NRC Evaluation of Licensee's Request for Mitigation

With respect to the Licensee's argument that aggregating Violations I.A and I.B is inappropriate, the NRC concluded, as described above, that Violation I.B occurred as stated. The NRC determined that Violations I.A and I.B were related in that they have the same fundamental underlying cause and similar programmatic deficiencies, namely, the lack of management attention to NCS controls. Violation I.A involved exceeding a NCS limit. Violation I.B was issued for failure to consider process conditions and known modes of failure in the NCS analysis. These are two different issues in NCS controls and two different license requirements. Therefore, the NRC concludes both that aggregating Violations I.A and I.B as a Severity Level III was appropriate regardless of the time period between the two violations and that an escalated enforcement action was warranted.

With regard to the Licensee's disagreement with NRC statements, the NRC notes that there are 17 documented Licensee violations of NRC requirements involving NCS controls over the past two years. Despite these noted numerous weaknesses, the Licensee's NCS evaluations and analyses have not been adequately strengthened as evidenced by the failures described in NRC inspection reports 70–27/94–12, 94–15, and 94–16. These violations and other weaknesses clearly represent continued poor performance and inadequate management attention because the Licensee has not sufficiently improved its performance over the past two years to prevent recurring problems in the area of NCS. Furthermore, the Licensee's argument regarding the function of the NLB is narrow and does not support the Licensee's statements that extensive management attention has been placed in this area to ensure identification and correction of NCS problems. While the NRC acknowledges that some management attention has been directed toward identifying and correcting NCS problems, Licensee management must ensure that proper NCS controls and oversight are in place and are adhered to, and that NCS problems are thoroughly investigated to ensure that effective corrective actions are in place to prevent such problems from recurring or leading to other problems.

The NRC neither escalated nor mitigated for the identification factor because while the NRC recognizes that the Licensee identified Violation I.A, the Licensee should note that the NRC identified Violation I.B. In addition, Section VI of the Enforcement Policy states, in part, that a ''self-disclosing' event as used in this policy statement means an event that is readily obvious by human observation * * *'' The Licensee's Chemical Processing operating procedures required operators to: compare the amount of U–235 added to the low-level dissolvers with the amount removed, determine if the difference between the two exceeded 40 percent and, if so, report such excessive differences to management. Also, the Licensee's NCS limits required the amount of U–235 in each low-level dissolver zone be limited to 350 grams. Because the license requires procedures and postings to be followed and because doing so made the 350 gram limit violation readily obvious to human observation, the event was correctly categorized as self-disclosing.

Furthermore, Section VI of the Enforcement Policy also states, in part, that ''The base civil penalty may also be mitigated up to 25% when the licensee identifies a violation resulting from a self-disclosing event where the licensee demonstrates initiative in identifying the root cause of the violation.'' While the NRC acknowledged that the Licensee identified inadequacies in procedures, controls, and implementation systems, the NRC maintains that the Licensee did not demonstrate initiative in identifying the root cause of the violations because its analysis did not ask or answer *why* these procedures, controls, and systems were inadequate and what should be done to prevent such recurrence. Specifically, NRC involvement was needed before acceptable corrective action was taken in that it was not until NRC requested and conducted a management meeting with the Licensee on August 3, 1994, that the Licensee agreed to evaluate the series of incidents that had been occurring in an attempt to uncover the underlying generic root cause(s).

With regard to the corrective action factor, the NRC acknowledged that the Licensee took some immediate corrective actions to stop operations of the low-level dissolver and formed an incident review team to review the event in detail and determine appropriate corrective actions. The NRC did give the Licensee credit for these corrective actions in that escalation for this factor was not applied. However, the NRC affirms that full mitigation for this factor is not warranted because: (1) The Licensee did not demonstrate initiative in identifying the root cause of the violations because NRC involvement was needed before adequate actions were taken; (2) the Licensee's initial long term corrective actions were not comprehensive; and (3) the Licensee's development of long term corrective actions was not timely.

As noted earlier, it was not until NRC requested and conducted a management meeting that the Licensee agreed to evaluate the series of incidents in an attempt to identify the root cause. The results of that evaluation were discussed in a management meeting on November 16, 1994, and were submitted by the Licensee on November 20, 1994, as an attachment to the Licensee's reply to the Notice. Furthermore, on July 8, 1994, as the NRC's Augmented Inspection Team discussed its findings with Licensee management, the Licensee was requested to submit a copy of its investigation team findings, including corrective actions, to the NRC. The Licensee stated that the report would be completed and made available to the NRC on or about August 5, 1994. However, the report was not completed and made available to the NRC until September 23, 1994, after the enforcement conference. During the enforcement conference, NRC asked the Licensee for a time schedule for implementing the corrective actions discussed by the Licensee at the conference. More than two months after the low-level dissolver event, the Licensee did not have long-term corrective action time schedules firmly in place.

Regarding the prior opportunity to identify factor, the NRC believes that effective corrective action, if taken, for events occurring in March 1989 and February 1994, which revealed weaknesses in the drum counter measurement system, could have prevented the June 1994 event. Specifically, if the Licensee had adequately reviewed the effect on NCS of items or processes that were using drum counter measurement results and implemented effective corrective actions, the June 1994 event could have been prevented. Following the March 1989 and February 1994 events, a formal incident review and root cause analysis were not performed and corrective actions were not taken. The NRC expects licensees to learn from their mistakes and implement adequate and effective corrective actions to prevent recurrence. In its answer to the Notice, the Licensee acknowledges that its corrective actions would have prevented the low-level dissolution violation had they been followed.

The NRC concludes that the escalation and mitigation factors were applied appropriately and in accordance with the Enforcement Policy.

NRC Conclusion

The NRC concludes that Violations I.B.1, I.B.2, and II.C occurred as stated, that Violations I.A and I.B were appropriately categorized as a Severity Level III problem, and that an adequate basis for mitigation of the proposed civil penalty was not provided by the Licensee. Consequently, the proposed civil penalty in the amount of $37,500 should be imposed by Order.

[FR Doc. 95–5495 Filed 3–6–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Financial Management

Proposed Rescission of OMB Circular A–73

AGENCY: Office of Management and Budget, Office of Federal Financial Management.

ACTION: Notice of Proposed Rescission of OMB Circular A–73.

SUMMARY: Publication of OMB's intention to rescind Circular A–73.

FOR FURTHER INFORMATION CONTACT: Suzanne Murrin, OMB, Office of Federal Financial Management, (202) 395–6911.

Dated: February 28, 1995.

John B. Arthur,

Associate Director for Administration.

Office of Management and Budget

Rescission of OMB Circulars

AGENCY: Office of Management and Budget.

ACTION: Notice of Proposed Rescission of OMB Circular A–73.

SUMMARY: Notice is hereby given that OMB intends to rescind Circular No. A–73, Audit of Federal Operations and Programs. The current circular codifies what are now common audit practices throughout the Federal Government and extends the application of certain principles in the Inspector General Act of 1978 (IG Act) to those agencies not covered by the IG Act. Circular No. A–73 is unnecessary because: (1) Its audit policy direction is largely hortatory and (2) the IG Act has been expanded in 1988 amendments to cover almost all Federal entities of significant size.

DATES: Persons who wish to comment on the proposed rescission of Circular No. A–73 should submit their comments no later than April 7, 1995. The rescission will take place May 22, 1995, unless the comments raise significant concerns regarding the proposed rescission.

ADDRESSES: Comments should be addressed to: Suzanne Murrin, Office of Federal Financial Management, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 6025, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rescission of Circular No. A–73, contact Suzanne Murrin on (202) 395–6911. For further information on OMB's overall review of its circulars, contact Frank J. Seidl, III, Staff Assistant, on (202) 395–5146; or Rosalyn J. Rettman, Associate General Counsel for Budget on (202) 395–5600.

SUPPLEMENTARY INFORMATION: The Director of the Office of Management and Budget (OMB) has initiated a systematic review of all OMB circulars, as part of efforts to reduce unnecessary Government directives. As part of this initiative, each OMB circular is being reviewed to see whether it should be rescinded or whether its requirements can be simplified.

[FR Doc. 95–5489 Filed 3–6–95; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–92]

Termination of Section 301 Investigation and Action Regarding the People's Republic of China's Protection of Intellectual Property and Provision and Market Access to Persons Who Rely on Intellectual Property Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Termination of investigation of certain acts, policies and practices of the Peoples' Republic of China (China) initiated under section 302 of the Trade Act of 1974, as amended (Trade Act); termination of action pursuant to section 301 of the Trade Act; monitoring of trade agreement under section 306 of the Trade Act; revocation of priority foreign country identification under section 182(c)(1)(B) of the Trade Act; and requests for public comment.

SUMMARY: On February 4, 1995, the United States Trade Representative (USTR) determined pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies and practices of China with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR also determined pursuant to section 304(a)(1)(B) and 301(b) that action in the form of increasing duties on certain products of China to 100 percent ad valorem was appropriate. 60 FR 7230 (February 7, 1995). Having reached a satisfactory resolution of the issues under investigation, the USTR has determined to: (1) Terminate this section 301 investigation; (2) monitor implementation of the agreement under section 306 of the Trade Act; (3) terminate the action ordered pursuant to section 301 with respect to raising tariffs on certain products originating in China; and (4) revoke China's identification as a priority foreign country under section 182 of the Trade Act. Public comments will be accepted on the decision to terminate the action ordered pursuant to section 301.

EFFECTIVE DATE: The modification of the Harmonized Tariff Schedule of the United States (HTS) described below is effective with respect to imports entered, or withdrawn from warehouse for consumption, on or after February 26, 1995. The determinations to terminate the action taken under section 301 and revoke China's status as a priority foreign country were made by the USTR on February 26, 1995. Written comments from interested persons are due by noon on Friday, March 10, 1995.

ADDRESSES: Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Deborah Lehr, Director for China and Mongolian Affairs (202) 395–5050, or Thomas Robertson, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: On June 30, 1994, China was identified as a priority foreign country under the ''special 301'' provisions of the Trade Act for its failure to enforce intellectual property rights or to provide fair and equitable market access to persons who rely on intellectual property protection. On the same day, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for its identification as a priority foreign country (PFC) under section 182(c)(1)(B) of the Trade Act. 59 FR 35558 (July 12, 1994).

On December 31, 1994, the USTR extended the investigation until February 4, 1995, and sought public comment on proposed determinations under section 304(a)(1). 60 FR 1829 (January 5, 1995). On February 4, 1995, the USTR determined that the acts, policies and practices of the Chinese government at issue in the investigation are unreasonable and constitute a burden or restriction on U.S. commerce. The USTR also determined that the appropriate action in response was to impose duties of 100 percent ad valorem on certain Chinese-origin products that were entered, or withdrawn from warehouse for consumption, on or after February 26, 1995. 60 FR 7230 (February 7, 1995).

After extensive negotiations, the United States and China entered into an exchange of letters (including an Action Plan for the Effective Protection and Enforcement of Intellectual Property Rights) by which China will address the issues raised by the United States in the negotiations. Under the agreement, China will, among other things, establish a system at the central, provincial and local levels to provide strong, transparent and responsive enforcement of intellectual property rights; initiate a special enforcement period during which enhanced resources will be allocated to the enforcement of intellectual property rights; establish an effective border enforcement regime; ensure the transparency of its legal regime,