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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Parts 353 and 355

[Docket No. 950306068-5068-01]

RIN 0625-AA45

#### Antidumping and Countervailing Duties

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Interim regulations; request for comments.

**SUMMARY:** The International Trade Administration (ITA) hereby amends its regulations on antidumping and countervailing duty proceedings on an interim basis in order to implement certain provisions of the Uruguay Round Agreements Act ("URAA").

The interim rules amend and supplement the existing antidumping and countervailing duty regulations in accordance with certain amendments to the antidumping and countervailing duty laws made by the URAA.

**DATES:** Interim regulations effective May 11, 1995. See Supplementary Information section for discussion on comments.

**ADDRESSES:** Address written comments to Susan G. Esserman, Assistant Secretary for Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Comments should be addressed: Attention: Interim Regulations/Uruguay Round Agreements Act.

**FOR FURTHER INFORMATION CONTACT:** William D. Hunter, (202) 482-4412, or Penelope Naas, (202) 482-3435.

**SUPPLEMENTARY INFORMATION:** On December 8, 1994, the URAA was enacted (Pub. L. 103-465). This legislation, which implements the results of the Uruguay Round multilateral trade negotiations, makes significant amendments to the antidumping and countervailing duty provisions of Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*) ("the Act") and other related statutes. The interim rules described below amend and supplement the ITA's regulations concerning antidumping and

countervailing duties in accordance with certain provisions of the new legislation.

These interim regulations are effective on the date of publication, and apply to investigations and reviews initiated pursuant to petitions filed or requests made after January 1, 1995, the date on which the World Trade Organization Agreement entered into force with respect to the United States. See section 291 of the URAA. These rules will remain in effect until the ITA adopts final rules promulgated pursuant to the notice-and-comment procedures of the Administrative Procedure Act. In this regard, the ITA has published an Advance Notice of Proposed Rulemaking seeking public comments and suggestions regarding amendments to the antidumping and countervailing duty regulations.

Written comments on these interim-final regulations may be submitted in combined form with comments which the Department expects to request pursuant to a notice of proposed rulemaking. Accordingly, the due date for comments on these interim-final regulations and comments on the Department's proposed rulemaking will be stated in the forthcoming notice of proposed rulemaking.

Parties should submit comments on the interim regulations in the same format as that requested for comments pursuant to the Advance Notice of Proposed Rulemaking (60 FR 80), which is as follows: (1) Number each comment in accordance with the number designated for that issue as indicated in the list of issues set forth in the Advance Notice of Proposed Rulemaking; (2) begin each comment on a separate page; (3) concisely state the issue identified and discussed in the comment; and (4) provide a brief summary of the comment (a maximum of 3 sentences) and label this section "summary of the comment."

Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

To simplify the processing and distribution of these comments, parties are encouraged to submit documents in electronic form accompanied by an original and two paper copies. All documents filed in electronic form should be on DOS formatted 3.5" diskettes, and should be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Each comment submitted should be on a separate file on the diskette and labeled by the number designated for that issue based upon the list of issues

outlined in the Department's Advance Notice of Proposed Rulemaking (60 FR 80; January 3, 1995). Comments received on diskette will be made available to the public on Internet under the following addresses:

FTP://FWUX.FEDWORLD.GOV/PUB/IMPORT or

FTP://FTP.FEDWORLD.GOV/PUB/IMPORT/IMPORT.HTM

In addition, ITA will make comments available to the public on 3.5" diskettes, with specific instructions for accessing compressed data, at cost, and paper copies available for reading and photocopying in Room B-099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482-1248.

#### Explanation of the Interim Rules

##### General Background

These interim regulations are limited to certain new or revised procedures and obligations mandated by the URAA. The interim rules amend or supplement the existing regulations only to the extent necessary to implement certain new or revised procedures that will have an immediate impact on the orderly administration of the antidumping and countervailing duty laws. The ITA has concluded that the administration of these laws will be made more efficient by issuing these interim procedural regulations now.

The ITA is in the midst of a rulemaking procedure designed to conform its existing regulations in their entirety to the URAA. Following the completion of that exercise, including consideration of comments by the public, the ITA will issue final revised rules. Pending the issuance of final rules, the existing regulations, as supplemented by these interim rules, will form the basis for the ITA's administration of the antidumping and countervailing duty laws. In the event of a conflict between the existing regulations and the statute, the statute will control.

#### Explanation of Particular Provisions

##### Part 353

Part 353 contains the ITA's antidumping regulations. The citation for Part 353 is amended to include a reference to the URAA.

##### Section 353.1

Section 353.1 (Scope) is revised to consist of two paragraphs. Paragraph (a) continues to provide that 19 CFR Part 353 sets forth rules and procedures

applicable to antidumping proceedings under Title VII of the Tariff Act ("the Act"). While the ITA will rely on these rules and procedures in conducting antidumping investigations and reviews, paragraph (a) also clarifies that in the event of a conflict between the regulations and the Act, the Act controls.

Paragraph (b) identifies those sections of Part 353 that have been revised or added to reflect certain amendments made by the URAA. The ITA concludes that these limited regulations are necessary for orderly administration of the law pending completion of the rulemaking proceeding. In addition, in accordance with section 291 of the URAA, paragraph (b) provides that these revisions and additions apply only to antidumping investigations and reviews that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

#### Section 353.12(b)(2)

Section 353.12(b)(2), which deals with the contents of antidumping petitions, is revised to reflect the new requirement of amended section 732(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. To facilitate the Secretary's analysis of industry support, revised section 353.12(b)(2) requires a petitioner to provide information relevant to this issue.

#### Section 353.13(a)

Section 353.13(a), which deals with determinations regarding the sufficiency of antidumping petitions, is revised to reflect the new requirement of amended section 732(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. In addition, section 353.13(a) is revised to reflect the fact that, in exceptional circumstances, the Secretary may extend the deadline for determining the sufficiency of a petition where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry and where additional time is necessary to meet that requirement. The additional time will not be extended automatically to the forty days permissible, but only to the time necessary.

#### Section 353.15(a)(1)

Section 353.15(a)(1), which deals with the deadline for preliminary determinations in antidumping

investigations, is revised to reflect the deadlines in amended section 733(b) of the Act.

#### Sections 353.15(b) and 353.15(c)

Sections 353.15(b) and 353.15(c), which deal with extensions of the deadline for preliminary determinations in antidumping investigations, are revised to reflect the deadlines in amended section 733(c) of the Act.

#### Sections 353.22(c)(4) and 353.22(c)(7)

Sections 353.22(c)(4) and 353.22(c)(7), which deal with the deadlines for preliminary and final results, respectively, of reviews under section 751(a)(1) of the Act, are revised to reflect the deadlines in amended section 751(a)(3) of the Act.

#### Section 353.22(h)

Section 353.22(h) is added to establish procedures for conducting so-called "new shipper reviews," a new procedure contained in amended section 751(a)(2) of the Act. Section 353.22(h) generally is based on existing section 353.22(c), which sets forth procedures for so-called "normal administrative reviews." However, certain features of section 353.22(h) merit discussion.

First, the deadlines in section 353.22(h) differ from those in section 353.22(c) in order to reflect the expedited nature of new shipper reviews.

Second, because the purpose of a new shipper review is to provide a new shipper the opportunity to obtain its own dumping margin on an expedited basis, section 353.22(h)(1)(iii) precludes a new shipper review where the exporter or producer requesting such a review already has received its own margin during a prior stage of the antidumping proceeding in question.

Third, consistent with the Statement of Administrative Action accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. (1994)) ("the SAA"), section 353.22(h)(2) requires an exporter or producer requesting a new shipper review to provide certain information, along with appropriate certifications, supporting its claim as a new shipper.

Fourth, section 353.22(h)(3) sets forth rules regarding the timing of new shipper reviews and defines the term "semiannual anniversary month." As an example of how section 353.22(h)(3) would operate, assume that an antidumping order is issued on January 15. The semiannual anniversary months for this order would be January and July. If a request were received at any time during the period February through

July, a new shipper review would be commenced in August. If a request for a new shipper review were received at any time during the period August through January, a new shipper review would be commenced in February.

Fifth, section 353.22(h)(5) provides that the Secretary will determine the time period to be covered by a new shipper review. Because new shipper reviews are a new procedure, the ITA did not consider it appropriate to establish a standard review period without first obtaining public comment.

Finally, section 353.22(h)(9) addresses situations in which a new shipper may be subject to more than one review or more than one request for review, particularly in the first few years of the administration of the amended statute. For example, a new shipper might request a review notwithstanding that the new shipper is already subject to a review pursuant to section 353.22(a). In order to minimize the potential for confusion and to conserve administrative resources, section 353.22(h)(9) permits the Secretary to terminate, or decline to commence, a review under section 353.22, including a new shipper review.

#### Section 353.31(a)

Section 353.31(a), which deals with general time limits for the submission of information, is revised by the addition of a new paragraph (a)(1)(iii) that establishes deadlines for the submission of information in new shipper reviews. Because the deadline for completing new shipper reviews is shorter than for normal administrative reviews, the deadline for submitting information is shorter, as well.

#### Section 353.31(c)

Section 353.31(c), which deals with the time limits for certain allegations, is revised to include the deadline for submitting allegations of sales below cost of production in new shipper reviews. Because the deadline for completing new shipper reviews is shorter than for normal administrative reviews, the deadline for submitting allegations of sales below cost is shorter, as well. In addition, existing section 353.31(c)(2), which deals with the time limits for allegations regarding lack of industry support for a petition, has been deleted as obsolete. As noted above, under the amended Act, the Secretary must make a determination regarding industry support prior to the initiation of an investigation.

#### Section 353.38(i)

Section 353.38(i) is added to reflect the requirements of section 782(g) of the

Act regarding pre-final release of information and the opportunity to comment thereon.

#### Part 355

Part 355 contains the ITA's countervailing duty regulations. The authority citation for Part 355 is amended to include a reference to the URAA.

#### Section 355.1

Section 355.1 (Scope) is revised to consist of two paragraphs. Paragraph (a) continues to provide that 19 CFR Part 355 sets forth rules and procedures applicable to countervailing duty proceedings under Title VII of the Tariff Act ("the Act"). While the ITA will rely on these rules and procedures in conducting countervailing duty investigations and reviews, paragraph (a) also clarifies that in the event of a conflict between the regulations and the Act, the Act controls.

Paragraph (b) identifies those sections of Part 355 that have been revised or added to reflect certain amendments made by the URAA. The ITA concludes that these limited regulations are necessary for orderly administration of the law pending completion of the rulemaking proceeding. In addition, in accordance with section 291 of the URAA, paragraph (b) provides that these revisions and additions apply only to countervailing duty investigations and reviews that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

#### Section 355.12(b)(2)

Section 355.12(b)(2), which deals with the contents of countervailing duty petitions, is revised to reflect the new requirement of amended section 702(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. To facilitate the Secretary's analysis of industry support, revised section 355.12(b)(2) requires a petitioner to provide information relevant to this issue.

#### Section 355.13(a)

Section 355.13(a), which deals with determinations regarding the sufficiency of countervailing duty petitions, is revised to reflect the new requirement of amended section 702(c) of the Act that, prior to initiating an investigation pursuant to a petition, the Secretary must determine that the petition has the requisite support of the domestic industry. In addition, section 355.13(a) is revised to reflect the fact that, in

exceptional circumstances, the Secretary may extend the deadline for determining the sufficiency of a petition where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry and where additional time is necessary to meet that requirement. The additional time will not be extended automatically to the forty days permissible, but only to the time necessary.

#### Section 355.15(a)(1)

Section 355.15(a)(1), which deals with the deadline for preliminary determinations in countervailing duty investigations, is revised to reflect the deadlines in amended section 703(b) of the Act.

#### Sections 355.15(a)(2)(ii) and 355.15(a)(4)

Sections 355.15(a)(2)(ii) and 355.15(a)(4), which deal with the contents of preliminary countervailing duty determinations, are revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single countrywide subsidy rate in countervailing duty proceedings.

#### Sections 355.15(b) and 355.15(c)

Sections 355.15(b) and 355.15(c), which deal with extensions of the deadline for preliminary determinations in antidumping investigations, are revised to reflect the deadlines in amended section 703(c) of the Act.

#### Sections 355.20(a)(2)(ii) and 355.20(a)(4)

Sections 355.20(a)(2)(ii) and 355.20(a)(4), which deal with the contents of final countervailing duty determinations, are revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

#### Section 355.20(d)

Section 355.20(d), which deals with the calculation of individual countervailing duty rates, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The text of section 355.20(d) is deleted. However, because the Department anticipates that these interim rules will be replaced by final rules as soon as possible, we have designated section 355.20(d) as "[Reserved]" rather than renumber all of section 355.20.

#### Section 355.20(e)

Section 355.20(e), which deals with the effect of a decision not to exclude

a firm from a countervailing duty order, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

#### Section 355.22(a)

Section 355.22(a), which deals with procedures for requesting administrative reviews of countervailing duty orders and suspended investigations, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The procedures of revised section 355.22(a) are based on the company-specific approach of section 353.22(a) of the antidumping regulations.

#### Section 355.22(c)

Section 355.22(c), which deals with procedures for administrative reviews of countervailing duty orders and suspended investigations, under section 751(a)(1) of the Act, is revised to (1) reflect the deadlines in amended section 751(a)(3) of the Act; and (2) reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

#### Section 355.22(d)

Section 355.22(d), which deals with the calculation of individual countervailing duty rates in reviews, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings. The text of section 355.22(d) is deleted, and, in order to avoid renumbering all of section 355.22, section 355.22(d) is designated "[Reserved]".

#### Section 355.22(f)

Section 355.22(f), which deals with reviews of an individual producer or exporter, is revised in light of the changes, described above, to section 355.22(a). The text of section 355.22(f) is deleted, and, in order to avoid renumbering all of section 355.22, section 355.22(f) is designated "[Reserved]".

#### Section 355.22(i)

Section 355.22(i), which deals with reviews at the direction of the President under section 762 of the Act, is revised to reflect the fact that under the amended Act there no longer is a preference for calculating a single country-wide subsidy rate in countervailing duty proceedings.

## Section 355.22(j)

Section 355.22(j) is added to establish procedures for conducting so-called "new shipper reviews," a new procedure contained in amended section 751(a)(2) of the Act. Because section 355.22(j) is virtually identical to section 353.22(h), for an explanation of section 355.22(j) please refer to the discussion of section 353.22(h), above.

## Section 355.31(a)

Section 355.31(a), which deals with general time limits for the submission of information, is revised by the addition of a new paragraph (a)(1)(iii) that establishes deadlines for the submission of information in new shipper reviews. As in the case of antidumping new shipper reviews, the deadlines are shorter than those for normal administrative reviews.

## Section 355.31(c)

Section 355.31(c), which deals with the time limits for certain allegations, is revised to include the deadline for submitting allegations of subsidies in new shipper reviews. This deadline is shorter than the deadline for making similar allegations in normal administrative reviews. In addition, existing section 355.31(c)(2), which deals with the time limits for allegations regarding lack of industry support for a petition, has been deleted as obsolete. As noted above, under the amended Act, the Secretary must make a determination regarding industry support prior to the initiation of an investigation.

## Section 355.38(i)

Section 355.38(i) is added to reflect the requirements of section 782(g) of the Act regarding pre-final release of information and the opportunity to comment thereon.

## Section 355.40

A new section 355.40 is added to establish procedures for reviews of countervailing duty orders in connection with investigations under section 753 of the Act. In general, section 753 deals with outstanding countervailing duty orders on merchandise from a member of the World Trade Organization that were issued without a finding of material injury. Under section 753, upon receipt of a proper request, the U.S. International Trade Commission ("ITC") will conduct an investigation to determine if a U.S. industry is likely to be materially injured if a countervailing duty order is revoked.

Under section 753(b)(2), the ITA must provide the ITC with information

regarding the net countervailable subsidy that is likely to prevail if the order in question is revoked, as well as information regarding the nature of the countervailable subsidy. Section 355.40 sets forth procedures the ITA will follow in performing this task. In addition, section 355.40(a) reflects the Administration's commitment to notify domestic interested parties as soon as possible after their opportunity for requesting a section 753 investigation arises. See the SAA, pp. 942-943.

**Classification***Administrative Procedure Act (APA)*

ITA rules to implement new legislation ordinarily are promulgated in accordance with the requirements of the APA, 5 U.S.C. 553 *et seq.* The ITA is publishing this interim final rule without prior notice, an opportunity for public comment, and a 30-day delay in effective date pursuant to authority to waive such requirements for good cause contained in 5 U.S.C. 553(b)(B) and 553(d)(3). The URAA became effective less than 30-days after its enactment, rendering portions of existing antidumping and countervailing duty regulations obsolete. It also makes significant revisions and additions to existing procedures. In view of the timing and number and degree of URAA procedural changes, some new implementing regulations must be in place immediately to allow ITA to administer antidumping and countervailing duty proceedings effectively and efficiently. As such, ITA has determined that the provision of prior notice and an opportunity for public comment for these rules, which have the limited purpose of amending existing regulations where they are clearly at odds with the URAA and where regulations are essential to administration of the new law, would be impracticable and contrary to the public interest. Similarly, the need to implement these measures in a timely manner to address the new procedures in the URAA, described above, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date.

The ITA recognizes that interim final rules, because they are issued without public participation, should be narrowly drawn to respond to no more than the situation that justified waiving the APA. The agency is undertaking a full rulemaking proceeding to conform existing antidumping duty, countervailing duty, and NAFTA Article 1904 regulations to the URAA, as well as other substantive and procedural changes that might be warranted. To

that end, on January 3, 1995 (60 FR 80), the ITA published an advance notice of proposed rulemaking seeking public comment on subjects that should be considered in revising the antidumping and countervailing duty regulations.

*E.O. 12866*

This interim final rule has been determined to be significant under E.O. 12866.

*Paperwork Reduction Act*

This interim final rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act.

*E.O. 12612*

This interim final rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

**List of Subjects in 19 CFR Parts 353 and 355**

Business and industry, Foreign trade, Imports, Trade practices.

Dated: May 3, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

For the reasons stated, 19 CFR parts 353 and 355 are amended as follows:

**PART 353—ANTIDUMPING DUTIES**

1. The authority citation for part 353 is revised to read as follows:

**Authority:** 5 U.S.C. 301 and 19 U.S.C. 1671 *et seq.*

2. Section 353.1 is revised to read as follows:

**§ 353.1 Scope.**

(a) This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1673 *et seq.*) ("the Act"), as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96-39, 93 Stat. 150, section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98-573, 98 Stat. 294, Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1184, and Title II of the Uruguay Round Agreements Act, Pub. L. 103-465; 108 Stat. 4809 (Dec. 8, 1994), relating to the imposition of antidumping duties. In the event of a conflict between the provisions of this part and the provisions of the Act, the Act shall be controlling.

(b) The following sections reflect amendments to the Act made by the Uruguay Round Agreements Act: §§ 353.1, 353.12(b)(2), 353.13(a),

353.15(a)(1), 353.15(b), 353.15(c), 353.22(c)(4), 353.22(c)(7), 353.22(h), 353.31(a)(1), 353.31(c), and 353.38(i). These sections shall be applicable only to proceedings that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

3. Section 353.12(b)(2) is revised to read as follows:

**§ 353.12 Petition requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry, and information relating to the degree of industry support for the petition;

\* \* \* \* \*

4. Section 353.13(a) is revised to read as follows:

**§ 353.13 Determination of sufficiency of petition.**

(a) *Determination of sufficiency.*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, not later than 20 days after a petition is filed under § 353.12, the Secretary will determine whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, contains information reasonably available to the petitioner supporting the allegations, is filed by an interested party as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, and is filed by or on behalf of the domestic industry.

(2) *Extension where polling required.* Where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry under section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, apply paragraph (a)(1) of this section by substituting “a maximum of 40 days” for “20 days”.

\* \* \* \* \*

5. Section 353.15 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

**§ 353.15 Preliminary determination.**

(a) *In general.* (1) Not later than 140 days after the date on which the Secretary initiates an investigation under § 353.11 or § 353.13, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that the merchandise is being sold at less than fair value. The Secretary will not make the determination unless the Commission

has made an affirmative preliminary determination.

\* \* \* \* \*

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 190 days after the date on which the Secretary initiated the investigation. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of:

(i) The large number of complex nature of the transactions or adjustments under subpart D of this part;

(ii) Novel issues raised; or

(iii) The large number of producers and resellers; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary’s preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 190 days after the date on which the Secretary initiated the investigation, unless the Secretary finds compelling reasons to deny the request.

\* \* \* \* \*

6. Section 353.22 is amended by revising paragraphs (c)(4) and (c)(7), and by adding paragraph (h) to read as follows:

**§ 353.22 Administrative review of orders and suspension agreements.**

\* \* \* \* \*

(c) \* \* \*

(4) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 245 days after the last day of the anniversary month, issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary’s preliminary conclusions with respect to the status of, and compliance with, the agreement;

\* \* \* \* \*

(7) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 120 days after the date on which the preliminary results are published, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The weighted-average dumping margin, if any, during the period of review for each person reviewed; and

(iii) For an agreement, the Secretary’s conclusions with respect to the status of, and compliance with, the agreement;

\* \* \* \* \*

(h) *Determination of antidumping duties for new shippers.*—(1) *In general.* If the Secretary receives a request, accompanied by the information described in paragraph (h)(2) of this section, from an exporter or producer of the merchandise establishing that:

(i) Such exporter or producer did not export the merchandise that was the subject of an antidumping duty order to the United States (or, in the case of an order described in section 736(d) of the Act, did not export the merchandise for sale in the region concerned) during the period of investigation;

(ii) Such exporter or producer is not affiliated with (within the meaning of section 771(33) of the Act) any exporter or producer who exported the merchandise to the United States (or in the case of an order described in section 736(d) of the Act, who exported the merchandise for sale in the region concerned) during that period; and

(iii) The Secretary has not previously established a weighted-average dumping margin for such exporter or producer, the Secretary will conduct a review to establish a weighted-average dumping margin for such exporter or producer.

(2) *Certification of new shipper status.* A request described in paragraph (h)(1) of this section shall include, with appropriate certifications:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot certify as to the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) A list of the firms with which the exporter or producer making the request is affiliated; and

(iii) A statement from the exporter or producer making the request and from each firm with which the exporter or producer is affiliated that it did not, under its current or a former name, export the merchandise during the period of investigation.

(3) *Time for new shipper review.*

(i) *In general.* The Secretary will commence a review under paragraph (h)(1) of this section in the calendar month beginning after the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the semiannual anniversary month.

(ii) *Semiannual anniversary month.*

The semiannual anniversary month is:

(A) The calendar month in which the anniversary of the date of publication of the order occurs; or

(B) The calendar month which is 6 months after the calendar month in which the anniversary of the date of publication of the order occurs.

(4) *Posting bond or security.* The Secretary will, at the time a review under paragraph (h)(1) of this section is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise.

(5) *Period under review.* A review under paragraph (h)(1) of this section will cover, as appropriate, entries, exports, or sales during a period to be determined by the Secretary.

(6) *Procedures.* After receipt of a request satisfying the requirements of paragraphs (h)(1), (h)(2) and (h)(3) of this section, the Secretary will:

(i) Not later than 20 days after the semiannual anniversary month, issue a notice of "Initiation of New Shipper Antidumping Duty Review;"

(ii) Normally not later than 30 days after the date of issuance of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a verification under § 353.36;

(iv) Issue preliminary results of review, based on the available information, that include:

(A) The factual and legal conclusions on which the preliminary results are based; and

(B) The weighted-average dumping margin, if any, for each person reviewed;

(v) Publish in the **Federal Register** notice of "Preliminary Results of New Shipper Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and an invitation for argument consistent with § 353.38, and notify all parties to the proceeding;

(vi) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure

a further explanation of the calculation methodology used in reaching the preliminary results;

(vii) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based;

(B) The weighted-average dumping margins, if any, for each person reviewed;

(viii) Publish in the **Federal Register** notice of "Final Results of New Shipper Antidumping Duty Administrative Review," including the weighted-average dumping margins, if any, and notify all parties to the proceeding;

(ix) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(x) Promptly after publication of the notice of final results, instruct the Customs Service to assess antidumping duties on the merchandise described in paragraph (h)(4) of this section, and to collect a cash deposit of estimated antidumping duties on future entries.

(7) *Time limits.*

(i) *In general.* The Secretary will issue preliminary results in a review conducted under paragraph (h)(1) of this section within 180 days after the date on which the review is initiated, and final results within 90 days after the date the preliminary results are issued.

(ii) *Exception.* If the Secretary concludes that the case is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(8) *Results of reviews.* The results of a review under paragraph (h)(1) of this section shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(9) *Multiple reviews.* Notwithstanding any other provision of this section, if a review (or a request for a review) under paragraph (a), (f), or (g) of this section covers merchandise of an exporter or producer subject to a review (or to a request for a review) under paragraph (h)(1) of this section, the Secretary may:

(i) Terminate, in whole or in part, a review in progress under this section; or

(ii) Decline to commence, in whole or in part, a review under this section.

7. Section 353.31 is amended by revising paragraph (a)(1) and (c) to read as follows:

**§ 353.31 Submission of factual information.**

(a) *Time limits in general.* (1) Except as provided in § 353.32(b) and

paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

(i) For the Secretary's final determination, seven days before the scheduled date on which the verification is to commence;

(ii) For the Secretary's final results of an administrative review under § 353.22 (c) or (f), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review;

(iii) For the Secretary's final results of an administrative review under § 353.22(h), the earlier of the date of publication of notice of preliminary results of review or 120 days after the date of publication of notice of initiation of the review; or

(iv) For the Secretary's final results of an expedited review under § 353.22(g), a date specified by the Secretary.

\* \* \* \* \*

(c) *Time limits for allegations of sales below cost of production.* (1) The

Secretary will not consider any allegation of sales below the cost of production that is submitted by the petitioner or other interested party, as defined in paragraph (k)(3), (k)(4), (k)(5), or (k)(6) of § 353.2, later than:

(i) In an investigation 45 days before the scheduled date for the Secretary's preliminary determination, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

(ii) In an administrative review under § 353.22 (c) or (f), 120 days after the date of publication of the notice of initiation of the review, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit;

(iii) In an administrative review under § 353.22(h), 60 days after the date of publication of the notice of initiation of the review, unless a relevant response is, in the Secretary's view, untimely or incomplete, in which case the Secretary will determine the time limit; or

(iv) In an expedited review under § 353.22(g), 10 days after the date of publication of the notice of initiation of the review.

(2) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) of this section an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not

longer than 10 days in an investigation or 30 days in an administrative review.

\* \* \* \* \*

8. Section 353.38 is amended by adding paragraph (i), to read as follows:

**§ 353.38 Written argument and hearing.**

\* \* \* \* \*

(i) *Public comment on information.* In any investigation or review under this part, the Secretary will specify a date on which the Secretary will cease collecting information and on which the Secretary will release to parties that have participated in the investigation or review all information on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 353.34. Parties shall have an opportunity to file written comments on any information released to them, and the date on which such comments must be filed will be specified by the Secretary. The Secretary will disregard comments containing new factual information.

**PART 355—COUNTERVAILING DUTIES**

9. The authority citation for part 355 is revised to read as follows:

**Authority:** 5 U.S.C. 301 and 19 U.S.C. 1671 *et seq.*

10. Section 355.1 is revised to read as follows:

**§ 355.1 Scope.**

(a) This part sets forth procedures and rules applicable to proceedings under Title VII of the Tariff Act of 1930, as amended (19 U.S.C. 1671 *et seq.*) (“the Act”), relating to the imposition of countervailing duties, as amended by Title I of the Trade Agreements Act of 1979, Pub. L. 96–39, 93 Stat. 150, section 221 and Title VI of the Trade and Tariff Act of 1984, Pub. L. 98–573, 98 Stat. 294, Title I, subtitle C, part II of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 102 Stat. 1184, and Title II of the Uruguay Round Agreements Act, Pub. L. 103–465; 108 Stat. 4809 (Dec. 8, 1994) and under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) (“Trade Agreements Act”), relating to subsidies on quota cheese. In the event of a conflict between the provisions of this part and the provisions of the Act, the Act shall be controlling.

(b) The following sections reflect amendments to the Act made by the Uruguay Round Agreements Act: §§ 355.1, 355.12(b)(2), 355.13(a), 355.15(a)(1), 355.15(a)(2)(ii),

355.15(a)(4), 355.15(b), 355.15(c), 355.20(a)(2)(ii), 355.20(a)(4), 355.20(d), 355.20(e), 355.22(a), 355.22(c), 355.22(d), 355.22(f), 355.22(i)(5)(ii), 355.22(j), 355.31(a)(1), 355.31(c), 355.38(i), 355.40. These sections shall be applicable only to proceedings that have been self-initiated by the Secretary after, or initiated pursuant to petitions or requests filed after, January 1, 1995.

11. Sections 355.12(b)(2) is revised to read as follows:

**§ 355.12 Petition requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) The identity of the industry on behalf of which the petitioner is filing, including the names and addresses of other persons in the industry, and information relating to the degree of industry support for the petition.

\* \* \* \* \*

12. Section 355.13(a) is revised to read as follows:

**§ 355.13 Determination of sufficiency of petition.**

(a) *Determination of sufficiency.*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, not later than 20 days after a petition is filed under § 355.12, the Secretary will determine whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, contains information reasonably available to the petitioner supporting the allegations, is filed by an interested party as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, and is filed by or on behalf of the domestic industry.

(2) *Extension where polling required.* Where the Secretary is required to poll or otherwise determine support for the petition by the domestic industry under section 702(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, apply paragraph (a)(1) of this section by substituting “a maximum of 40 days” for “20 days”.

\* \* \* \* \*

13. Section 355.15 is amended by revising paragraphs (a)(1), (a)(2)(ii), (a)(4), (b) and (c) to read as follows:

**§ 355.15 Preliminary determination.**

(a) *In general.* (1) Not later than 65 days after the date on which the Secretary initiates an investigation under § 355.11 or § 355.13, the Secretary will make a determination based on the available information at the time whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise. If the merchandise is from a country entitled to an injury test for

the merchandise, the Secretary will not make the determination unless the Commission has made an affirmative preliminary determination.

(2) \* \* \*

(ii) The individual countervailing duty rate for each person investigated and an all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

\* \* \* \* \*

(4) The Secretary will publish in the **Federal Register** notice of “Affirmative (Negative) Preliminary Countervailing Duty Determination,” including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any, and an invitation for argument consistent with § 355.38.

\* \* \* \* \*

(b) *Postponement in extraordinarily complicated investigation.* If the Secretary decides the investigation is extraordinarily complicated, the Secretary may postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation. The Secretary will base the decision on express findings that:

(1) The respondent parties to the proceeding are cooperating in the investigation;

(2) The investigation is extraordinarily complicated by reason of:

- (i) The large number or complex nature of the alleged subsidies;
- (ii) Novel issues raised;
- (iii) The need to determine the extent to which particular subsidies are used by individual producers or exporters; or
- (iv) Large number of producers and exporters; and

(3) Additional time is needed to make the preliminary determination.

(c) *Postponement at the request of the petitioner.* If the petitioner, not later than 25 days before the scheduled date for the Secretary’s preliminary determination, requests a postponement and states the reasons for the request, the Secretary will postpone the preliminary determination to not later than 130 days after the date on which the Secretary initiated the investigation, unless the Secretary finds compelling reasons to deny the request.

\* \* \* \* \*

14. Section 355.20 is amended by revising paragraphs (a)(2)(ii), (a)(4), and (e), and by removing and reserving paragraph (d), to read as follows:

**§ 355.20 Final determination.**

(a) \* \* \*

(2) \* \* \*

(ii) The estimated individual countervailing duty rate for each person investigated and an estimated all-others rate, if any, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate; and

\* \* \* \* \*

(4) The Secretary will publish in the **Federal Register** notice of "Affirmative (Negative) Final Countervailing Duty Determination," including the estimated individual countervailing duty rates, all-others rate, or country-wide subsidy rate, if any.

\* \* \* \* \*

(e) *Effect of decision not to exclude from order.* If the Secretary finds that a person requesting exclusion under § 355.14 received, during the period for which the Department measured benefits in the investigation, any net subsidy from any program that the Secretary determines countervailable in the affirmative final determination, the Secretary will state in the affirmative final determination an individual rate for that person, and that rate will be the basis for the cash deposit or bond, as appropriate, of estimated countervailing duties for that person. The individual rate will be either the individual rate calculated for that person, the all-others rate, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate.

\* \* \* \* \*

15. Section 355.22 is amended by revising paragraphs (a), (c), (i)(5)(ii), (i)(6), (i)(9)(ii), and (i)(10), by removing and reserving paragraphs (d) and (f), and by adding paragraph (j), to read as follows:

**§ 355.22 Administrative review of orders and suspension agreements.**

(a) *Request for administrative review; withdrawal of request for review.* (1) Each year during the anniversary month of the publication of an order (the calendar month in which the anniversary of the date of publication of the order occurs), an interested party, as defined in paragraph (i)(2), (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, may request in writing that the Secretary conduct an administrative review of specified individual producers or exporters covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or exporters.

(2) During the same month, a producer or exporter covered by an order may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may

request in writing that the Secretary conduct an administrative review of only a producer or exporter of the merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation (the calendar month in which the anniversary of the date of publication of the suspension of investigation occurs), an interested party, as defined in § 355.2(i), may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which suspension of investigation was based.

(5) The Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. When a request for review is withdrawn, the Secretary will publish in the **Federal Register** notice of "Termination of Countervailing Duty Administrative Review" or, if appropriate, "Partial Termination of Countervailing Duty Administrative Review."

\* \* \* \* \*

(c) *Procedures.* After receipt of a timely request under paragraph (a) of this section, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Not later than 15 days after the anniversary month, publish in the **Federal Register** notice of "Initiation of Countervailing Duty Administrative Review;"

(2) Normally not later than 30 days after the date of publication of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 355.36;

(4) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 245 days after the last day of the anniversary month, issue preliminary results of review, based on the available information, that include:

(i) The factual and legal conclusions on which the preliminary results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs made by the

government of the affected country that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's preliminary conclusions with respect to the status of, and compliance with, the agreement;

(5) Publish in the **Federal Register** notice of "Preliminary Results of Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

(6) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(7) Unless the Secretary extends the time limit pursuant to section 751(a)(3)(A) of the Act, within 120 days after the date on which the preliminary results are published, issue final results of review that include:

(i) The factual and legal conclusions on which the final results are based;

(ii) The countervailing duty rate for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single country-wide subsidy rate during the period of review;

(iii) A description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the cash deposit of estimated countervailing duties; and

(iv) For an agreement, the Secretary's conclusions with respect to the status of, and compliance with, the agreement;

(8) Publish in the **Federal Register** notice of "Final Results of Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes, and notify all parties to the proceeding;

(9) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the final results; and

(10) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (b) of this section and to collect a cash deposit of estimated countervailing duties on future entries. Both the assessment and the cash deposit will be

at the rates found in the final results of review.

\* \* \* \* \*

(i) \* \* \*

(5) \* \* \*

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

\* \* \* \* \*

(6) Publish in the **Federal Register** notice of "Preliminary Results of Countervailing Duty Administrative Review at the Direction of the President," including the countervailing duty rates or country-wide subsidy rate, if any, the estimated net subsidy for cash deposit purposes, and an invitation for argument consistent with § 355.38;

\* \* \* \* \*

(9) \* \* \*

(ii) The countervailing duty rates, or, if section 777A(e)(2)(B) of the Act applies, the country-wide subsidy rate, if any, during the period of review; and

\* \* \* \* \*

(10) Publish in the **Federal Register** notice of "Final Results of Countervailing Duty Administrative Review at the Direction of the President," including the countervailing duty rates or country-wide subsidy rate, if any, and the estimated net subsidy for cash deposit purposes; and

\* \* \* \* \*

(j) *Determination of countervailing duties for new shippers.*—(1) *In general.* If the Secretary receives a request, accompanied by the information described in paragraph (j)(2) of this section, from an exporter or producer of the merchandise establishing that:

(i) Such exporter or producer did not export the merchandise that was the subject of a countervailing duty order to the United States (or, in the case of an order described in section 706(c) of the Act, did not export the merchandise for sale in the region concerned) during the period of investigation;

(ii) Such exporter or producer is not affiliated with (within the meaning of section 771(33) of the Act) any exporter or producer who exported the merchandise to the United States (or in the case of an order described in section 706(c) of the Act, who exported the merchandise for sale in the region concerned) during that period; and

(iii) The Secretary has not previously established a countervailing duty rate for such exporter or producer, the Secretary will conduct a review to establish a countervailing duty rate for such exporter or producer.

(2) *Certification of new shipper status.*—A request described in

paragraph (j)(1) of this section shall include, with appropriate certifications:

(i) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot certify as to the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(ii) A list of the firms with which the exporter or producer making the request is affiliated; and

(iii) A statement from the exporter or producer making the request and from each firm with which the exporter or producer is affiliated that it did not, under its current or a former name, export the merchandise during the period of investigation.

(3) *Time for new shipper review.*—(i) *In general.* The Secretary will commence a review under paragraph (j)(1) of this section in the calendar month beginning after the semiannual anniversary month if the request for the review is made during the 6-month period ending with the end of the semiannual anniversary month.

(ii) *Semiannual anniversary month.* The semiannual anniversary month is:

(A) the calendar month in which the anniversary of the date of publication of the order occurs; or

(B) the calendar month which is 6 months after the calendar month in which the anniversary of the date of publication of the order occurs.

(4) *Posting bond or security.* The Secretary will, at the time a review under paragraph (j)(1) of this section is initiated, direct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise.

(5) *Period under review.* A review under paragraph (h)(1) of this section will cover, as appropriate, entries, exports, or sales during a period to be determined by the Secretary.

(6) *Procedures.* After receipt of a request satisfying the requirements of paragraphs (j)(1), (j)(2), and (j)(3) of this section, the Secretary will:

(i) Not later than 20 days after the semiannual anniversary month, issue a notice of "Initiation of New Shipper Countervailing Duty Review;"

(ii) Normally not later than 30 days after the date of issuance of the notice of initiation, send to appropriate interested parties or a sample of interested parties questionnaires requesting factual information for the review;

(iii) Conduct, if appropriate, a certification under § 355.36;

(iv) Issue preliminary results of review, based on the available information, that include:

(A) The factual and legal conclusions on which the preliminary results are based; and

(B) The countervailing duty rate, if any, for each person reviewed, or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate;

(v) Publish in the **Federal Register** notice of "Preliminary Results of New Shipper Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and an invitation for argument consistent with § 355.38, and notify all parties to the proceeding;

(vi) Promptly after issuing the preliminary results, provide to parties to the proceeding which request disclosure a further explanation of the calculation methodology used in reaching the preliminary results;

(vii) Issue final results of review that include:

(A) The factual and legal conclusions on which the final results are based;

(B) The countervailing duty rate, if any, for each person reviewed or, if section 777A(e)(2)(B) of the Act applies, a single estimated country-wide subsidy rate;

(viii) Publish in the **Federal Register** notice of "Final Results of New Shipper Countervailing Duty Administrative Review," including the countervailing duty rates or country-wide subsidy rate, if any, and notify all parties to the proceeding;

(ix) Promptly after issuing the final results, provide to parties to the proceeding which request disclosure of a further explanation of the calculation methodology used in reaching the final results; and

(x) Promptly after publication of the notice of final results, instruct the Customs Service to assess countervailing duties on the merchandise described in paragraph (j)(4) of this section, and to collect a cash deposit of estimated countervailing duties on future entries.

(7) *Time limits.*—(i) *In general.* The Secretary will issue preliminary results in a review conducted under paragraph (j)(1) of this section within 180 days after the date on which the review is initiated, and final results within 90 days after the date the preliminary results are issued.

(ii) *Exception.* If the Secretary concludes that the case is extraordinarily complicated, the

Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(8) *Results of reviews.* The results of a review under paragraph (j)(1) of this section shall be the basis for the assessment of countervailing duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(9) *Multiple reviews.* Notwithstanding any other provision of this section, if a review (or a request for a review) under paragraph (a), (f), or (g) of this section covers merchandise of an exporter or producer subject to a review (or to a request for a review) under paragraph (j)(1) of this section, the Secretary may:

- (i) Terminate, in whole or in part, a review in progress under this section; or
- (ii) Decline to commence, in whole or in part, a review under this section.

16. Section 355.31 is amended by revising paragraphs (a)(1) and (c) to read as follows:

**§ 355.31 Submission of factual information.**

(a) *Time limits in general.* (1) Except as provided in paragraphs (a)(2) and (b) of this section, submissions of factual information for the Secretary's consideration shall be submitted not later than:

- (i) For the Secretary's final determination, the day before the scheduled date on which the verification is to commence;
- (ii) For the Secretary's final results of an administrative review other than a review under § 355.22(j), the earlier of the date of publication of notice of preliminary results of review or 180 days after the date of publication of notice of initiation of the review; or
- (iii) For the Secretary's final results of an administrative review under § 355.22(j), the earlier of the date of publication of notice of preliminary results of review or 120 days after the date of publication of notice of initiation of the review.

(c) *Time limits for allegations of subsidies.* (1) Except for an allegation of upstream subsidies submitted in an investigation (see §§ 355.15(d) and 355.20(b)), the Secretary will not consider any subsidy allegation submitted by the petitioner or other interested party, as defined in paragraph (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, later than:

- (i) In an investigation, 40 days before the scheduled date for the Secretary's preliminary determination;
- (ii) In an administrative review other than a review under § 355.22(j), 120

days after the date of publication of the notice of initiation of the review; or

(iii) In an administrative review under § 355.22(j), 60 days after the date of publication of the notice of initiation of the review.

(2) Any interested party may request in writing not later than the time limits specified in paragraph (c)(1) of this section an extension of those time limits. If the Assistant Secretary for Import Administration concludes that an extension would facilitate the proper administration of the law, the Assistant Secretary may grant an extension of not longer than 10 days in an investigation or 30 days in an administrative review.

\* \* \* \* \*

17. Section 355.38 is amended by adding paragraph (i), to read as follows:

**§ 355.38 Written argument and hearings.**

\* \* \* \* \*

(i) *Public comment on information.* In any investigation or review under this part, the Secretary will specify a date on which the Secretary will cease collecting information and on which the Secretary will release to parties that have participated in the investigation or review all information on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 355.34. Parties shall have an opportunity to file written comments on any information released to them, and the date on which such comments must be filed will be specified by the Secretary. The Secretary will disregard comments containing new factual information.

18. A new section 355.40 is added to subpart C, to read as follows:

**§ 355.40 Likelihood of continued subsidization; revocation under section 753 of the Act.**

(a) *Notification of domestic interested parties.* (1) As soon as possible after the opportunity arises for requesting an investigation under section 753 of the Act, the Secretary will:

- (i) Notify domestic interested parties on the Department's service list by first class mail or personal service of the opportunity to request an injury investigation by the Commission; and
  - (ii) Publish in the **Federal Register** a notice informing domestic interested parties of the opportunity to request an injury investigation by the Commission.
- (2) The notification provided for in paragraph (a)(1) of this section will inform domestic interested parties of the opportunity to request that reviews of outstanding antidumping orders or

findings and countervailing duty orders under section 751(c) of the Act involving the same or comparable merchandise be expedited.

(3) For purposes of paragraph (a) of this section, "domestic interested parties" means interested parties described in paragraphs (i)(3), (i)(4), (i)(5), or (i)(6) of § 355.2, or in section 771(9)(G) of the Act.

(b) *Suspension of liquidation.* (1) The Secretary will instruct the Customs Service to suspend liquidation with respect to entries of subject merchandise made on or after:

(i) In the case of an order described in section 753(a)(1)(B)(i) of the Act, the date on which the country described in section 753(a)(1)(A) of the Act becomes a Subsidies Agreement country within the meaning of section 701(b) of the Act; or

(ii) In the case of an order described in section 753(a)(1)(B)(ii) of the Act, the date on which such order is issued.

(2) Liquidation shall be suspended under paragraph (b)(1) of this section at the cash deposit rate in effect on the date described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, whichever is applicable.

(c) *Net countervailable subsidy; nature of subsidy.* The Secretary will provide to the Commission the net countervailable subsidy that is likely to prevail if the order is revoked. The Secretary will normally choose a net countervailable subsidy that was determined under section 705 or subsection (a) or (b)(1) of section 751 of the Act. At the same time, the Secretary also will inform the Commission of the nature of the countervailable subsidy and whether the countervailable subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement, as defined in section 771(8)(A) of the Act.

(d) *Initiation and conduct of review.*— (1) *In general.* Where the Secretary deems it necessary in order to provide to the Commission the information described in paragraph (c) of this section, the Secretary will initiate a review of the countervailing duty order in question.

(2) *Notice of initiation of review.* Where the Secretary initiates a review under paragraph (d)(1) of this section, the Secretary will publish in the **Federal Register** a notice of "Initiation of Countervailing Duty Section 753 Review."

(3) *Conduct of review.* Following the initiation of a review under paragraph (d)(1) of this section, the Secretary will:

- (i) If the Secretary considers it appropriate, send to interested parties and other persons, or a sample of

interested parties and other persons, questionnaires requesting factual information for the review;

(ii) If the Secretary considers it appropriate, conduct a verification under § 355.36;

(iii) Issue, based on available information, preliminary results of review that include the factual and legal conclusions on which the preliminary results are based;

(iv) Publish in the **Federal Register** notice of "Preliminary Results of Countervailing Duty Section 753 Review," including an invitation for argument consistent with § 355.38;

(v) Promptly notify all parties to the proceeding of the preliminary results, and provide to such parties which request disclosure a future explanation of the calculation methodology used in reaching the preliminary results;

(vi) Issue final results of review that include the factual and legal conclusions on which the final results are based;

(vii) Publish in the **Federal Register** notice of "Final Results of Countervailing Duty Section 753 Review;" and

(viii) Promptly notify all parties to the proceeding and the Commission of the final results, and provide such parties which request disclosure a further explanation of the calculation methodology used in reaching the final results.

(e) *Effect of affirmative Commission determination.* Upon being notified by the Commission that it has made an affirmative determination under section 753(a)(1) of the Act:

(1) The Secretary will order the termination of the suspension of liquidation required pursuant to paragraph (b) of this section; and

(2) The countervailing duty order shall remain in effect until revoked, in whole or in part.

(f) *Effect of negative Commission determination.* Upon being notified by the Commission that it has made a negative determination under section 753(a)(1) of the Act, the Secretary will revoke the countervailing duty order and refund, with interest, any estimated countervailing duty collected during the period liquidation was suspended pursuant to paragraph (b) of this section.

[FR Doc. 95-11582 Filed 5-10-95; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[T.D. 8581]

RIN 1545-AQ87

**Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; Correction**

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations (T.D. 8581), which were published in the **Federal Register** for Friday, December 23, 1994, (59 FR 66165) relating to certain cash or deferred arrangements and employee and matching contributions under employee plans. **EFFECTIVE DATE:** December 23, 1994. **FOR FURTHER INFORMATION CONTACT:** Catherine Livingston Fernandez (202) 622-4606 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of this correction are under sections 401(a)(30), 401(k), 401(m), 402(a)(8), 402(g), 411(d)(6), 415(c), 416, and 4979 of the Internal Revenue Code.

**Need for Correction**

As published, T.D. 8581 contains an error which may prove to be misleading and is in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.401(k)-1 (h)(4)(ii) is revised to read as follows:

**§ 1.401(k)-1 Certain cash or deferred arrangements.**

\* \* \* \* \*

(h) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(A) The plan does not fail to satisfy the requirements of section 401(a) merely because of the nonqualified cash or deferred arrangement.

(B) Employer contributions under the nonqualified cash or deferred arrangement are considered to satisfy the requirements of section 401(a)(4).

(C) Except as provided in paragraphs (a)(7) and (f) of this section, elective contributions under the arrangement are treated as employer contributions under the Internal Revenue Code of 1986, as if the arrangement were a qualified cash or deferred arrangement. See § 1.401(k)-1(a)(4)(ii). See § 1.402(a)-1(d) for rules governing when elective contributions under the arrangement are includible in an employee's gross income.

\* \* \* \* \*

**Cynthia E. Grigsby,**  
*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 95-11583 Filed 5-10-95; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 935**

[OH-232; Combined Program Amendments Numbers 25R and 56R]

**Ohio Regulatory Program Amendment**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment is intended to revise Ohio's "Guidelines for Evaluating Revegetation Success" to be consistent with the corresponding Federal regulations. These guidelines describe the sampling methods which Ohio proposes to use to evaluate revegetation success prior to bond release on areas with different postmining land uses.

**EFFECTIVE DATE:** May 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert H. Mooney, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232; Telephone: (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Ohio Program.
- II. Discussion of the Proposed Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.