state the rationale and justification for the omission of proviso to Regulation 6 in the absence of any other provision regarding agility and physical capability of the person to hold the office. In response, the Ministry of Finance (Department of Economic Affairs) vide their O.M. dated 8.4.2004 forwarded the comments of SEBI which, inter-alia read as under:-

“ The amendment was made to attract talent from the higher judiciary. It was also felt that an upper age limit of 65 years would debar eminent persons such as retired judges of Supreme Court (whose retirement age is 65 years) from holding office of President or Member of the CLA.

It was felt that even in the absence of an upper age limit in the regulations, the Board would have to satisfy itself that any prospective appointee as President, Vice-President or Member of the CLA would be agile and physically capable of carrying out the duties of the offices. This obligation would also follow from regulation 4 (2) of the regulations, which lays down the quality of persons who can be appointed. It was also felt that the term of three years specified in regulation 6 of the regulations would act as a check in this regard.

We would like to further inform you that under sections 3 to 9 of the Major Port Trusts Act, 1963, which provide for the appointment, term of office, disqualification etc. of the Board of Trustees of a major port, do not mention any maximum age limit for them. Similarly, upper age limit is not specified for the Chairmen, Vice-Chairmen and Members of the Income-Tax, Settlement Commission under Section

24 SB of the IT Act, 1961. Therefore, it may be clarified that there is no infirmity in the captioned Amendment Regulations.”

3.4 Regulation 4 (2) of the CLA Regulations reads as follows:-

“The President and the Members shall be appointed by the Board from amongst persons having integrity, outstanding ability drawn from the judiciary, the lawyers, academicians, the exchanges, persons having expertise in securities market regulation, financial experts and investor associations. Provided that at least four Members shall be representatives of stock exchanges”

3.5 It may be observed from the above that there was nothing in the regulation 4 (2) to suggest that the board would have to satisfy that any prospective appointee would be agile and physically capable as contented by SEBI. It was pointed out to the Ministry that while removing the proviso regarding upper age limit for an appointee, an express provision regarding agility and physical capability of the person ought to have been incorporated in the regulation. The Ministry of Finance in their reply dated 8 December, 2004 furnished the following comments of SEBI dated 22 September, 2004:-

“As suggested by the Committee on Subordinate Legislation, SEBI is agreeable in principle to amend the Securities and Exchange Board of India (Central Listing Authority) (Amendment) Regulations, 2003 (Notification No.S.O. 954 (E) dated 21.8.2003). Appropriate amendments for giving effect to the Committee’s suggestion shall be taken to the Board of SEBI for its consideration.”

3.6 The Committee note that the amendment notified vide Securities and Exchange Board of India (Central Listing Authority) (Amendment) Regulations, 2003 SO 443-E of 2003 published in the Gazette of India, Extraordinary, Part-II, Section 2 (ii) on 17 April, 2003 implied that there would be no upper age limit for the President or Member of the Central Listing Authority for holding office as the age limit of 65 years laid down in the regulation would be removed. There was however, no provision in the regulations about the requirement of the person being agile and physically capable to hold the office. The contention of the Ministry of Finance (Department of Economic Affairs) that regulation 4 (2) placed an obligation on the Board to satisfy itself that any prospective appointee would be agile and physically capable was not well-founded. According to Regulation 4 (2), the President and the Members shall be appointed by the Board from amongst persons having integrity and outstanding ability drawn from the judiciary, the lawyers, academicians, the exchanges, persons having expertise in securities market regulation, financial experts and investor associations.

3.7 When the absence of requirement of agility and physical capability in Regulation 4 (2) was pointed out, the Ministry of Finance (Department of Economic Affairs) agreed in principle to amend the SEBI (CLA) Regulation, 2003. The Committee urge the Ministry to take necessary action in this regard at the earliest.

IV

Shortcomings in the notification of Reserve Bank of India

The Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Third Amendment) Regulations, 2002 (GSR 222-E of 2003); Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2002 (GSR 223-E of 2003); Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Sixth Amendment) Regulations, 2002 (GSR 224-E of 2003) were published by Reserve Bank of India in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 18 March, 2003. On scrutiny of these regulations, it was observed that there were three shortcomings in these notifications viz. - inordinate delay in publishing the regulations which were published in the Gazette of India-Extraordinary; absence of foot-note bringing out the particulars of publication of principal regulations, etc.; and discrepancy in the year shown in the short title.

A. Inordinate delay in publication

4.2 In terms of Government of India instructions no matter should be required to be published in a Gazette Extraordinary unless it is of such urgent nature that it cannot wait until the publication of the ordinary issue of the Gazette. It was, however, observed that there was a gap of four to seven months between the date of notification and the date of publication in the Gazette Extraordinary in respect of certain notifications of RBI. The particulars of the date of notification and the date of their publication in Gazette Extraordinary are shown below :-

	<u>No. of Notification</u>	<u>Date of Notification</u>	<u>Date of publication in Gazette Extraordinary</u>
1.	GSR 222-E	26.8.2002	18.3.2003
2.	GSR 223-E	12.11.2002	18.3.2003
3.	GSR 224-E	25.11.2002	18.3.2003

4.3 It may be observed from above that there was a gap of 4 to 7 months between the date of notification and date of publication by RBI in Gazette Extraordinary. The matter was, therefore, referred to the Ministry of Finance seeking clarification in the matter. In response, the Ministry of Finance (Department of Economic Affairs) vide their communication dated 2 July, 2004 stated as under :-

“The Reserve Bank of India sends the Notifications without classifying them as ‘extraordinary’. These notifications are considered in this Ministry from policy angle in consultation with other concerned Ministries/Departments. Once it is decided to give approval to the proposed notifications of the RBI, these are sent to the Press for publication. Such notifications come into effect from the date of their

publication in the Gazette. At this stage, Department of Economic Affairs classifies them as 'extraordinary' in order to get them printed at the earliest. It would thus be appreciated that it does not negate the very meaning of 'being extraordinary in nature'.

4.4 The Committee observe that the Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Third Amendment) Regulations, 2002 (GSR 222-E of 2003); Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2002 (GSR 223-E of 2003); Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Sixth Amendment) Regulations, 2002 (GSR 224-E of 2003) were published by Reserve Bank of India in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 18 March, 2003. On scrutiny of these regulations, it was observed that there were three shortcomings in these notifications viz. - inordinate delay in publishing the regulations which were published in the Gazette of India - Extraordinary; absence of foot-note bringing out the particulars of publication of principal regulations, etc.; discrepancy in the year shown in the short title.

4.5 As regards delay in publication of the regulations, the explanation of the Ministry of Finance (Department of Economic Affairs) that these notifications came into effect from the date of their publication in the Gazette does not explain the discrepancy between the date of notification and the date of publication in Gazette Extraordinary with as long as a gap of four to seven months. It appears that the Ministry has not recognised the relevance and significance of publication of the Gazette Extraordinary. The Committee urge the Ministry to ensure that the notifications published in the Gazette Extraordinary are really extraordinary in nature and should bear the same date as that of the date of publication of the Gazette. The Committee urge that the Ministry should keep track of the notifications which are sent by them for publication and ensure that these are published in the appropriate gazettes.

B. Discrepancies in Short title

4.6 The Committee observe that the short title to the regulations mentioned above show the year as 2002 whereas these were published in the year 2003. In other words, the year in the short title does not tally with the year of publication of the Gazette Notification. The Committee have time and again emphasised in the past that in order to facilitate easy referencing, the year in the short title should always conform to the year of publication of the rules. However, on being pointed out, the Ministry have issued the necessary corrigendum correcting the year in the short title.

C. Absence of foot-note

4.7 The Committee observe that the regulations are amending in nature but foot-note which are required to be appended to indicate the particulars of principal rule and subsequent amendments thereto are not appended. The Committee have time and again emphasised that in order to facilitate easy referencing, all amendment notifications should invariably contain a foot-note to indicate the particulars of Principal rule and the subsequent

amendments for facilitating easy referencing. The Committee are happy to note that the Ministry of Finance (Department of Economic Affairs) have since issued a corrigendum incorporating the requisite foot-note to the regulations.

NEW DELHI:
OCTOBER, 2005
ASVINA, 1927 (SAKA)

N.N. KRISHNADAS,
CHAIRMAN,
COMMITTEE ON SUBORDINATE LEGISLATION

APPENDIX –I

(Vide Para 4 of the Introduction of the Report)

SUMMARY OF RECOMMENDATIONS MADE IN THE REPORT OF THE COMMITTEE ON SUBORDINATE LEGISLATION

(FOURTEENTH LOK SABHA)

Sl. No.	Reference to Para No. in the Report	<u>Summary of Recommendations</u>
1	2	3
1.	<p>1.5</p> <p>1.7</p>	<p><u>Infirmities in the Export of Bivalve Molluscs (Quality Control, Inspection and Monitoring) Rules, 2003</u></p> <p>The Committee observe that Sub-Rules (5), (9), (10), (13) & (15) of Rule 6 of the Export of Bivalve Molluscs (Quality Control, Inspection and Monitoring) Rules, 2003 empower the Competent Authority to take appropriate action under these sub-rules in case requirement of the standards are not being met by despatch centers and purification centers. The Committee desire that in order to ensure that the rules do not provide any scope for arbitrary exercise of discretionary powers by the Executive, the Ministry of Commerce & Industry should amend the rules by incorporating suitable provisions in the rules for recording of reasons in writing before taking any punitive action against despatch centers and purification centers.</p> <p>The Committee do not find the Ministry's contention that the requirements of EC Directive keep on changing, to be borne out by facts. The copy of the EC Directive furnished by the Ministry dates back to 15 July, 1980 and it is evident that the directive has not undergone frequent changes as claimed by the Ministry. The Committee in the past have time and again emphasized that rules should as far as possible be self-contained and drafted in a manner that no difficulty is caused to the public in locating and referencing the rules and that legislation by reference should be avoided. The Committee observe that the EC Directive requires</p>

2.		<p>Member States to establish strict quality standards for more than 60 parameters, to monitor drinking water quality and to take the necessary steps to ensure compliance to the established values and stress that authoritative information regarding these requirements ought to be published by the Government instead of leaving it to the public to access the EC website especially in the age of growing importance attached to the quality of drinking water.</p> <p>1.10 The Committee do not find the Ministry's reply convincing. The rules ought to indicate the minimum number of inspections that should be carried out mandatorily in a year. The number may vary depending on the type of inspection, namely monitoring visits, supervisory visits or corporate audit. The Committee feel that unless the periodicity of inspection is specified, the provision in the rule that the inspection and monitoring shall be carried out regularly would be a mere rhetoric without any substance. The Committee therefore desire that the Ministry should amend the rules to provide for periodicity of inspection and monitoring.</p> <p>1.12 The Committee are not convinced of the reply of the Ministry. It is not clear whether the sampling plans have already been established or not. The Committee feel that the Ministry's contention that the plans will have to be changed periodically is presumptuous. Further, the Ministry have also not indicated the expected periodicity of such changes. Whether the sampling plans are executive or legislative in nature depends on their application. If the instructions lay down norms or standards according to which the control and monitoring of production of bivalve molluscs is to be done, the plans would be legislative in character and will have to be incorporated as part of the rules. The Committee desire that the Ministry should incorporate the factual position in the rules to make them self-explanatory.</p> <p><u>Validity of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2002.</u></p> <p>2.6 The Committee note that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2002 was notified on 21 December, 2003. According to sub-para (2) of para 1, the order was to come into force at once. It is observed from the preamble to the order that the time limit prescribed for making application to RBI for registration of securitisation/reconstruction of companies was upto 20.12.2002 and the order extended the time</p>
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3.		<p>limit from 21 December, 2002 to 20 March, 2003. For any order to be effective, it must be duly and properly published. The order was, however published in the Ordinary Gazette on 4th January 2003, i.e. two weeks after the order was to come into force. It may be seen that the order was a matter of urgent importance and should have been published in the Extraordinary Gazette which is used to publish urgent material and made available on the appointed date. According to the Ministry of Finance (Department of Economic Affairs) the order had been inadvertently sent to the Government of India Press for being published in the Ordinary Gazette. The Committee take serious note of the fact that due attention has not been paid to proper publication of the notification in the Gazette. The Committee feel that the delay in publication raises the question of the validity of the order during the intervening period from 21st December, 2002 to 3 January, 2003 .</p> <p>2.7 Incidentally, the Committee also note that the delay in publication has also led to a discrepancy in the year shown in the short title of the order. The Committee on Subordinate Legislation have time and again stressed that the year in short title should correspond to the year of publication of the order in the official Gazette. In this case, the short title indicates the year as 2002 while the year of publication as 2003. The Ministry of Finance in consultation with the Department of Legal Affairs and Legislative Department have taken the stand that any correction in the year of the short title at this stage may have legal implications. The Committee are not convinced with the stand taken by the Ministry.</p> <p>2.8 The Committee are of the view that the matter has not been taken seriously by the Ministry of Finance. Due to delay in publication, the legal validity of the order as regards its enforcement during the period from 21 December, 2002 to 3 January, 2003 is doubtful. The Committee therefore urge the Ministry to examine the issue afresh from all angles and issue a suitable amendment to the order, if necessary, by giving retrospective effect and with suitable correction in the short title.</p> <p><u>The Securities and Exchange Board of India (Central Listing Authority) (Amendment) Regulations, 2003.</u></p> <p>3.6 The Committee note that the amendment notified vide Securities and Exchange Board of India (Central Listing Authority) (Amendment) Regulations, 2003 SO 443-E of 2003 published in</p>
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4.		<p>the Gazette of India, Extraordinary, Part-II, Section 2 (ii) on 17 April, 2003 implied that there would be no upper age limit for the President or Member of the Central Listing Authority for holding office as the age limit of 65 years laid down in the regulation would be removed. There was however, no provision in the regulations about the requirement of the person being agile and physically capable to hold the office. The contention of the Ministry of Finance (Department of Economic Affairs) that regulation 4 (2) placed an obligation on the Board to satisfy itself that any prospective appointee would be agile and physically capable was not well-founded. According to Regulation 4 (2), the President and the Members shall be appointed by the Board from amongst persons having integrity and outstanding ability drawn from the judiciary, the lawyers, academicians, the exchanges, persons having expertise in securities market regulation, financial experts and investor associations.</p> <p>3.7 When the absence of requirement of agility and physical capability in Regulation 4 (2) was pointed out, the Ministry of Finance (Department of Economic Affairs) agreed in principle to amend the SEBI (CLA) Regulation, 2003. The Committee urge the Ministry to take necessary action in this regard at the earliest.</p> <p><u>Shortcomings in the notification of Reserve Bank of India</u></p> <p>4.4 The Committee observe that the Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Third Amendment) Regulations, 2002 (GSR 222-E of 2003); Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2002 (GSR 223-E of 2003); Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Sixth Amendment) Regulations, 2002 (GSR 224-E of 2003) were published by Reserve Bank of India in the Gazette of India, Extraordinary, Part-II, Section 3 (i) dated 18 March, 2003. On scrutiny of these regulations, it was observed that there were three shortcomings in these notifications viz. - inordinate delay in publishing the regulations which were published in the Gazette of India - Extraordinary; absence of foot-note bringing out the particulars of publication of principal regulations, etc.; discrepancy in the year shown in the short title.</p> <p>4.5 As regards delay in publication of the regulations, the explanation</p>
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		<p>of the Ministry of Finance (Department of Economic Affairs) that these notifications came into effect from the date of their publication in the Gazette does not explain the discrepancy between the date of notification and the date of publication in Gazette Extraordinary with as long as a gap of four to seven months. It appears that the Ministry has not recognised the relevance and significance of publication of the Gazette Extraordinary. The Committee urge the Ministry to ensure that the notifications published in the Gazette Extraordinary are really extraordinary in nature and should bear the same date as that of the date of publication of the Gazette. The Committee urge that the Ministry should keep track of the notifications which are sent by them for publication and ensure that these are published in the appropriate gazettes.</p>
	4.6	<p>The Committee observe that the short title to the regulations mentioned above show the year as 2002 whereas these were published in the year 2003. In other words, the year in the short title does not tally with the year of publication of the Gazette Notification. The Committee have time and again emphasised in the past that in order to facilitate easy referencing, the year in the short title should always conform to the year of publication of the rules. However, on being pointed out, the Ministry have issued the necessary corrigendum correcting the year in the short title.</p>
	4.7	<p>The Committee observe that the regulations are amending in nature but foot-note which are required to be appended to indicate the particulars of principal rule and subsequent amendments thereto are not appended. The Committee have time and again emphasised that in order to facilitate easy referencing, all amendment notifications should invariably contain a foot-note to indicate the particulars of Principal rule and the subsequent amendments for facilitating easy referencing. The Committee are happy to note that the Ministry of Finance (Department of Economic Affairs) have since issued a corrigendum incorporating the requisite foot-note to the regulations.</p>

APPENDIX-II
(Vide Para 3 of the Introduction of the Report)

**EXTRACTS FROM THE MINUTES OF THE FIRST SITTING OF THE
COMMITTEE ON SUBORDINATE LEGISLATION (2005-2006)**

The Committee met on Wednesday, 10 August, 2005 from 1500 to 1615 hours in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

- Shri Bikram Keshari Deo - In the Chair
2. Shri Omar Abdullah
 3. Shri Ajay Chakraborty
 4. Shri N.Y. Hanumanthappa
 5. Shri Ram Singh Kaswan
 6. Shri Vijaykumar Khandelwal
 7. Shri Anantha Venkata Rami Reddy
 8. Shri Sita Ram Singh
 9. Shri Ramjilal Suman
 10. Shri Madhu Goud Yaskhi

SECRETARIAT

- Shri A. Louis Martin - Director
- Shri J.V.G. Reddy - Under Secretary

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3. At the outset, the Chairman welcomed the members to the sitting of the Committee.

Thereafter, the Committee considered the following memoranda and decided to prepare a report thereon with suitable comments :-

- (1) Memorandum No. 19 regarding the infirmities in the Export of Bivalve Molluscs (Quality Control, Inspections and Monitoring) Rules, 2003.
- (2) Memorandum No. 20 regarding the validity of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Removal of Difficulties) Order, 2002.
- (3) Memorandum No. 21 regarding the Securities and Exchange Board of India (Central Listing Authority) (Amendment) Regulations, 2003.
- (4) Memorandum No. 22 regarding the shortcomings in the notification of Reserve Bank of India –
 - (i) The Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Third Amendment) Regulations, 2002.
 - (ii) The Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2002.
 - (iii) The Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) (Sixth Amendment) Regulations, 2002.

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The Committee then adjourned.

MINUTES OF THE THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (2005-2006)

The Committee met on Monday, 3 October, 2005 from 1500 to 1545 hours in Committee Room 62, Parliament House, New Delhi.

PRESENT

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| Shri Bikram Keshari Deo | - | In the Chair |
| 2. Shri Ajoy Chakraborty | | |
| 3. Shri Ram Singh Kaswan | | |
| 4. Shri Vijaykumar Khandelwal | | |
| 5. Shri Anantha Venkata Rami Reddy | | |
| 6. Shri Chandra Sekhar Sahu | | |
| 7. Shri P. C. Thomas | | |
| 8. Shri Madhu Goud Yaskhi | | |

SECRETARIAT

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| 1. | Shri R. K. Bajaj | - | Deputy Secretary |
| 2. | Shri J.V.G. Reddy | - | Under Secretary |

2. In the absence of Chairman, Members of the Committee who were present chose Shri Bikram Keshari Deo to act as Chairman for the sitting in terms of Rule 258 (3) of Rules of Procedure and Conduct of Business in Lok Sabha.
3. The Committee took up for consideration the draft Eighth Report and adopted the same without any modifications.
4. The Committee then authorized the Chairman to present the same to Lok Sabha.

The Committee then adjourned.