

## Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**2005-22-09** **Aerospatiale:** Amendment 39-14353. Docket No. FAA-2005-22795; Directorate Identifier 2005-NM-193-AD.

#### Effective Date

(a) This AD becomes effective November 14, 2005.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to all Aerospatiale Model ATR42-200, -300, -320, and -500 airplanes, and Model ATR72-101, -201, -102, -202, -211, -212, and -212A airplanes, certificated in any category.

## Unsafe Condition

(d) This AD results from a report that a fuel quality indicator (FQI) having an incorrect part number was installed on a Model ATR72 airplane. We are issuing this AD to ensure that a correct FQI is installed. An incorrect FQI could result in fuel starvation to the engine and consequent engine shutdown during flight.

### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

### Inspection and Corrective Action

(f) Within 7 days after the effective date of this AD, do the inspection specified in paragraph (f)(1) or (f)(2) of this AD.

(1) Perform an inspection to determine the part number (P/N) of the fuel quantity indicator (FQI) 3QT, in accordance with ATR All Operators Message (AOM) 42-72/2005/08, issue 5, dated September 7, 2005. Instead of the inspection, a review of the airplane maintenance records is acceptable if the P/N of the FQI can be positively determined from that review.

(2) Inspect the faceplate of the FQI to verify that it has the correct markings as specified in paragraphs (f)(2)(i) and (f)(2)(ii), as applicable.

(i) For Model ATR42-200, -300, -320, and -500 airplanes: The FQI has the marking of 4960 lbs on the faceplate as illustrated in ATR AOM 42-72/2005/08, issue 5, dated September 7, 2005.

(ii) For Model ATR72-101, -201, -102, -202, -211, -212, and -212A airplanes: The FQI has the marking of 5500 lbs on the faceplate as illustrated in the AOM 42-72/2005/08, issue 5, dated September 7, 2005.

(g) If it can be positively determined, during the inspection required by paragraph (f) of this AD, that the FQI has the correct part number or marking, no further action is required by this AD.

(h) If it is determined, during the inspection required by paragraph (f) of this AD, that the FQI does not have the correct part number or marking, before further flight, install the FQI having the correct part number as specified in ATR AOM 42-72/2005/08, issue 5, dated September 7, 2005.

### Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

### Related Information

(j) French emergency airworthiness directive UF-2005-160, dated September 8, 2005, also addresses the subject of this AD.

## Material Incorporated by Reference

(k) You must use ATR All Operators Message (AOM) 42-72/2005/08, issue 5, dated September 7, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Nassif Building, Washington, DC; on the Internet at <http://dms.dot.gov>; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on October 18, 2005.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-21338 Filed 10-27-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Part 351

[Docket No. 050803215-5260-02]

RIN 0625-AA69

### Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Commerce ("the Department") is amending its regulations related to sunset reviews to conform the existing regulation to the United States' obligations under Articles 6.1, 6.2, and 11.3 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement"). The regulations amend the "waiver" provisions which govern treatment of interested parties who do not provide a substantive response to the Department's notice of initiation of a sunset review and clarify the basis for parties' participation in a public hearing in an expedited sunset review.

**DATES:** The effective date of this final rule is October 31, 2005. The final rule will be applied in sunset reviews initiated on or after the effective date.

**FOR FURTHER INFORMATION CONTACT:**

Stacy J. Ettinger or Patrick V. Gallagher, Office of the Chief Counsel for Import Administration, room 3622, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230; telephone: (202) 482-4618 or (202) 482-5053, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On March 20, 1998, the Department published regulations addressing the procedures for participation in, and conduct of, sunset reviews. See 63 FR 13516. On December 17, 2004, the Dispute Settlement Body (“DSB”) of the World Trade Organization adopted the reports of the Appellate Body and the dispute settlement panel in *United States—Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina*, WT/DS268/AB/R (November 29, 2004) and WT/DS268/R (July 16, 2004), respectively. The AB and the dispute settlement panel found that the waiver provisions of section 751(c)(4)(B) of the Tariff Act of 1930 and section 351.218(d)(2)(iii) of Commerce’s sunset regulations are inconsistent with Articles 6.1, 6.2, and 11.3 of the Antidumping Agreement.

Section 123 of the URAA governs the process for changes to the Department’s regulations where a dispute settlement panel and/or the Appellate Body finds a regulatory provision to be inconsistent with any of the WTO agreements. Consistent with section 123(g)(1)(C), on August 15, 2005, the Department published proposed amendments to its regulations related to sunset reviews to conform the existing regulations to the United States’ obligations under Articles 6.1, 6.2, and 11.3 of the Antidumping Agreement. The Department received four sets of written public comments on the proposed amendments. The Department has carefully considered each of the comments it received, and has adopted a drafting suggestion from one commenter related to the issue of the basis for parties’ participating in a hearing in an expedited sunset review. This final rule is published pursuant to section 123(g)(1)(F) of the URAA. The final rule amends the “waiver” provisions which govern treatment of interested parties who do not provide a complete substantive response to the Department’s Notice of Initiation of a sunset review and clarifies the basis for parties’ participation in a public hearing in an expedited sunset review.

**Explanation of Amendments**

In finalizing the amendments to the Department’s regulations addressing the procedures for participation in, and conduct of, sunset reviews, the Department carefully considered each of the comments it received. The following is an explanation of the amendments, as well as a summary of the comments received and the Department’s responses to those comments.

*Section 351.218*

Section 751(c)(4)(B) of the Tariff Act provides that where an interested party “waives” its participation in a sunset review, the Department “shall conclude that revocation of the order \* \* \* would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.” Paragraph (d)(2) of 19 CFR 351.218 deals with the procedure for waiving participation in a sunset review before the Department. Specifically, paragraph (d)(2)(i) provides for filing a “statement of waiver” for parties electing not to participate in the Department’s sunset review (so-called “affirmative waiver”), and paragraph (d)(2)(iii) provides that failure to file a complete substantive response to a notice of initiation also will be treated as a waiver of participation (so-called “deemed waiver”). The panel and Appellate Body found that the operation of the statutory and regulatory waiver provisions was inconsistent with the obligation under Article 11.3 to arrive at a “reasoned conclusion” because the Department’s order-wide likelihood determination would be based, at least in part, on statutorily-mandated “assumptions” about a company’s likelihood of dumping. The AB and panel also found that the operation of paragraph (d)(2)(iii) was inconsistent with “due process rights” of Articles 6.1 and 6.2, because the Department could assume likelihood with respect to a particular company even though that party had filed a substantive response to the notice of initiation, albeit an “incomplete” response.

To implement the AB and panel findings with respect to the operation of the waiver provisions, the Department has modified its regulations to eliminate the possibility that the Department’s order-wide likelihood determinations would be based on assumptions about likelihood of continuation or recurrence of dumping or a countervailable subsidy due to interested parties’ waiver of participation in sunset reviews. Specifically, the Department has made the following three modifications to

paragraph (d)(2) of 19 CFR 351.218. First, with respect to so-called “affirmative waivers” set forth in paragraph (d)(2)(i)—which provides that a party may elect not to participate in the Department’s sunset review by filing a “statement of waiver” within 30 days of initiation of the sunset review—the Department has amended the contents of a “statement of waiver” which are set forth in paragraph (d)(2)(ii). Paragraph (d)(2)(ii) now requires that a party filing a Statement of Waiver include a statement that it is likely to dump or benefit from a countervailable subsidy (as the case may be) or, in the case of a foreign government in a CVD sunset review, provide a countervailable subsidy, if the order is revoked or the investigation is terminated. Second, we have eliminated paragraph (d)(2)(iii)—which provided that an interested party is “deemed” to have waived participation in the sunset review by failing to file a complete substantive response to a notice of initiation. Thus, the Department will no longer make company-specific likelihood findings for companies that fail to file a statement of waiver and fail to file a substantive response to the notice of initiation. Finally, we modified paragraphs (d)(2)(iv)(C) and (e)(1)(ii)(B)(3)—which address waiver of participation by a foreign government in a CVD sunset review—to eliminate cross-references to paragraph (d)(2)(iii) and to eliminate certain language that might suggest the possibility that the Department’s order-wide likelihood determination in a CVD sunset review would be based on assumptions about likelihood of continuation or recurrence of a countervailable subsidy. In sum, these three modifications to the waiver provisions of the Department’s sunset regulations ensure that there is no longer the possibility that the Department’s order-wide likelihood determinations might be based on assumptions about likelihood of continuation or recurrence of dumping or a countervailable subsidy. The Department will make its order-wide likelihood determinations on the basis of the facts and information available on the record of the sunset review.

Two commenters argue that amendment or withdrawal of the statutory provision (section 751(c)(4)(B) of the Act) found to be WTO-inconsistent was required in order to implement the AB/panel findings. We disagree. By modifying its regulatory waiver provisions, the Department has eliminated the possibility that its order-wide likelihood determinations would be based on assumptions about

likelihood of continuation or recurrence of dumping or a countervailable subsidy due to interested parties' waiver of participation in sunset reviews. Section 751(c)(4)(B) of the Act only mandates an affirmative company-specific likelihood finding *as a consequence of* a party electing to waive its participation in the sunset review. Thus, the modified regulatory waiver requirements result in elimination of any assumptions about likelihood because a party waiving participation would have already indicated to the Department that it was likely to dump or benefit from a countervailable subsidy if the order were revoked.

Two commenters also noted that the regulations would not longer specify how the Department will address the situation where a producer/exporter does not participate in a sunset review. The commenters are correct in part. While it is the statute that provides for determinations on the basis of facts available where, *inter alia*, a party does not provide requested information (section 776 of the Act), there are specific provisions in the Department's regulations concerning use of facts available in a sunset review (19 CFR 351.308(f)). As a general matter, the Department will make its order-wide likelihood determination on the basis of the facts and information available on the record of the sunset review which may include, where appropriate, use of facts available as provided for in the statute and regulations.

#### Section 351.309

The Appellate Body upheld the panel's finding that the operation of paragraph (d)(2)(iii) of 19 CFR 351.218 was inconsistent with Article 6.2 in that it allegedly denies an interested party that is deemed to have waived its right to participate in a sunset review by submitting an incomplete substantive response the right to participate in a hearing. Paragraph (d)(2)(iii) does not explicitly address the issue of hearings; nor do the regulations preclude hearings in expedited sunset reviews resulting from the application of the waiver provisions. Nevertheless, in the interest of alleviating any perceived confusion with respect to participation in a hearing in an expedited sunset review, the Department is modifying paragraph (c)(1)(iii) of 19 CFR 351.309 to clarify that the Secretary will specify a due date for case briefs in an expedited sunset review. Case briefs provide the basis for parties' affirmative presentations at a hearing. In addition, as discussed above, for other reasons we have eliminated paragraph (d)(2)(iii) in its entirety.

One commenter argued that providing for filing of case briefs in expedited reviews could eliminate the distinction between expedited and full sunset reviews. The commenter proposed, instead, that the regulations provide respondents with an opportunity to supplement their substantive responses to correct identified deficiencies. We have not adopted this suggestion. The central distinction between an expedited and full sunset review remains. In a full sunset review, the regulations provide that the Department will issue a preliminary determination and allow comments on that determination; there is no provision for issuance of a preliminary determination in an expedited sunset review. Clarifying the basis for parties' participation in a public hearing in an expedited sunset review does not change this distinction. The commenter also suggested that if the Department permits the filing of case briefs in an expedited review, it should make a corresponding amendment to paragraph (e)(1)(ii)(C)(2) of 19 CFR 351.218. We agree and have eliminated certain language in paragraph (e)(1)(ii)(C)(2) that could be construed as inconsistent with permitting parties to file case briefs in expedited sunset reviews.

#### Classification

##### *E.O. 12866*

This final rule has been determined to be not significant under E.O. 12866.

##### *Administrative Procedures Act*

The Department finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3) in order to complete requirements mandated by the World Trade Organization ("WTO") Appellate Body by December 17, 2005. On December 17, 2004, the WTO Appellate Body ("AB") issued its findings regarding the sunset review of the antidumping duty order on Oil Country Tubular Goods ("OCTG") from Argentina. The WTO-appointed arbitrator determined, with reference to the Appellate Body report, that the United States must bring its laws into compliance with the Antidumping Agreement and complete another sunset review of the antidumping duty order on OCTG from Argentina not later than December 17, 2005. The Department was informed of this deadline date on June 7, 2005. On August 15, 2005 (70 FR 47738), the Department published a proposed rule to solicit comments on proposed revisions to its regulations related to sunset reviews. In addition, the Department initiated consultations for 60 days with the relevant

congressional committees in accordance with section 123 of the Uruguay Round Agreements Act. After the publication of this final rule, the Department still must initiate the sunset review, provide interested parties with 30 days to submit their responses to the Department's sunset questionnaire, analyze the responses, and make a final likelihood determination in the sunset review before December 17, 2005. Thus, in order to meet the WTO-mandated implementation date and to ensure that interested parties have an opportunity to participate fully in the sunset review, the Department finds good cause to waive the 30-day delay in effectiveness of the final rule and makes these regulations effective on October 31, 2005, upon conclusion of the 60-day congressional consultation period required by the Uruguay Round Agreements Act.

##### *Paperwork Reduction Act*

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for a failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This final rule involves collection-of-information requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The requirements have been approved by OMB under control numbers 0625-0105 and 0625-0148.

##### *E.O. 12612*

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

##### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this action. As a result, a regulatory flexibility analysis was not prepared.

#### List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations,

Reporting and recordkeeping requirements.

Dated: October 20, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

■ For the reasons stated, 19 CFR part 351 is amended as follows:

**PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES**

**Subpart B—Antidumping and Countervailing Duty Procedures**

■ 1. Section 351.218 is amended by revising paragraphs (d)(2)(ii) introductory text, (d)(2)(iv)(C), (e)(1)(ii)(B) introductory text, (e)(1)(ii)(B)(3), and (e)(1)(ii)(C)(2), and removing and reserving paragraph (d)(2)(iii), as follows:

**§ 351.218 Sunset reviews under section 751(c) of the Act.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Contents of statement of waiver.*

Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department; a statement that the respondent interested party is likely to dump or benefit from a countervailable subsidy (as the case may be) if the order is revoked or the investigation is terminated; in the case of a foreign government in a CVD sunset review, a statement that the government is likely to provide a countervailable subsidy if the order is revoked or the investigation is terminated; and the following information:

\* \* \* \* \*

(iv) \* \* \*

(C) Base the final results of review on the facts available in accordance with 351.308(f).

\* \* \* \* \*

(e) *Conduct of sunset review—(1)*

\* \* \*

(ii) \* \* \*

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review.* If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) of this section, the Secretary will: \* \* \*

(3) Base the final results of review on the facts available in accordance with 351.308(f).

(C) \* \* \*

(2) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the **Federal Register** of the notice of initiation, issue final results of review based on the facts available in accordance with § 351.308(f) (see section 751(c)(3)(B) of the Act and § 351.221(c)(5)(ii)).

\* \* \* \* \*

**Subpart C—Information and Argument**

■ 2. Section 351.309 is amended by revising paragraph (c)(1)(iii) to read as follows:

**§ 351.309 Written argument.**

\* \* \* \* \*

(c) *Case brief.* (1) \* \* \*

(iii) For the final results of an expedited sunset review, expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

\* \* \* \* \*

[FR Doc. 05-21468 Filed 10-28-05; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05-05-127]

RIN 1625-AA-09

**Drawbridge Operation Regulations; Shark River (South Channel), NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Route 71 Bridge, at mile 0.8, across Shark River (South Channel), at Belmar, New Jersey. This deviation allows the drawbridge to provide vessel openings upon two hours advance notice each day from 8 a.m. to 3 p.m. and from 6 p.m. to 10 p.m. beginning on Monday, October 31 until Thursday, November 3, 2005, to facilitate emergency mechanical repairs.

**DATES:** The deviation is effective from 8 a.m. to 3 a.m. and from 6 p.m. to 10 p.m. from October 31 until November 3, 2005.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (obr), Fifth Coast

Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:**

Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

**SUPPLEMENTARY INFORMATION:** The Route 71 Bridge, at mile 0.8 across Shark River (South Channel), a bascule-type drawbridge, has a vertical clearance in the closed position to vessels of 13 feet, at mean high water.

The New Jersey Department of Transportation, the bridge owner, requested a temporary deviation from the operating regulations for the Route 71 Bridge, set out in 33 CFR 117.751, to effect emergency repair and replacement of the span lock motor and gear box of the draw span.

To facilitate the work, the Route 71 Bridge will provide vessel openings of the draw span upon two hours advance notice each day from 8 a.m. to 3 p.m. and from 6 p.m. to 10 p.m. beginning on Monday, October 31, 2005 until and including Thursday, November 3, 2005. At all other times, the bridge will operate in accordance with 33 CFR 117.751.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 20, 2005.

**Waverly W. Gregory, Jr.,**

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 05-21501 Filed 10-27-05; 8:45 am]

**BILLING CODE 4910-15-P**