§ 275.11 [Amended]

28. In 7 CFR 275.11, paragraph (f) is amended by removing the last sentence of the paragraph.

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

29. In 7 CFR 276.1, paragraph (a)(1) is amended by replacing the phrase "Except as set forth in § 276.2(c)(iv)," with the phrase "Except as otherwise provided in these regulations,".

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10. 551, Food Stamps)

Dated: December 21, 1982.

Robert E. Leard,

Associate Administrator.

[FR Doc. 82–35092 Filed 12–27–82; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR part 50

Filing of Copies of Changes to Emergency Plans and Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reduce the number of copies of changes to nuclear power plant emergency plans and procedures. The total number of copies to be submitted will be reduced from 13 to 3. The Commission has determined that 3 copies will be sufficient for processing purposes. These amendments will reduce the regulatory burden on the affected licensees.

DATE: The effective date of this rule will be December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Perkins, Chief, Incident Response Branch, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (Telephone 301–492–7361).

SUPPLEMENTARY INFORMATION: On August 19, 1980, the Nuclear Regulatory Commission published in the Federal Register (45 FR 55402) amendments to its regulations for the upgrading of emergency planning and preparedness. The effective date for those regulations was November 3, 1980.

In those regulations, § 50.54(q) required licensees to furnish three copies of changes to the emergency plan and emergency plan implementing procedures to NRC Regional Administrators and ten copies to the Director, Office of Nuclear Reactor Regulation. The amendment contained in this notice reduces to 3 the total number of copies the licensee is required to submit (one copy to be sent to the appropriate Regional Administrator and two copies to NRC Headquarters).

Because these amendments relate solely to procedural matters, the Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon, as unnecessary. Since the amendment relieves licensees from restrictions under regulations currently in effect, it is effective upon publication.

Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150–0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Paragraph (q) of § 50.54 is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in § 50.47(b) of this part and the requirements in Appendix E to this Part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E of this part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of §§ 50.47(b) of this part and the requirements of Appendix E of this Part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E of this part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall furnish one copy of each proposed change for approval to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a change is made without approval, the licensee shall furnish one copy to the Administrator of the appropriate NRC Regional Office specified in Appendix D of Part 20 of this chapter and two copies of the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days after the change is made.

3. Part V, "IMPLEMENTING PROCEDURES," of Appendix E is revised to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

V. Implementing Procedures

No less than 180 days prior to the scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material one copy of the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Administrator of the appropriate NRC Regional Office, specified in Appendix D of Part 20 of this chapter and two copies are to be sent to the Document Control Desk, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensees who are authorized to operate a nuclear power facility shall submit one copy of any changes to the emergency plan or procedures to the Administrator of the appropriate NRC Regional Office, specified in Appendix D, 10 CFR Part 20, and two copies to the Document Control Desk within 30 days of such changes.

Dated at Bethesda, Maryland, this 29th day of November 1982.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 82-35005 Filed 12-27-82; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 369, 370, 372, 373, 387, and 388

[Docket No. 21213-249]

Revision of Enforcement Provisions of the Export Administration Regulations and Conforming Amendments

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule

SUMMARY: This rule finalizes revisions to the Enforcement provisions of the Export Administration Regulations (Part 387, Title 15, Code of Federal Regulations) which were published in interim form on December 22, 1980 (45 FR 84021) with request for comments. All comments, both written and oral, were considered and portions of the Regulations were changed in response to those comments. This rule incorporates amendments to the Export Administration Act (Pub. L. 97-145), reflects current organizational and administrative procedures within the International Trade Administration, revises and incorporates into Part 387 a provision relating to interrogatories or requests to produce documents, codified prior to October 12, 1979 in § 388.15 of the Regulations, and modifies recordkeeping requirements. This rule also makes technical amendments to Part 388 relating to administrative proceedings. Conforming amendments are also made to Parts 368 through 386; reporting for the antiboycott regulations are clarified; one interpretation in the antiboycott regulations is deleted, and four are redesignated as Supplement Nos. 1, 2, 3, 4, and 5, "Interpretations."

DATE: Effective December 28, 1982.

FOR FURTHER INFORMATION CONTACT:

Howard N. Fenton, Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3886, Washington, D.C. 20230, (202) 377-2381

Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, U.S. Department of Commerce, Room 1099-A, Washington, D.C. 20230, (202) 377-4811.

SUPPLEMENTARY INFORMATION:

I. Substance of the Regulations

This rule makes final the revisions to the Export Administration Regulations to incorporate changes in the Export Adminstration Act relating to criminal penalties, to conform specific violation provisions to the Export Administration Act, to reflect organizational changes within the International Trade Administration, to establish as distinct violations the failure to comply with reporting requirements and the failure to answer interrogatories or respond to requests for admission or to produce evidence during investigations conducted under the Export Administration Act of 1979, as amended (the "Act") and to conform this Part with revised Part 388.

The antiboycott regulations are amended to delete a supplement that has been superseded and renumber the remaining supplements.

In the interest of reducing the regulatory burden on the export community and persons reporting boycott-related requests, this rule permits recordkeeping entities, as defined in § 387.13(b), to request a limited exception to the recordkeeping requirements of Part 387. If granted an exception, the recordkeeping entity is allowed to maintain micrographic reproductions rather than originals of documents during the first year of the retention period, as well as in subsequent years. The Department is also exempting certain types of documents from the recordkeeping requirement.

Part 388 of the Export Administration Regulations details the administrative proceedings that the Office of Antiboycott Compliance and the Office of Export Enforcement may initiate to impose sanctions for violations of the Export Administration Act of 1979. The Regulations provide for the settlement of cases prior to the service of a charging letter if a consent agreement and order are approved by the Deputy Assistant Secretary of Commerce for Export Enforcement. This rule provides the Deputy Assistant Secretary with the flexibility to suspend a sanction under any terms or conditions that he may specify in such an order.

The authority of the Office of Export Administration to revise, suspend or revoke licenses or, in the case of bulk licenses described in Part 373, portions of licenses, is clarified.

The paragraph dealing with revocation of export licenses under § 373.7, Service Supply (SL) Procedure, is removed because it is redundant. All export licenses, including bulk licenses, and other authorizations are subject to revision, suspension, or revocation without notice under § 370.3 and § 372.9.

The definitions of "department," "party," "presiding official," and "respondent" in § 388.2 are revised.

II. Recordkeeping Requirements

Office of Export Administration and Office of Antiboycott Compliance information collection requirements contained in this regulation (§ 387.13) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0625-0104 and 0625-0036, respectively.

III. Issues and Public Comments

The Department received five public comments on the interim rule published December 22, 1980. Three comments noted with approval revised § 387.13(g) which, upon request, allows companies to maintain records on micrographic systems during the first year of the retention period. One comment suggested that records should be retainable in micrographic systems immediately upon their receipt. Because maintenance of original records for the first year of the retention period facilitates the investigative process, the Department, though sensitive to the reporting burden (as evidenced by its willingness to consider exceptional cases), cannot further reduce that burden without jeopardizing its ability to enforce the Act effectively. Another comment suggested a number of documents that should be exempt from recordkeeping requirements under § 387.13(h). Several of the suggestions have been adopted and included in that section.

The Export Administration Act of 1979 was amended by Pub. L. 97-145 after publication of these rules in interim form. Consequently, the sanctions provision, § 387.1, has been amended to conform it to the new penalty provisions that apply to violations occurring after December 29, 1981.

IV. Rulemaking Procedure and Invitation for Comments

In connection with various rulemaking requirements, the Office of Export Administration, the Office of Export Enforcement, and the Office of Antiboycott Compliance have determined that:

1. Under section 13(a) of the Act (50 U.S.C. app. 2412) this rule is exempt from public participation in rulemaking procedures of the Administrative Procedure Act. This rule was published in interim form. All comments, both written and oral, were considered, as contemplated by section 13(b) of the Act. This rule addresses those comments and confirms the regulations as a final rule.
2. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."
3. This rule does not impose an additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.
4. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

This rule is issued in final form. Although there is no formal comment period, public comments on these regulations are welcome on a continuing basis. All public comments on these regulations are a matter of public record and are available for public inspection and copying. Communications from agencies of the U.S. Government or foreign governments are not made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4001-B, Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

Drafting Information

The principal authors of these rules are Pamela P. Breed, Deputy Assistant General Counsel—Enforcement and Litigation, Daniel C. Hurley, Jr., Attorney-Advisor, and Margo E. Jackson, Attorney-Advisor.

List of Subjects

15 CFR Part 368

Imports, Penalties.

15 CFR Part 369

Boycotts, Reporting requirements, Trade practices.

15 CFR Part 370

Exports, Administrative practice and procedure.

15 CFR Parts 372, 373

Exports.

15 CFR Part 387

Exports, law enforcement, Penalties.

15 CFR Part 388

Administrative practice and procedure, Exports, Penalties, Boycotts.

For the reasons set forth above, the regulations on Enforcement, 15 CFR Part 387, as well as portions of Parts 368 through 386 and 388 are amended as set forth below.

1. 15 CFR Part 387 is revised as set forth below.

PART 387—ENFORCEMENT

Sec.

Authority. Sec. 4, Pub. L. 97-145 (to be codified at 50 U.S.C. app. 2410;) Secs. 4, 5, 6, 7, 8, 11, 12, 15 and 21, Pub. L. 96-72, 50 U.S.C. app. § 2401, et seq. (Supp. III 1979); E.O. 12214, (45 FR 29783, May 6, 1980); Department Organization Order 10-3 of February 15, 1982 (unpublished) and International Trade Administration Organization and Function Orders 41-1, effective February 15, 1982 (unpublished) and 41-4, effective May 18, 1982 (47 FR 29582, July 7, 1982).

§ 387.1 Sanctions.

(a) *Criminal.*—(1) *Violations of Export Administration Act.*—(i) *General.* Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) *Willful violations.* Whoever willfully exports anything contrary to any provision of the Act or any regulation, order, or license issued under the Act, with the knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both. Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who, with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both. For purposes of this Part, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370).

(2) *Violations of False Statements Act.* The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than $10,000, or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) *Administrative.*[1]—(1) *Denial of export privileges.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (*see* § 388.3 et seq.).

(2) *Exclusion from practice.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the International Trade Administration (*see* § 390.2(a)).

(3) *Civil penalty.* A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under § 5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this § 387.1(b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine *de novo* all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.[2]

(4) *Seizure.* Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export Administration Act or of any regulation, order, or license issued under the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data. Seized commodities or technical data are subject to forfeiture (22 U.S.C. 401) (*see* § 386.8(b)(6)).

[1] Violations of the Act or Regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under 22 U.S.C. 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

[2] The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.

§ 387.2 Causing, aiding, and abetting a violation.

No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Export Administration Act or any regulation, order, or license issued under the Act.

§ 387.3 Solicitation, attempt, and conspiracy.

(a) *Solicitation and attempt.* No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

(b) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

§ 387.4 Acting with knowledge of a violation.

No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

§ 387.5 Misrepresentation and concealment of facts.

(a) *Misrepresentation and concealment.* No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Office of Export Administration, the Office of Export Enforcement,[1] the Office of Antiboycott Compliance, any customs office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official:

[1] For purposes of Part 387, the Office of Export Enforcement enforces the Export Administration Regulations relating to short supply controls imposed under section 7 of the Act. Such controls are otherwise the responsibility of the Office of Industrial Resource Administration.

(1) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(2) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in §370.2, or restrictive trade practice or boycott request report, as defined in § 369.6;

(3) For the purpose of or in connection with effecting an export from the United States, or the reexport, transshipment, or diversion of any such export.

(b) *Scope.* Paragraph (a) of this section applies to all representations, statements, and certifications made to, and material facts concealed from, the Office of Export Administration, the Office of Export Enforcement, the Office of Antiboycott Compliance, and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes, Executive Orders, and regulations relating to export control, restrictive trade practices or boycotts, and orders or licenses issued or established under the Act.

(c) *Representations to be continuing in effect; notification.* All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Office of Export Administration, the Office of Export Enforcement, or the Office of Antiboycott Compliance, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

§ 387.6 Export, diversion, reexport, transshipment.

Except as specifically authorized by the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export

Administration Act or any regulation, order, or license issued under the Act.

§ 387.7 Failure to comply with reporting requirements.

No person may fail or refuse to comply with reporting requirements in violation of the Export Administration Act or of any order, regulation or license issued under the Act. *See,* for example, §§ 369.6 and 373.4(e)(3).

§ 387.8 Failure to answer interrogatories or respond to requests for admission or to produce documents.

(a) *Interrogatories and requests for admission or to produce documents.* Whenever the Office of Export Enforcement or the Office of Antiboycott Compliance finds it impracticable, during the course of an investigation, other proceeding or action, to subpoena a person, or books, writings, records, or other tangible things bearing upon the matter being investigated, the Office of Export Enforcement or the Office of Antiboycott Compliance may serve upon such person interrogatories, requests for admission of facts, requests for the production of books, records and other writings, or requests to produce or make available other tangible things for inspection, including commodities or technical data exported from the United States, as therein specifically set forth. If a person, within 20 days after receiving interrogatories or requests, fails or refuses to (1) furnish responsive answers to such interrogatories or requests for admissions, (2) produce the requested books, records and other writings, or (3) produce or make available for inspection other tangible things requested, including commodities or technical data exported from the United States, which are in that person's possession, custody or control, without good cause being shown, an order may be issued as provided in § 383.3(a)(2), denying export privileges to such person. This order shall remain in effect for five years or until such person responds to the interrogatories or requests or gives adequate reasons for failure or refusal to so respond.

(b) *Service.* Interrogatories or requests shall be served in the same manner as provided in § 388.4 (b) and (c) for service of a charging letter.

(c) *Enforcement procedures.* The procedure regarding applications for denial orders under § 387.8(a) and motions to vacate or modify such orders shall conform substantially to that provided for temporary denial orders by § 388.19 (b) and (c).

§ 387.9 Licensee accountable for use of license.

The person to whom a license is issued becomes the licensee and will be held strictly accountable for use of the license. The licensee may not, without prior written approval of the Office of Export Administration, in consultation with the Office of Export Enforcement, permit any other person to facilitate or effect the export of any commodity or technical data described in the license, except under his direction and responsibility as his true agent in fact. No term of sale or export or other agreement between the licensee or the order party and the purchaser or ultimate consignee of such commodity or technical data may provide otherwise.

§ 387.10 Unauthorized use and alterations of export control documents.

Except as otherwise specifically authorized in the Export Administration Regulations or in writing by the Office of Export Administration, in consultation with the Office of Export Enforcement, no licensee or other person, may obtain, use, alter, or assist in or permit the use or alteration of, any export control document, for the purpose of or in connection with facilitating or effecting any export or reexport other than that set forth in such document and in accordance with all the terms, provisions, and conditions thereof.

§ 387.11 Trafficking and advertising export control documents.

(a) *Unlawful practices.* Without prior written approval of the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may do any of the following with respect to any export or reexport under any export control document:

(1) *Transfers or changes of authority.* Effect any transfer of, or other change of the authority granted in such document, whether by sale, grant, gift, loan or otherwise, to any person; or permit any person to use the same other than for the true account of and as true agent in fact for the licensee; or, if that person is not the licensee, to receive or accept a transfer or other change of the authority granted in, or otherwise use an export control document except for the true account of and as true agent in fact for the licensee.

(2) *Change in named parties.* Effect any change of, substitution for, or addition to, the parties named in an export control document; or transfer, obtain, purchase, or create any interest or participation in the transaction described in any export control document.

(3) *Unlawful advertising or soliciting.* Offer or solicit by advertisement, circular, or other communication any transfer or change of an export control document or any interest therein prohibited above. Such communication shall be deemed unlawful:

(i) Even though coupled with a condition requiring approval by the Office of Export Administration of a new consignor or consignee or other change in the export license, by way of transfer, amendment or otherwise;

(ii) Where, in offering or soliciting the sale for export of any commodities or technical data, the communication indicates that the proposed seller of such commodities or technical data holds or will furnish a license or other export control document for the export of such commodities or technical data;

(iii) Where, in offering or soliciting the purchase for export of any commodities or technical data, that communication is addressed by the proposed buyer directly or indirectly to any person on the condition that such person as a seller then holds or will furnish a license or other export control document for the export of those commodities or technical data.

(4) *Other unlawful practices.* Sections 387.10, 387.11, and 387.12 among other things, make it unlawful:

(i) For a licensee or other person holding an export control document to sell or offer to sell, or for any person to purchase or to offer to purchase, the commodities or technical data described in such document with the understanding that the document may be used by or for the benefit of the purchaser to effect export of those commodities or technical data;

(ii) For any person to effect the export of the commodities referred to in § 387.11(a)(4)(i) for the benefit of or "for the account" of any person other than the licensee, regardless of the device, means, or fiction employed;

(iii) For the licensee to act fictitiously as principal or agent of another person who actually is effecting the export, or for such other person to act fictitiously as the licensee's principal or agent for the same purpose;

(iv) For the named consignee to act "for the account" of a new unlicensed consignee, or

(v) For any person to use a license, originally issued for a specified transaction which was not effected, for any other transaction without the specific written authorization of the Office of Export Administration.

(b) *Transfer of dock receipts, bills of lading, or liens.* (1) *Use of certain export control documents.* Section 387.12(a) is not to be construed as affecting the transfer and other use of dock receipts, bills of lading, or other commercial documents necessary to complete a transaction authorized by the export license, or impairing the validity of liens or other security titles or interests created in good faith with respect to commodities or technical data or documents in the course of financing, warehousing, forwarding, or transporting commodities or technical data.

(2) *Disposition of export.* A person who is entitled to foreclose on any lien or other security title or interest, or who may exercise any rights as holder of the lien or other security title or interest, who contemplates an export under the license by someone other than the licensee or to someone other than the purchaser or ultimate consignee designated in the license, must apply for a new license in accordance with the provisions of Part 372.

§ 387.12 Transactions with persons subject to denial orders.

(a) *Prohibited activities.* Without prior disclosure of the facts to and specific authorization of the Office of Export Administration, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the International Trade Administration; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate (i) in any transaction which may involve any commodity or technical data exported or to be exported from the United States, (ii) in any reexport thereof, or (iii) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

(b) *Definition of "Person Denied Export Privileges".* For the purpose of this section, the term "person denied export privileges" means:

(1) Any person, firm, corporation, or other business organization whose export privileges are revoked or denied by any order or who is excluded by such order from practice before the International Trade Administration; and

(2) Any other person, firm, corporation, or other business organization also denied export privileges or excluded from practice before the International Trade Administration because of a relationship to any person denied export privileges through affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services during the period of such order.

(c) *Applicability of orders.* Orders which revoke or deny the export privileges of any person or which exclude any person from practice before the International Trade Administration may provide that the terms and prohibitions of such orders apply not only to the persons expressly named therein but also, for the purpose of preventing evasion, to any other person, firm, corporation, or other business organization with which that person may then or thereafter (during the term of the order) be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. The Table of Denial Orders (*see* Supplement No. 1 to Part 388 and §§ 388.3 and 390.2) contains all orders which currently deny export privileges in whole or in part. The table also lists the names and addresses of such persons, the effective and expiration dates of the orders, a brief summary of the export privileges affected, and the citations to the volumes and pages of the **Federal Register** where complete texts of the orders are published. The publication of such orders in the **Federal Register** constitutes legal notice of the terms thereof to all persons.

§ 387.13 Recordkeeping.

(a) *Transactions subject to this regulation.* This section applies to (1) transactions involving restrictive trade practice or boycott requirements or requests (OMB No. 0625–0036), (2) exports of commodities or technical data from the United States and any known reexports, transshipments, or diversions of commodities or technical data originally exported from the United States (OMB No. 0625–0104), or (3) any other transactions subject to these Regulations, regardless of whether the export or reexport is made, or proposed to be made, by any person with or without authorization by a validated license, a general license, or any other export authorization. This section also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction which a reasonably prudent exporter would believe likely to lead to a violation of export orders or regulations. It also applies to any exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein or that the commodity or technical data involved is to be reexported, transshipped, or diverted from Canada to another foreign country.

(b) *Persons subject to this regulation.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in § 387.13(a), and any person in the United States or abroad who is required to make and keep records under any provisions of the Export Administration Regulations, shall keep all the records described in § 387.13(c), which are made or obtained by that person, and shall produce them in the manner provided in paragraph (f) of this section.

(c) *Records to be kept.* The records to kept under this § 387.13 shall include export control documents, as defined in §370.2, memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents, and reports, and other written matter pertaining to the transactions described in § 387.13(a), which are made or obtained by a person described in § 387.13(b). In addition to the records required to be kept by this section, other sections of the Regulations require the retention of records, including §§ 368.2, 369.6, 371.9, 371.10, 371.12, 371.22, 372.1, 372.5, 372.6, 372.13, 373.3, 373.4, 373.7, 373.8, 374.7, 376.5, 376.8, 376.10, 376.15, 377.5, 378.5, 378.6, 379.4, 386.3, and 386.6. The revocation or revision of any provision of the Export Administration Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep these records for the prescribed period.

(d) *Reproduction of records.* (1) *Definition.* "Reproduction" for the purpose of this § 387.13(d) is defined to include any photographic, photostatic, micrographic, miniature photographic or other process which completely, accurately and durably reproduces the original record.

(2) *Use of reproductions.* Reproductions may not be substituted for original documents with respect to

all categories of records required to be retained under any provision of the Export Administration Regulations or of any order, until all of the following conditions are met:

(i) The original documents have been retained for twelve months after the beginning of the retention period set forth in § 387.13(e) *or* an exception has been granted under the provisions of § 387.13(g).

(ii) All significant information, marks and/or other characteristics on the original document must be clearly visible and legibly reproduced.

(iii) Appropriate facilities must be provided and maintained for the preservation of the reproduced records during the retention period and for the ready location and inspection of the records, including a projector for viewing films, if needed.

(e) *Period of retention.* (1) Except for records relating to restrictive trade practice or boycott requests, which must be kept for three years (*see* § 369.6(b)(8)), records required under this section shall be kept for a period of two years from the latest of the following times:

(i) The export from the United States; or

(ii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (18 U.S.C. 3282). The statute of limitations for administrative compliance proceedings is also five years (28 U.S.C. 2462).

(2) If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned.

(f) *Producing and inspecting records.* (1) Persons within the United States may be requested to produce records which are required to be kept by any provision of the Export Administration Regulations or by any order, and to make them available for inspection and copying by any authorized agent, official or employee of the International Trade Administration, the U.S. Customs Service, or the U.S. Government, without any charge or expense to such agent, official or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized to issue subpoenas for books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition the appropriate district court to have the subpoena enforced.

(2) Every person abroad, required to keep records by any provision of the Export Administration Regulations or by any order, shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the International Trade Administration, the U.S. Customs Service, or a U.S. Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge of expense to such agent, official or employee. Persons located outside the United States who fail to comply with certain requests, including requests to produce documents, may be subject to orders denying export privileges. (*See* § 387.8.)

(g) *Requests for exceptions to recordkeeping requirements.* (1) *Effect of exception.* Recordkeeping entities (as defined in § 387.13(b) wishing to maintain records on micrographic systems prior to the second year of the retention period may request an exception to the recordkeeping requirements. An exception, if granted, permits the recordkeeping entity to substitute micrographic records for original documents for the full retention period.

(2) *Basis for consideration.* When reviewing requests for exceptions, the Office of Export Administration, in consultation with the Office of Export Enforcement, and the Office of Antiboycott Compliance will take into consideration the requestor's previous performance with respect to general export control matters and antiboycott matters respectively.

(3) *Guidelines for micrographic systems.* To maintain records under this exception, a micrographic system shall have the following minimum requirements:

(i) The system shall provide commercial permanence of all records.

(ii) The system shall provide for frequent quality control inspection to ensure readability of all records.

(iii) Micrographed records must have a degree of legibility and readability, when displayed on a viewer and when reproduced on paper, equal to that of the original records. (*See* section 5 or IRS Revenue Procedure No. 81–46, 1981–40 C.B. 6 concerning technical standards of micrographed records.)

(iv) A detailed index of all micrographic data shall be maintained, and arranged in such a manner as to permit the immediate location of any particular record, location of all documents relating to a given transaction, and determination of disposition of corresponding original documents.

(4) *Submission of requests for exception.*

(i) The recordkeeping entity shall submit requests for exceptions involving general export matters to:

Office of Export Administration, P.O. Box 273, Washington, D.C. 20044

(ii) The recordkeeping entity shall submit requests for exceptions involving antiboycott matters to:

Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Room 3886, Washington, D.C. 20230

(iii) The requesting firm shall include in the request—

(A) Data on the proposed micrographic system, including specific information as to how the system conforms to requirements set forth in § 387.13(g)(3);

(B) A statement concerning intended disposition of corresponding original documents; and

(C) Samples of records to be kept on the system.

(5) *Micrographing records under an exception.* Upon receiving written notice that an exception has been granted under this § 387.13(g), the recordkeeping entity may substitute micrographic reproductions for only those records *already* in the retention period and approved under the exception. Originals of records that have not entered the retention period must be kept until the retention period begins (as set forth in §§ 369.6(b)(8) and 387.13(e)) and micrographed records may then be substituted for the originals.

(6) *Disposition of original documents.* The recordkeeping entity shall include with micrographed records a signed document indicating final disposition of original documents, and the date of final disposition.

(7) *Revocation of exception.* The Department of Commerce may revoke an individual exception at any time if it determines that the firm has acted improperly, or for other good cause. A decision to revoke this exception may be appealed under the provisions of Part 389 of these Regulations.

(h) *Records exempt from recordkeeping requirements.* The following kinds of records have been determined to be exempt from recordkeeping requirements:

—Export Information Page
—Special Export Price List
—Vessel Log from Freight Forwarder
—Inspection Certificate
—Warranty Certificate
—Guarantee Certificate
—Packing Material Certificate
—Goods Quality Certificate
—Notification to Customer of Advance Mailings
—Letter of Indemnity
—Financial Release Form
—Financial Hold Form
—Export Parts Shipment Problem Form
—Draft Number Log
—Expense Invoice Mailing Log
—Financial Status Report
—Bank Release of Guarantees
—Cash Sheet
—Monthly Customer Statement
—Sales Run
—Commission Payment Back-up
—Commissions Payable Worksheet
—Commissions Payable Control
—Check Request Forms
—Accounts Receivable Correction Form
—Check Request Register
—Commission Payment Printout
—Engineering Fees Invoice
—Foreign Tax Receipt
—Individual Customer Credit Status
—Request for Export Customer Code Forms
—Acknowledgement for Receipt of Funds
—Escalation Development Form
—Summary Quote
—Purchase Order Review Form
—Proposal Extensions
—Financial Proposal to Export Customers
—Sales Summaries

§ 387.14 Where to report violations.

(a) *Notification.* The Office of Export Enforcement has the primary responsibility for enforcing these Regulations except that the Office of Antiboycott Compliance has the responsibility for enforcing the Restrictive Trade Practices or Boycott Regulations in particular.

(1) If a person obtains knowledge that a violation of these Regulations has occurred or will occur, that person may notify: Office of Export Enforcement, P.O. Box 7138, Washington, D.C. 20044, telephone (202) 377-3461, or Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. N.W., Room 3886, Washington, D.C. 20230, telephone (202) 377-2381, as appropriate.

(2) Any federal, state, or local government agency obtaining knowledge of a potential violation under these Regulations should immediately report such potential violation to: (i) Office of Export Enforcement, P.O. Box 7138, Washington, D.C. 20044, telephone (202) 377-4608. Failure to report such potential violations may result in the unwarranted issuance of validated export licenses or unlicensed exports to the detriment of the national security, foreign policy or short supply interests of the United States; (ii) Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. N.W., Room 3886, Washington, D.C. 20230, telephone (202) 377-2381.

(b) *Reporting requirement distinguished.* The notification provisions set forth in paragraph (a) of this section are not "reporting requirements" within the meaning of § 387.7.

PART 368—[AMENDED]

2. Section 368.4(b) is revised to read as follows:

§ 368.4 Penalties and sanctions for violations.

* * * * *

(b) *Criminal.* The False Statements Act makes it a criminal offense to make a willfully false statement or conceal a material fact, or knowingly use a document containing a false statement, in any matter within the jurisdiction of a U.S. department or agency. Maximum penalties under this provision are $10,000 fine or imprisonment for five years, or both. In addition, a knowing violation of the Export Administration Act or any regulation, order, or license issued under the Act generally is punishable by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than 5 years, or both. Willful violations are punishable by fines or imprisonment, or both. (*See* also § 387.1(a).)

PART 369—[AMENDED]

3. Section 369.6(b) (5) and (8) are revised to read as follows:

§ 369.6 Reporting requirements.

* * * * *

(b) * * *

(5) At the reporting person's option, reports may be submitted on either a single transaction form (Form ITA-621P, Report of Restrictive Trade Practice or Boycott Request Single Transaction (revised 7-79) OMB No. 0625-0036) or on a multiple transaction form (Form ITA-6051P, Report of Request for Restrictive Trade Practice or Boycott Multiple Transactions (revised 7-79) OMB No. 41-R2305). Use of the multiple transaction form permits the reporting person to provide on one form all required information relating to as many as 75 reportable requests received within any single reporting period.

* * * * *

(8) Records containing information relating to a reportable boycott request, including a copy of any document(s) in which the request appears, must be maintained by the recipient for a three-year period after the receipt of the request. The Department may require that these materials be submitted to it or that it have access to them at any time within that period. (*See* § 387.13 for additional recordkeeping requirements.)

* * * * *

Supplement 1—[Removed]

4. Supplement No. 1 to Part 369 and the heading above it reading "Interpretation of Part 369" are removed.

Appendix—[Redesignated as Supplement 1]

5. The material titled "Appendix—Interpretations" is redesignated as Supplement No. 1 to Part 369, "Interpretations."

Supplement 2—[Amended]

6. A new heading "Interpretations" is added to Supplement No. 2 to Part 369.

Supplement 3—[Amended]

7. Supplement No. 3 to Part 369, "Appendix—Interpretations," is amended by removing "Appendix" from the heading.

Supplement 4—[Amended]

8. Supplement No. 4 to Part 369 is amended by removing "Appendix" from the heading.

Supplement 5—[Amended]

9. Supplement No. 5 to Part 369, "Appendix—Interpretation," is amended by removing "Appendix" from heading.

PART 370—[AMENDED]

10. Section 370.2 is amended by adding the following after the definitions of "Commodity Control List (CCL)" and "Net Value", respectively.

§ 370.2 Definitions of terms.

* * * * *

Controlled Country. Any country described in Section 620(f) of the Foreign Assistance Act of 1961.

* * * * *

Office of Export Enforcement. Pursuant to the Export Administration Act of 1979 (Pub. L. 96-72), the Office of Export Enforcement enforces the Export Administration Act and the Regulations thereunder and among other things, directs the investigation of suspected export control violations and prepares cases on violations for referral for administrative proceedings by the Department of Commerce and criminal prosecution by the Department of Justice.

* * * * *

11. The first sentence of paragraph (b) of § 370.3 is revised to read as follows:

§ 370.3 Prohibited exports.

* * * * *

(b) *Revocation of Export Licenses and Other Authorizations.* All export licenses and other authorizations to export or reexport are subject to revision, suspension, or revocation, in whole or in part, without notice. * * *

* * * * *

PART 372—[AMENDED]

12. Paragraph (d)(4) of § 372.9 is revised to read as follows:

§ 372.9 Issuance of validated licenses.

* * * * *

(d) * * *

(4) *Revocation, suspensions, or revisions.* Outstanding licenses may be revised, suspended, or revoked, in whole or in part, or the validity periods thereof may be extended or reduced by appropriate orders or regulations.

* * * * *

PART 373—[AMENDED]

§ 373.7 [Amended]

13. Paragraph (m) of § 373.7 is removed.

14. Paragraph (n) of § 373.7 is redesignated as (m).

15. Paragraph (o) of § 373.7 is redesignated as (n).

PART 388—[AMENDED]

16. Section 388.1, first sentence, is revised to read as follows:

§388.1 Purpose and limitations.

The regulations in this part set forth the procedures for imposing administrative sanctions for violation of the Export Administration Act of 1979, as amended (Pub. L. 97-145, 50 U.S.C. app. 2401, *et seq.)* or its predecessor statute, the Export Administration Act of 1969, as amended (50 U.S.C. app. 2401, *et seq.* (1976 & Supp. III 1979)) (hereinafter collectively referred to as the "Act," although citations to particular sections of the Act will be to the 1979 Act), or of any regulation, order, license or other authorization issued thereunder. * * *

17. Section 388.2 is revised to read as follows:

§ 388.2 Definitions.

As used in this part:

Department. The Office of Export Administration, the Office of Export Enforcement or the Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce.

Party. The Department and any person named as a respondent, in a charging letter or order proposed or issued under this part.

Presiding Official. The person authorized to conduct hearings in administrative proceedings. For proceedings brought under § 8 of the Export Administration Act, the presiding official shall be an administrative law judge who may impose sanctions only after notice and opportunity for an agency hearing on the record. Other proceedings may be referred by the Director, Office of Export Enforcement, to either an Administrative Law Judge or the Hearing Commissioner who shall serve as presiding official.

Regulations. The Export Administration Regulations (15 CFR Parts 368 through 399), including the regulations concerning Restrictive Trade Practices or Boycotts (15 CFR Part 369).

Respondent. Any person named in a charging letter, temporary denial order, or order to show cause proposed or issued under this part.

18. Section 388.3(a)(4) is revised to read as follows:

§ 388.3 Denial of export privileges and imposition of civil penalties.

(a) * * *

(4) *Civil penalty.* In addition to or instead of any or all of the administrative sanctions described in (a) (1), (2) and (3) of this section, a civil penalty not to exceed $10,000 for each violation may be imposed, except that a civil penalty not to exceed $100,000 may be imposed for each violation involving national security controls imposed under § 5 of the Act.

* * * * *

19. The first sentence of § 388.4(a) is revised to read as follows:

§ 388.4 Institution of administrative proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement [1] or the Director of the Office of Antiboycott Compliance, as appropriate, may begin administrative proceedings under this Part by issuing a charging letter in the name of the Department. * * *

* * * * *

20. The first sentence of § 388.6(a) is revised to read as follows:

§ 388.6 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be delivered or mailed to "EAR Administrative Proceedings," U.S. Department of Commerce, Room 6716, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, or such other place as the presiding official may designate. * * *

* * * * *

21. Section 388.17(b) is revised to read as follows:

§ 388.17 Consent proceedings.

(a) * * *

(b) Cases may also be settled prior to the service of a charging letter. In such event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for approval and signature to the Deputy Assistant Secretary of Commerce for Export Enforcement. The consent proposal shall include a consent agreement and a proposed order. If the Deputy Assistant Secretary does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If the Deputy Assistant Secretary approves the proposal he will issue an order, and no action by the presiding official shall be required. The Deputy Assistant Secretary may order that any administrative sanction imposed shall be suspended in whole or in part upon such terms of probation or other conditions as he deems appropriate. Any such suspension may be modified or revoked by the Deputy Assistant Secretary, or on appeal, by the Assistant Secretary of Commerce for Trade Administration, as provided in § 388.16(c).

* * * * *

§ 388.19 [Amended]

22. Section 388.19(a)(1) is amended to remove "Office of Export Administration" and insert "Office of Export Enforcement" in the first (and only) sentence.

[1] By agreement with the Director of the Office of Industrial Resource Administration, the Director of the Office of Export Enforcement enforces short supply controls imposed under section 7 of the Export Administration Act.

23. Section 388.20(c)(1)(i) is revised to read as follows:

§ 388.20 Record for decision and availability of documents.

* * * * *

(c) *Availability of documents.*—(1) *Scope.*

(i) For proceedings started on or after October 12, 1979, all charging letters, answers, decisions, and orders disposing of a case shall be made available for public inspection in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce. The complete record for decision, as defined in § 388.20 (a) and (b), shall be made available on request. In addition, all decisions on appeal and those final orders providing for denial, suspension or revocation of export licensing privileges shall be published in the **Federal Register.**

* * * * *

24. Section 388.22(b) is revised to read as follows:

§ 388.22 Appeals.

* * * * *

(b) *Filing of appeal.* An appeal of an order must be filed with the Office of the Assistant Secretary for Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 3898–B, Washington, D.C. 20230, within 30 days after service of the order appealed from. If the Assistant Secretary cannot act on an appeal for any reason, the Under Secretary for International Trade may designate another Department of Commerce official to receive and act on the appeal.

* * * * *

(Secs. 8, 13, 15, and 21, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 et seq. (Supp. III 1979); Executive Order No. 12214 (45 FR 29783, May 6, 1980); Department Organization Order 10–3 (unpublished) as reissued February 15, 1982; International Trade Administration Organization and Function Orders 41–1 of February 15, 1982 and 41–4 (47 FR 29582, July 7, 1982)

Date: December 10, 1982.

Bohdan Denysyk,

Deputy Assistant Secretary for Export Administration.

Dated: December 10, 1982.

Theodore Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 82–35174 Filed 12-27-82; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-19336; S7-933]

Pro Rata Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of revised Rule 14d–8 to govern the acceptance of securities deposited in response to a partial tender offer if a greater number of securities are deposited than the bidder is bound or willing to purchase and rescission of current Rule 14d–8. Pursuant to revised Rule 14d–8, a bidder in an oversubscribed partial tender offer is required to accept securities on a pro rata basis according to the number of securities deposited by each depositor during the period such offer remains open.

DATE: Revised Rule 14d–8 shall be effective with respect to any tender offer subject to Section 14(d) of the Exchange Act that is commenced within the meaning of Rule 14d–2 under that Act after December 28, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr., (202) 272–3097, Office of Tender Offers, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission announces the adoption of revised Rule 14d–8 under Sections 14(e) and 23(a) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a *et seq.*). The revised rule requires a bidder in an oversubscribed partial tender offer to accept securities on a pro rata basis according to the number of securities deposited by each security holder during the period such offer remains open.

I. General

After consideration of the comments received on proposed Rule 14d–8,[1] published in Release No. 34–18761 (May 25, 1982) (47 FR 24338) (the "Proposing Release"), and its continuing experience with the ten calendar day proration period in recent partial tender offers, the Commission has determined to adopt revised Rule 14d–8, as proposed, and to rescind current Rule 14d–8 (17 CFR 240.14d–8).[2] The Commission believes that, as stated in the Proposing Release, extension of proration rights throughout the term of the offer is essential to assure security holders the time necessary to consider the merits of an offer and to obtain sufficient information upon which to base their investment decisions and to minimize the potential security holder confusion and misunderstanding generated by changing proration periods and multiple proration pools.

In the Proposing Release, the Commission discussed at length the problems associated with the current ten calendar day proration period and requested comments on its proposal to extend the proration period for the duration of the offer. Concurring in the Commission's assessment that, as used in recent partial tender offers, the minimum ten calendar day proration period denies security holders an adequate opportunity to make informed investment decisions and leads to security holder confusion and misunderstanding, the majority of the commentators supported the Commission's proposal to extend the proration period beyond the current ten calendar day period.

A number of commentators related specific experiences in which they had problems receiving tender offer materials and effecting their investment decisions within the ten calendar day proration period. These experiences included receiving tender offer materials after the expiration of a bidder's proration period or so close to the end of the period that they could not tender before the expiration of the proration period. As a result, these commentators stated that they were foreclosed from participating in the offer and were likely to receive a lesser amount for their securities in a proposed second-step merger. In addition, these commentators highlighted the problems that individual security holders experience trying to understand the varying legal consequences of the deadlines contained in a partial tender offer, appreciating the importance of deciding

[1] Pursuant to the Commission's request for comment on the Proposing Release, 41 commentators submitted 42 letters. The commentators may be categorized as follows: corporations (7); law firms and associations (7); securities industry (6); banks and depositories (2); state governmental agencies (1); academicians (4); and individuals (14). The comment letters are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7–933). The Commission also has placed in the files a copy of the summary of public comments prepared by the Division of Corporation Finance.

[2] Having considered the comments received regarding its authority to adopt revised Rule 14d–8, the Commission continues to believe that Sections 14(e) and 23(a) provide such authority.