Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 3rd day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5311 Filed 3-7-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 80466-8066]

Chlorendic Anhydride; Reduction in Export Control

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Correction notice; announcement of effective date.

SUMMARY: On August 10, 1988 (53 FR 30026), the Bureau of Export Administration issued a final rule amending export controls on chlorendic anhydride. This chemical, formerly controlled for national security reasons under Export Control Commodity Number (ECCN) 5799C on the Commodity Control List, was transferred to ECCN 6799G and remains subject to export controls to Country Groups S and Z for foreign policy reasons.

The effective date was inadvertently omitted from the August 10 final rule. This notice establishes that the effective date of that rule is August 10, 1988, the date of publication.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration (Telephone: (202) 377–5695).

Dated: February 23, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-5281 Filed 3-7-89; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release Nos. 33-6822; 34-26587; IC-16844; FR-34; File No. S7-6-88]

Acceleration of the Timing for Filing Forms 8-K Relating to Changes in Accountants and Resignations of Directors; Amendments to Regulation S-K Regarding Changes in Accountants

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today announced the adoption of amendments to its rules to reduce the time period from 15 calendar days to five business days for a registrant to file a Form 8-K announcing a change in its independent certifying accountant or the resignation of a director. The Commission also announced amendments to Regulation S-K concerning changes in a registrant's independent certifying accountant to: (1) Reduce the time period for filing with the Commission the former accountant's letter from 30 calendar days to ten business days after the filing of the report or registration statement announcing the change in accountants, (2) require the registrant to file any such letter within two business days of receipt, and (3) permit the former accountant to provide an interim letter to the registrant, which also must be filed by the registrant within two business days of receipt.

EFFECTIVE DATE: April 7, 1989. These amendments are effective for changes in accountants and the receipt of letters from resigned directors occurring on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns or John M. Riley, (202) 272–2130, Office of the Chief Accountant, or William H. Carter, (202) 272–2573, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

When a registrant's independent certifying accountant resigns, declines to stand for re-election or is dismissed the registrant must provide the disclosure required by Item 304(a)(1) of Regulation S-K.[1] When the registrant engages a new independent certifying accountant, it must provide the disclosure required by Item 304(a)(2) of Regulation S-K.[2] In both cases, Item 304(a)(3) of Regulation S-K directs the registrant to request the former accountant to provide to the registrant a letter addressed to the Commission that indicates whether the former accountant agrees with the registrant's disclosures and, if not, the respects in which it does not agree.[3] The registrant is required to file any such letter received as an exhibit to the document containing the relevant disclosure.[4]

Generally, this disclosure regarding the change in accountants will first appear in a Form 8-K [5] filing. Prior to the adoption of the amendments announced today, General Instruction B.1 to Form 8-K required a registrant to file a report within 15 calendar days after the former accountant resigned, was dismissed, or declined to stand for re-election, or a new accountant was engaged. Under Item 304(a)(3) of

[1] 17 CFR 229.304(a)(1). These disclosures include whether the former accountant resigned, declined to stand for re-election or was dismissed; whether the accountant's report on the registrant's financial statements for either of the past two fiscal years contained (and if so the nature of) an adverse opinion, disclaimer of opinion, modification or qualification; whether the change in accountants was recommended or approved by the audit or similar committee of the board of directors; and a description of disagreements between management and the former accountant and "reportable events," including whether the former accountant discussed such matters with the audit committee or board of directors and whether the registrant has authorized the former accountant to discuss these matters with the successor auditors. For definitions of "reportable events" and "disagreements," *see* notes 7 and 8 *infra.*

[2] 17 CFR 229.304(a)(2). These disclosures principally focus on certain pre-existing relationships between the registrant and the newly engaged accountant. To the extent required disclosures previously were made in connection with the disclosure of the former accountant's resignation, declination to stand for reelection or dismissal, they do not have to be repeated. Instruction 1. to Item 304, and Instruction to Item 4, Form 8-K, 17 CFR 249.308.

[3] 17 CFR 229.304(a)(3). However, if the disclosures are to appear in an annual report to shareholders or a proxy or information statement, then in lieu of requesting such a letter the registrant must provide the former accountant with the opportunity to submit a brief statement to be included directly in the registrants's document. This statement must be submitted to the registrant within ten business days of the date the accountant receives the registrant's disclosure. *See* Instruction 2 to Item 304 of Regulation S-K, 17 CFR 229.304.

[4] Item 304(a)(3) of Regulation S-K, 17 CFR 229.304(a)(3).

[5] Item 4, Form 8-K, 17 CFR 249.308. The Division of Corporation Finance reviews all incoming Item 4 Forms 8-K. This review may result in a referral to the Commission's Division of Enforcement, examination of the current or next financial statements on a high priority basis, or disposition according to the routine comment process. The Division of Enforcement makes appropriate inquiries when it receives referrals on these matters from the Division of Corporation Finance.

Regulation S-K, the letter from the registrant's former accountant was to be filed within 30 calendar days after the document containing the registrant's Item 304 disclosures had been filed with the Commission.[6] Assuming the initial disclosure was made by the registrant on a Form 8-K 15 days after the former accountant resigns, declines to stand for re-election or is dismissed, and the former accountant's letter was filed 30 days after the date of the filing of the Form 8-K, a total of 45 calendar days could elapse from the date of the former accountant's leaving the engagement until the filing with the Commission of the former accountant's letter. This letter may be the first expression of the former accountant's concerns regarding communications with the registrant that are now disclosed as reportable events,[7] disagreements with the registrant concerning certain accounting, auditing or financial reporting issues,[8] or other matters.

More prompt disclosure of information related to changes in registrants' certifying accountants is in the public interest.[9] Moreover, in commenting on previous rulemaking proceedings the American Institute of Certified Public Accountants ("AICPA") and others recommended that the time period for filing the former accountant's letter be reduced.[10] Accordingly, in April 1988, the Commission published for public comment a proposal to reduce the time period from 15 to 5 calendar days for filing the initial Form 8-K, and to reduce the time period from 30 to 10 calendar days for filing the letter from the former accountant.[11] The Commission also proposed to require that the registrant file any letter from the former accountant responding to the registrant's Form 8-K disclosures within two calendar days of receipt,[12] and expressly to permit the former accountant to provide an interim letter, which also would be filed by the registrant within two calendar days of receipt.[13]

In reviewing the need for more prompt disclosure regarding changes in independent accountants, the Commission noted that disclosures concerning the resignation of a director [14] may be of similar importance in bringing to light disagreements or difficulties concerning management policies or practices that may be material to an investment decision with regard to the registrant's securities. Accordingly, the Commission further proposed to shorten the time period from 15 to five calendar days for reporting on Form 8-K the resignation of a member of a registrant's board of directors.[15]

The Commission received a total of 19 comment letters in response to this proposing release.[16] All 19 addressed the proposal to shorten the Form 8-K filing period for changes in accountants, 17 addressed the reduction in the time period under Regulation S-K for filing the former accountant's letter, and six addressed the time period for filing a Form 8-K concerning the resignation of directors. A significant majority of commentators on each of these proposals supported some reduction in the relevant time periods. The commentators differed, however, on what those periods should be.

Eight commentators also discussed direct communication by accountants with the Commission when there is a change in accountants. One suggestion was that a registrant be required to request that its former accountant send to the Commission a copy of its letter responding to the registrant's Form 8-K disclosures. This suggestion for further rulemaking is being reviewed by the Commission's staff. Even in the absence of rulemaking, however, the Commission continues to believe that an independent accountant who is aware that a required filing related to a change of accountants has not been made by the registrant should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.[17] In addition, the Commission strongly encourages the accounting profession to establish either a professional requirement for auditors to notify the Commission directly if they know that a required filing has not been made by a former client, or another approach that may achieve essentially the same result.

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[6] Under Item 4 of Form 8-K the resignation or dismissal of an independent accountant, or its declination to stand for re-election, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 8-K will be required for a single change in accountants, the first on the resignation (or declination to stand for re-election) or dismissal of the former accountant and the second when the new accountant is engaged. *See* Instruction to Item 4, Form 8-K. If the termination of the relationship with the former accountant and the engagement of the new accountant are reported separately, the registrant must make two requests for the former accountant to provide a letter indicating whether it agrees with the registrant's disclosure. The timing for each letter is computed separately, each period beginning with the related filing of the registrant's disclosure.

[7] Reportable events involve situations where the accountant has advised the registrant that it: questions the reliability of the registrant's financial statements, management's representations or the registrant's internal controls; needs to expand the scope of its audit to investigate certain matters; or, has concluded that certain information that has come to its attention materially impacts the fairness or reliability of current or past audit reports or the financial statements underlying those reports. *See* Item 304(a)(1)(v) of Regulation S-K, 17 CFR 229.304(a)(1)(v). *See generally* Financial Reporting Release No. 31 (April 12, 1988) (53 FR 12924).

[8] Instruction 4 to Item 304 of Regulation S-K, 17 CFR 229.304, states in part:

The term "disagreements" as used in this Item shall be interpreted broadly, to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion.

See generally Financial Reporting Release No. 31 (April 12, 1988) (53 FR 12924).

[9] *See e.g.*, Hearings on Failure of ZZZZ Best Co. Before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, 100th Cong., 2d Sess., Serial No. 100-115 (1988).

[10] *See* Letter from AICPA to Jonathan G. Katz, October 9, 1987, contained in File No. S7-24-87, which recommended that this period be reduced to 21 calendar days. Copies may be obtained by contacting the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[11] Securities Act Release No. 6767 (April 12, 1988) (53 FR 12948).

[12] *Id.*

[13] *Id.*

[14] A Form 8-K must be filed when a director resigns (or declines to stand for re-election) because of a disagreement with the registrant relating to its operations, policies or practices, and that director has furnished a letter to the registrant describing the disagreement and requesting that the matter be disclosed. The required disclosure includes the date of resignation or refusal to stand for re-election and a summary of the director's description of the disagreement, with the director's letter attached to the Form 8-K as an exhibit. The registrant also may state briefly its own view of the disagreement. Item 6, Form 8-K.

[15] Securities Act Release No. 6767, *supra* note 11.

[16] Copies of the letters from commentators are available to the public in File No. S7-6-88 in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

[17] In Accounting Series Release No. 165 (December 20, 1974) (40 FR 1010), Financial Reporting Codification section 603.02.a.iii, the Commission stated:

When a change in independent accountants occurs so that the accountant being replaced is aware that a Form 8-K should be filed reporting the event, he might well bring that reporting responsibility to the attention of the registrant. If he becomes aware that the required reporting has not been made, e.g., because he has not been requested to furnish a letter as required by the Form 8-K item, he should consider advising the registrant in writing of that reporting responsibility with a copy to the Commission.

II. A Registrant's Filing on Form 8-K Regarding a Change in Certifying Accountants

The Commission has accelerated the timing for filing an initial Form 8-K regarding a change in certifying accountants from 15 calendar days to five business days.[18]

In proposing a five *calendar* day period, the Commission noted that documentation regarding disagreements and reportable events should be readily available to both the registrant and the former accountant.[19] While 14 of the 19 commentators generally supported reduction of the filing period, only one agreed with the five calendar day proposal. Others stated that the proposed periods may be too short for the preparation of complete and informative disclosures.[20] They indicated that the individuals who prepare and review the Form 8-K filing may not be available during a period as short as five calendar days. They also noted that with intervening weekends and holidays the filing period effectively could be reduced to as few as two business days if the change occurred immediately preceding a "three-day weekend." Several commentators, therefore, suggested that the filing period be either extended or expressed in business rather than calendar days. Four commentators specifically suggested a ten calendar day period, four others suggested a ten business day period, and five specifically recommended a five business day period.

In recognition of the commentators' concerns, the Commission has adopted a five business day period. In calculating the five business day period, the day on which the change in accountants occurs would not be counted. For example, assuming there are no intervening federal holidays, if the accountant resigns [21] on a Monday, the Form 8-K must be filed no later than the close of the Commission's business [22] on the following Monday. If the Item 4, Form 8-K event occurs on other than a business day, the filing period begins to run on and includes the first business day thereafter.

III. Filing Period Related to the Former Accountant's Letter

The Commission is amending Item 304(a)(3) of Regulation S-K to state that the former accountant's letter should be provided to the registrant as promptly as possible to permit the letter to be filed by the registrant with the Commission within ten business days [23] after the filing of the Form 8-K or other report or registration statement announcing the change in accountants. In order to facilitate the preparation of the accountant's letter, the Commission also has adopted, as proposed,[24] a requirement that the registrant provide the former accountant with a copy of the disclosures it has made concerning the change in accountants no later than the day those disclosures are filed with the Commission.

Fifteen of 17 commentators addressing the issue supported a reduction in the 30 day period for filing the former accountant's letter. Four of these commentators supported the proposed ten calendar day period, but others suggested longer periods citing the unavailability of personnel and the impact of weekends, among other factors, on promptly preparing and reviewing a complete and informative letter. Nine commentators suggested a ten business day period, four suggested a ten calendar day period, two recommended 21 calendar days, one suggested 15 business days, and one suggested a period of 21 business days.[25] After considering these comments, the Commission has revised the proposed ten calendar day period to ten business days. Calculation of this period should begin on and include the first business day after the initial filing with the Commission.

The new rules, as amended, contain the proposed language that the registrant shall request that the former accountant provide the letter "as promptly as possible." One commentator objected to this language, stating that it would be impossible to demonstrate compliance with that request.[26] This language has been added to the disclosure requirement to focus the accountant's attention on the need to address the issue in a timely manner, that is, with the diligence that may be expected under the circumstances.

The accountant's letter, therefore, may be received by the registrant prior to the expiration of the ten business day period. In order that such a letter may be made available to the public on a timely basis, the Commission proposed that the registrant file the letter within two calendar days of receipt. Three of the 11 commentators addressing this issue supported the proposed two calendar day period, while seven commentators suggested a two business day period and cited the adverse impact of weekends and holidays on their ability to meet the two calendar day requirement. One commentator noted that the proposed period may cause timing problems but did not offer a specific recommendation as to the appropriate time period. In response to the commentators' concerns, the Commission has adopted a two business day period.[27]

The newly adopted filing requirements for Form 8-K concerning a change in accountants result in a reduction in the overall time period for filing both the Form 8-K and the former accountant's letter from 45 calendar days to 15 business days.[28] The new time periods reflect an appropriate balance between the need for prompt disclosure and the time required to research, prepare and review the disclosures called for when a change in accountants occurs.[29]

IV. Interim Letter From the Former Accountant

The amendments to Item 304(a)(3) of Regulation S-K include the proposed provision specifying that the former accountant, at its discretion, may provide the registrant with an interim letter highlighting specific areas of concern and indicating a more detailed

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[18] The term "business day" means any day other than a Saturday, Sunday, or federal holiday on which the Commission is not opened for business.

[19] Securities Act Release No. 6767, *supra*, note 11.

[20] *See* note 16, *supra*.

[21] In contrast to the dismissal of an accountant through the mail, which occurs when the registrant sends the notice of dismissal, when the accountant resigns by mailing a letter of resignation to the registrant the resignation is deemed to occur for the purpose of this requirement when the registrant receives the letter.

[22] The business hours of the principal office of the Commission in Washington, DC are from 9:00 a.m. to 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, each day except Saturdays, Sundays and holidays. Rule 0-2 under the Securities Exchange Act of 1934, 17 CFR 240.0-2.

[23] *See* note 16, *supra*.

[24] Securities Act Release No. 6767, *supra* note 11. The proposal stated that the accountant should be provided with a copy of these disclosures no later than the "time" they are filed with the Commission. To avoid controversy over the specific time that the disclosures were filed and the time they were received by the accountant, this provision has been revised to require that the accountant receive the disclosures on the same day they are filed with the Commission.

[25] Some commentators suggested more than one time period.

[26] Letter to Jonathan G. Katz from Peat Marwick Main & Co. dated May 16, 1988, available in File No. S7-6-88. *See* note 16, *supra*.

[27] The requirement to file the former accountant's letter within two business days of receipt is independent of the ten business day period discussed above and is not intended to result in an extension of that ten business day period.

[28] It should be noted that in current practice the accountant's letter often is filed with the initial Form 8-K.

[29] *See generally* Item 4 of Form 8-K, 17 CFR 249.308, and Item 304 of Regulation S-K, 17 CFR 229.304.

letter will follow. If such an interim letter is provided it must be filed by the registrant within two business days of receipt.[30]

Ten of 11 commentators addressing the interim letter provision generally opposed the provision because: the statements in the interim letter may be based on incomplete information; the provision could create a de facto reporting obligation; or the need for such a provision is diminished by the reduction of the filing period relating to the accountant's letter. The Commission recognizes these concerns. However, it believes it is important explicitly to provide former accountants with the opportunity to provide expedited notice to the public of situations where former accountants have concluded that registrants' Forms 8-K contain patently false disclosures. The Commission does not intend to establish a de facto reporting obligation and, to the contrary, believes that such interim letters will generally pertain to cases where there is no reasonable uncertainty regarding the former accountant's objection to the registrant's disclosures. An example of a case where the accountant may file such an interim letter is when the accountant is dismissed after having an obvious disagreement with the registrant and the registrant's initial Form 8-K states that there were no disagreements.

V. Filing Period for Reporting Disagreements Associated With the Resignation of a Director

In addition to the disclosure of disagreements between the registrant and its former accountant, disclosure of disagreements between the registrant and a director who has resigned (or declined to stand for re-election) also may be material to a shareholder's voting or investment decisions.[31]

Accordingly, the Commission has reduced the period from 15 calendar days to five business days for filing a Form 8-K relating to the resignation of a director.

Four of six commentators addressing this proposal agreed that some reduction in the filing period was appropriate. However, the impact of weekends and holidays and the possible unavailability of continuing directors to consult on the matter, and of legal counsel and others to prepare and review the Form 8-K disclosures were cited as reasons to extend the proposed five calendar day period.[32] Three commentators respectively suggested periods of ten business days, ten calendar days, and five business days, while another commentator supported either a ten calendar or five business day period.

The Commission has adopted a five business day filing period. The event that triggers the Form 8-K reporting obligation concerning the resignation of a director is the receipt by the registrant of a letter describing a disagreement between the registrant and the director relating to the registrant's operations, policies or practices.[33] For example, assuming no intervening federal holidays, if the registrant received the resigned director's letter on a Monday, it would be required to file the Form 8-K no later than the following Monday.

VI. Cost/Benefit Analysis

The amendments announced in this release affect the timing of procedures for a registrant filing a Form 8-K disclosing the resignation of a director or a change in the registrant's certifying accountant and the filing of a letter containing the views of the registrant's former account regarding certain matters disclosed by the registrant. The amendments, however, do not affect the recordkeeping, substance of the disclosure, or contents of the registrant's disclosure or the former accountant's letter. It is anticipated therefore that the costs associated with these amendments will be small and relate solely to the more prompt preparation of the registrant's disclosure and the former accountant's letter. The principal benefit of the amendments is the availability of signficant information to the market on a more timely basis.

VII. Certain Findings

Section 23(a)(2) of the Exchange Act[34] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amendments to Form 8-K and Regulation S-K in light of the standard cited in section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. As stated above, these amendments are designed to promote the purpose of the Exchange Act by providing more prompt disclosure of significant information, without changing the substance of the disclosure obligation.

VIII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[35] the Chairman of the Commission previously certified that adoption of these amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

IX. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Include a new paragraph 603.02.d to include the text in topic II of this release, "A Registrant's Filing On Form 8-K Regarding A Change In Certifying Accountants." (Footnotes in this topic that refer to footnotes in topic I of this release to contain the full text of the cited notes.)

2. Include a new paragraph 603.08 to include the text in topic III of this release, "Filing Period Related to the Former Accountant's Letter." (Footnotes in this topic that refer to footnotes in topics I or II of this release to contain the full text of the cited notes.)

3. Include a new paragraph 603.08.a to include the text in topic IV of this release, "Interim Letter from the Former Accountant." (Footnotes in this topic that refer to discussions or footnotes in topics II or III of this release to contain the appropriate citations to the codification and the full text of the cited notes.)

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements; Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for Part 229 continues to read as follows:

[30] A two calendar day period was proposed for comment. The Commission, however, has adopted a two business day period due to the impact of weekends and holidays on the registrant's ability to comply with the requirement. *See* the discussion of the two day filing period *supra*.

[31] *See* note 14, *supra*, for a discussion of when a Form 8-K regarding the resignation of a director should be filed and the required disclosures.

[32] *See* note 16, *supra*.

[33] Item 6(a), Form 8-K.

[34] 15 U.S.C. 78w(a)(2).

[35] 5 U.S.C. 605(b).

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a), unless otherwise noted.

2. By revising § 229.304(a)(3) to read as follows:

§ 229.304 (Item 304) Changes in and disagreements with accountants on accounting and financial disclosure.

(a) * * *

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 304(a) that the former accountant shall receive no later than the day that the disclosures are filed with the Commission. The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 304(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the report on registration statement containing this disclosure. If the former accountant's letter is unavailable at the time of filing such report or registration statement, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant can file the letter with the Commission within ten business days after the filing of the report or registration statement. Notwithstanding the ten business day period, the registrant shall file the letter by amendment within two business days of receipt; if the letter is received on a Saturday, Sunday or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and shall include the first business day thereafter. The former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming within the ten business day period noted above. If not filed with the report or registration statement containing the registrant's disclosure under this Item 304(a), then the interim letter, if any, shall be filed by the registrant by amendment within two business days of receipt.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

4. By amending General Instruction B1 to Form 8–K (§ 249.308 of this chapter) to read as follows:

Note.—Form 8–K does not appear in the Code of Federal Regulations.

Form 8–K.

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports.

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4 and 6 of this form. A report of an event specified in Items 1–3 is to be filed within 15 calendar days after the occurrence of the event. A report of an event specified in Item 4 or 6 is to be filed within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business then the 5 business day period shall begin to run on and include the first business day thereafter.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

March 2, 1989.

[FR Doc. 89–5293 Filed 3–7–89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 87F-0320]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the increased use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for low density polyethylene and olefin copolymers intended to contact food. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective March 8, 1989; written objections and requests for a hearing by April 7, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 29, 1987 (52 FR 41627), FDA announced that a petition (FAP 7B4018) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the increased use of di-*tert*-butylphenyl phosphonite condensation product with biphenyl as an antioxidant for low density polyethylene and olefin copolymers intended to contact food.

FDA has evaluated data in the petition and other relevant material in response to the petitioner's request. The agency concludes that these data and material establish the safety of increasing the level of use of the additive in certain copolymers, and that the regulations should be amended in § 178.2010(b) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before April 7, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

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

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

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

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.2010 is amended in the table in paragraph (b) by adding a new entry "4" under the heading "Limitations" for the entry "Di-*tert*-butylphenyl phosphonite condensation product with biphenyl" under the heading "Substances" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* *
Di-*tert*-butylphenyl phosphonite condensation product with biphenyl (CAS Reg. No. 38613-77-3) produced by the condensation of 2,4-di-*tert*-butylphenol with the Friedel-Crafts addition product (phosphorus trichloride and biphenyl) so that the food additive has a minimum phosphorus content of 5.4 percent, an acid value not exceeding 10 milligrams potassium hydroxide per gram, and a melting range of 85 °C to 110 °C (185 °F to 230 °F).	For use only: * * * 4. At levels not to exceed 0.15 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 2.1, 2.2, 3.1, or 3.2, where the polyethylene component has a density less than 0.94 gram per cubic centimeter.
* * *	* *

Dated: February 28, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-5273 Filed 3-7-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska Regulation 89-01]

Safety Zone Regulations: 54-12-30N, 165-37-39W, Lost Harbor, Akun Island, AK

AGENCY: Coast Guard, DOT

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the M/V AOYAGI MARU currently grounded at position latitude 54-12-30N, longitude 165-37-39W, Lost Harbor, Akun Island, for fifty (50) yards around the said vessel. The zone is needed to protect from a safety hazard associated with the pollution removal actions being conducted under section 311 of the Federal Water Pollution Control Act which includes use of explosives on the M/V AOYAGI MARU. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on February 24, 1989. It terminates on June 20, 1989 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR W.J. Hutmacher, 907-271-5137.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent death or injury to unauthorized personnel and further damage to the vessel.

Drafting Information

The drafters of this regulation are LCDR W.J. Hutmacher, project officer for the Captain of the Port, and LCDR R. Nelson, project attorney, Seventeenth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation resulted from the grounding of the M/V AOYAGI MARU on December 10, 1988. It has approximately 52,598 gallons of diesel, bunker C and lube oil in breached tanks and approximately 47,632 gallons of diesel, bunker C, and lube oil remaining in the vessel's unruptured tanks. This poses a major pollution threat. The Federal government has taken over the removal action under the Federal Water Pollution Control Act which includes using explosives to ignite the remaining oil aboard. All personnel or vessels not directly involved with the Federal removal action may not approach within fifty (50) yards of the M/V AOYAGI MARU nor within fifty yards of the M/V KRYSTAL SEA and M/V BETTYE K when working alongside M/V AOYAGI MARU.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A § 165.T1701 is added to read as follows:

§ 165.T1701 Safety zone: Lost Harbor, Akun Isl, Alaska.

(a) *Location.* The following area is a safety zone:

54–12–30N, 165–36–39W, Lost Harbor, Akun Island, Alaska, fifty yards (50) radius around M/V AOYAGI MARU and M/V KRYSTAL SEA and M/V BETTYE K when working alongside M/V AOYAGI MARU.

(b) *Effective Date.* This regulation becomes effective on 24 February 1989. It terminates on June 20, 1989 unless sooner authorized by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) Personnel or vessels not involved with the Federal removal actions may not approach the area within fifty (50) yards.

Dated: February 24, 1989.

R.N. Roussel,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 89–5409 Filed 3–7–89; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Cleveland REG 89–01]

Safety Zone; Old River and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes permanent the ten temporary safety zones most recently re-established on the Old and Cuyahoga Rivers on December 5, 1988 (53 FR 48907). Those temporary rules expired on January 31, 1989.

A pattern of collisions between large, underway vessels and small vessels located on bends in the river was identified. On August 31, 1987 one such collision resulted in severe damage to three recreational boats, one of which had persons aboard. Ten areas are considered to present the greatest danger to life and property based on collisions that have occurred or are likely to occur. Those areas are in the vicinity of river bends adjacent to the properties of Ontario Stone, Nicky's, Shooters, Nautica Stage, Columbus Road bridge, Upriver Marina, Alpha Precast Products (United Ready Mix), and Shippers C & D. Preventing mooring, standing, or anchoring of vessels in the ten areas will decrease danger to persons, property, and the environment by reducing the risk of collision at these river bends. This has been borne out by the positive results of the temporary safety zones first established on September 3, 1987.

EFFECTIVE DATE: This regulation becomes effective on April 7, 1989.

FOR FURTHER INFORMATION CONTACT: CDR Patrick A. Turlo, Captain of the Port, Cleveland (216) 522–4406.

SUPPLEMENTARY INFORMATION: On December 3, 1987, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 45973). Interested persons were requested to submit comments by January 22, 1988 and 25 written comments were received. The comments came from the following groups: commercial operators/industrial interests, riparian landowners, private citizens, recreational boating organizations, small business organizations, and officials from the City of Cleveland.

As a result of some of these comments, notice of a public hearing was published in the **Federal Register** on February 8, 1988, and the comment period was extended to March 7, 1988 (53 FR 3609). A public hearing was held on March 7, 1988. At the hearing, there were 19 respondents, representing the City of Cleveland, private citizens, commercial shipping/local industry, landowners, and private businesses.

As a result of the public hearing, the Captain of the Port agreed to extend the comment period for an additional 90 days until June 8, 1988 to allow a working group of interested parties to further study the situation and submit any new proposals at that time. See the **Federal Register** of March 31, 1988 (53 FR 10399). A second extension was requested by the working group, and was granted until December 1, 1988. See the **Federal Register** of July 22, 1988 (53 FR 27711). A letter from the working group supporting these regulations was received by the Captain of the Port on December 2, 1988.

Drafting Information

The drafters of these regulations are CDR Patrick A. Turlo, the Captain of the Port, Cleveland, project officer, and LCDR Carl V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Comments

The Coast Guard received a total of twenty-five letters in addition to nineteen statements made at the public hearing. These comments are discussed below and are arranged by topic.

1. Formation of a Working Group to Study the River Problem

Five commenters suggested that a working group comprised of interested parties be formed to study the river problem and develop its own suggestions to improve river safety without federal regulation. Such a working group was formed with the following members:

Shipping—Gordon Hall, Lake Carriers Association.
Recreational Boating—Norm Schultz, Lake Erie Marine Trades Association.
Small Commercial Boating—Wayne Bratton, Trident Marine.
River-related Industry—Carl Barricelli, Ontario Stone.
River-related Entertainment—Paul Ertel, JRM, Inc. (Nautica).
Ohio Department of Natural Resources Watercraft Division—Ken Alvey.
Property owner—Jack Stickney (Scranton Averell Trust).
Property owner/Flats Oxbow Association—Frank Samsel.
Flats Oxbow Association—Genevieve Ray (chair).
(Non-member observer) Ron Toth—City Division of Port Control.

The comment period was extended for an additional 90 days, until June 8, 1988, to allow the committee to meet. The working group requested and was granted a second extension until December 1, 1988. On December 1, 1988, the working group notified the Captain of the Port that they supported the proposed regulations. The group confirmed this with a letter on December 2, 1988.

2. Public Hearing

Five of the written comments called for a public hearing. On March 7, 1988, a public hearing was held in Cleveland.

3. Additional Zones

One commenter suggested that additional safety zones be included at International Salt and D'Poo's, and that the zone at Nautica Stage be enlarged. Another commenter recommended that rafting at the Commodores Club Marina be limited as part of these regulations. No problems requiring Coast Guard regulation have been identified at International Salt, D'Poo's, or Commodores Club Marina since they are not at bends in the river. The zone at Nautica Stage is deemed sufficient as is.

4. Channel Obstructions and Adequacy of Existing Regulations

One commenter felt that the real problem on the river is rafting of small craft, not mooring at dangerous bends. Another commenter felt that new