State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 30, 1998.

Kirk Rodgers,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 98–11969 Filed 5–5–98; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than Title VII and violations of the Commission's rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches and violations of the 24-hour rule for the period ending in 1997. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches and 24-hour rule violations encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930 may enter into APOs that permit them, under strict conditions, to obtain access to BPI of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7. The discussion below describes APO breach investigations that the Commission has completed including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 1997.

Since 1993, the report has also included a summary of the Commission's investigations involving violations of the 24-hour rule, which provides that during the 24-hour period after a Commission deadline for a party submission in an antidumping or countervailing duty proceeding, changes are permitted to the proprietary version to correct the bracketing of BPI; no other changes are permitted under that rule. See 19 CFR 207.3(c). The discussion below covers investigations of violations of this rule completed during 1997.

In recent years, the Commission has expanded the report to include APO breaches in other types of proceedings as well. In 1997, no APO investigations were completed in proceedings other than Title VII investigations.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the ''24-hour'' rule. See 56 *FR* 4846 (Feb. 6, 1991); 57 *FR* 12,335 (Apr. 9, 1992); 58 *FR* 21,991 (Apr. 26, 1993); 59 *FR* 16,834 (Apr. 8, 1994); 60 *FR* 24,880 (May 10, 1995); 61 *FR* 21,203 (May 9, 1996), and 62 *FR* 13,164 (March 19, 1997). This report does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in April 1996 a revised edition of *An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations* (Pub. No. 2961). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–2000.

I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission has used since March 1995, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the

direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for the interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation [or for binational panel review of such Commission investigation or until superceded by a judicial protective order in a judicial review of the proceeding];

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit such document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission; and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedure. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's rules relating to BPI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes— other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amendment document pursuant to Rule 201.14(b)(2).

II. Investigations of Alleged APO Breaches

An investigation of an alleged APO breach in an antidumping or countervailing duty investigation commences when the Secretary, acting under delegated authority, issues to the alleged breacher a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating or aggravating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission has determined that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. The Commission retains sole authority to determine whether a breach has occurred and, if so, the appropriate action to be taken.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, Section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually

occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or of transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to properly bracket BPI in proprietary documents filed with the Commission; the failure to immediately report known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches within the previous two-year period and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The case studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: Counsel for a party to a Commission investigation filed a submission with International Trade Administration, Department of Commerce (''Commerce'') in a Commerce investigation and served copies of the submission on the parties to the Commerce investigation. The submission contained BPI which counsel had obtained under a Commission APO. The Commission determined that one attorney did not breach the APO because he did not participate in the preparation or review of the Commerce submission and his name did not appear on the submission. The Commission determined that two attorneys who prepared and reviewed the submission filed with Commerce breached the APO. In reaching its decision to issue private letters of reprimand, the Commission considered that the BPI was viewed by an unauthorized person employed at Commerce. In addition, unauthorized persons may have viewed the BPI at the various law firms that were served copies of the submission. At least one person authorized to review BPI released under Commerce APOs was not authorized to review BPI released under the Commission's APO. The Commission noted that an even more important consideration was the admission by the attorneys that they were not aware of the explicit condition of the APO that information obtained under a Commission APO may not be used in any other investigation including the companion Commerce inquiry. This lack of awareness called into question the level of care that the attorneys exercised in regard to their obligations under the APO. In reaching its decision, the Commission also considered the mitigating factors that the two attorneys had not previously breached a Commission APO and that both reported and attempted to correct the breach promptly.

Case 2: Counsel in an investigation submitted a public version of a document in which certain BPI contained in footnotes was not bracketed or redacted. The text to which the footnotes referred was bracketed. The BPI in question was contained in an attachment to a questionnaire response. The Commission staff discovered the possible breach, and the Secretary contacted counsel to inquire about the failure to bracket and redact the information in the footnote. Counsel responded immediately by submitting corrected pages to the Commission and persons on the service list, and instructing the recipients that the original pages be destroyed. In response to the Commission's inquiry about the possible breach, counsel argued that the information was available in the public domain because the information in question was not marked as confidential and was not bracketed. The Commission's consistent practice with regard to information submitted in connection with a questionnaire response is that it must be treated as confidential unless the party served with the response can establish that the material is elsewhere available in the public domain. Counsel failed to establish that the unbracketed and unredacted material was available in the public domain at the time that they filed the document in question. Thus, the Commission disagreed and determined that counsel breached the APO and issued warning letters. In reaching its decision, the Commission took into account that the attorneys had not previously breached an APO; there was no bad faith or willful conduct involved in connection with this breach; and they moved promptly to mitigate the breach once informed about it by the Secretary. It did not appear that any non-signatory to the APO had reviewed the BPI.

Case 3: Two attorneys filed the public version of an *in camera* hearing submission with bracketed but unredacted BPI. They discovered the breach the following day, immediately reported it to the Commission, retrieved all copies from parties on the service list and the Commission, and obtained from each party a certification that no copies

were reviewed by non-signatories to the APO. The public version retrieved from the Commission's files had not been reviewed by any member of the public. The Commission determined that the two attorneys breached the APO and issued warning letters to them. In reaching its decision not to sanction the attorneys, the Commission considered that they had not been involved in prior breaches and they took action immediately after discovering the breach to limit the possibility of disclosure to unauthorized persons.

A second alleged breach occurred on the same day when four attorneys from the same firm filed the public version of a brief which contained three items of what appeared to be unredacted BPI. The Commission Secretary's office notified counsel that the submission appeared to contain unredacted BPI. The law firm retrieved copies of the pages in question and filed corrected versions with the Commission, as requested by the Secretary. The Commission determined that two of the attorneys committed a breach of the APO when they failed to redact one item of BPI from the brief. In deciding to issue warning letters, the Commission considered that the attorneys had not been involved in prior breaches and took appropriate action upon discovering the breach. The Commission also noted that the information in question was disclosed publicly by the submitter very shortly after the breach.

The Commission determined that disclosure of the other two items in question was not a breach of the APO because the information was not BPI. One item was publicly available and the other item was obtained directly from the client and not under the APO. The Commission determined that two of the attorneys did not breach the APO because they did not participate in the final review of the public version of the brief.

Case 4: Employees for an economic consulting firm prepared and distributed documents containing bracketed but unredacted BPI at a public hearing. A signatory of the APO, an attorney for another party, noticed that BPI had not been redacted from the documents and immediately informed the Secretary, the law firm, and the consulting firm. All copies of the handout were retrieved immediately and all persons at the hearing who had copies of the handout in their possession, with the exception of the attorney who first noticed the BPI, stated that they did not review the BPI contained in the handouts. The Commission determined that two consultants breached the APO and issued private letters of reprimand. In reaching the decision that the breach had occurred, the Commission noted that the actual receipt and review of BPI by unauthorized persons is not a precondition for a finding of a violation of the APO. Failure to follow the rules which are protective of the information by leaving the information unprotected and potentially releasable is sufficient to constitute a breach of the APO. In reaching its decision to issue private letters of reprimand, the Commission considered that this was the second time in two years that the consultants had breached an APO. In reaching its decision, the Commission also considered the mitigating factors that the breach was inadvertent, the Commission was promptly informed of the breach, and the consultant took immediate steps to mitigate any possible damage from the breach.

The Commission found that two other consultant firm employees, identified as clerical personnel in the APO applications, did not breach the APO because their work in preparing the documents was subject to review by the senior consultants. Although the consultants were under the direction and control of the lead attorney at a law firm, the Commission determined that no attorney at the firm was responsible for the breach because the consulting firm employees revised the documents after the attorneys had reviewed what they thought were the final versions, and no one advised the attorneys of the revision or requested that the attorneys review the revised documents.

Case 5: (*See* Case B of the 24-hour rule.) Attorneys, signatories to the APO in an investigation, failed to bracket and redact BPI from a footnote in the public version of a brief. The Commission sent a letter of inquiry to three attorneys but determined that one of them did not breach the APO because he was not involved in the drafting of the public version of the brief or in any review or appraisal of data included in the submission. The Commission determined that two attorneys breached the APO and issued one attorney a letter of reprimand and the other a warning letter. In reaching its decision to issue a private letter of reprimand to one of the attorneys, the Commission took into account the principal aggravating circumstance that it was the second time within a few months that this first attorney had breached an APO by failing to bracket and redact BPI from a submission. The Commission also considered that there was no evidence of willful disregard of the APO. However, the breach was not the result of an accident or inadvertence, but the result of a conscious decision not to bracket information which the attorney continued to maintain was justified. The Secretary's office discovered the breach and, once advised that there had been a breach, the attorney moved promptly to mitigate the breach by retrieving the offending pages of the brief and replacing them with corrected pages.

In reaching its decision to issue a warning letter to the second attorney, the Commission took into consideration that he had no prior APO violations. This attorney was involved in the preparation of the documents, but did not make bracketing decisions with respect to the submission and was not in a position to countermand the attorney who made those decisions.

Case 6: Four attorneys were named as possibly breaching the APO by filing a submission before the Department of Commerce (Commerce) containing BPI obtained under the Commission APO and by labeling the submission public even though it contained BPI. The BPI in question had been obtained from the confidential version of the petition to which counsel had access under the Commission's APO but had not yet gained access to it under the Commerce APO. The day after the submission of the document to Commerce, the attorneys informed the Commission in writing of the potential breaches stemming from the submission to Commerce and took immediate steps to retrieve the submission and prevent the improper disclosure to unauthorized individuals.

The Commission found that two of the attorneys did not breach the APO because they played no role in either the preparation or filing of the submission. The Commission determined that the two other attorneys committed two distinct breaches of the APO by including Commission BPI in a Commerce submission and by incorrectly labeling that document as a public document. The Commission issued private letters of reprimand to the two attorneys and reminded them that information obtained under the Commission's APO is not to be used in other agency proceedings without first obtaining the written consent of the Secretary of the Commission and the party from whom the BPI was obtained. The Commission considered as mitigating factors the fact that the attorneys had no previous breaches; they reported and corrected the breach promptly; and the firm strengthened its APO procedures subsequent to the breaches. Moreover, it appeared that the mislabeling of the document was unintentional and due to mistake or

oversight. In reaching its decision to issue private letters of reprimand, the Commission considered that there were two separate breaches in the same investigation and that the document was placed in a public file at Commerce where it may have been viewed by unauthorized persons.

Case 7: Two attorneys, an economist, and a secretary from a law firm representing a party in an investigation failed to certify within a Commission deadline that APO documents in their possession had been destroyed and to attest to their good faith belief that there was no unauthorized access by any person to the APO materials. Pursuant to the APO, counsel was required to destroy the BPI documents and provide certification to that effect within 60 days of the termination of the investigation. However, since counsel appealed the Commission's determination to the U.S. Court of International Trade, the firm was permitted to retain the documents pending its application for a Judicial Protective Order (JPO). If a JPO is not sought, signatories to the APO in the law firm are required to destroy the documents and to provide certification promptly after 150 days have elapsed from the termination of the investigation. Counsel did not apply for a JPO and failed to provide the certification promptly after the 150 days had passed. In their response to the Commission's inquiry, counsel provided the required certification indicating that the documents had been destroyed immediately after the termination of the investigation. The Commission determined that the two attorneys and the economist breached the APO by not providing the certification within the required time period, and issued warning letters. In reaching a decision to issue warning letters, the Commission considered that there was no access to the APO documents by any unauthorized person; the breach appeared to have been unintentional; the attorney and economist took prompt action to remedy the breach; and they had no prior APO breach violations within the last two years. The Commission concluded that the secretary did not breach the APO as the Commission generally has not held clerical personnel responsible for breaches unless they have played a direct role in the circumstances contributing to a breach.

Case 8: An attorney representing a party to a Commission investigation filed a letter with the Commission which was designated as public, although it contained bracketed but undeleted BPI. The Commission Secretary notified the attorney about the possible breach. In response, the attorney filed a revised letter and immediately took steps to retrieve the document from the other parties. Two weeks later the attorney filed a public version of a prehearing brief which contained BPI in one of the exhibits. Again, the Secretary notified the attorney who immediately took steps to retrieve the document from the other parties and prevent unauthorized disclosure. The Commission determined that breaches had occurred and issued a private letter of reprimand. In reaching its decision to issue a private letter of reprimand the Commission considered that, although the attorney had committed no prior breaches, the attorney had committed two separate breaches in the same investigation within weeks of each other. The Commission also considered the mitigating factors that, when informed of the breaches, the attorney took immediate steps to retrieve the information and prevent its unauthorized disclosure; the breaches were unintentional; and the law firm took action to prevent future violations of this nature.

IV. Investigations Involving the 24-Hour Rule

Under Commission rule 207.3(c), parties that submit a proprietary version of a document with the Commission pursuant to a Commission deadline have one business day in which to check and correct bracketing of BPI before filing the nonproprietary version of the document. The rule expressly states however, that *only* bracketing changes may be made without leave of the Commission in the one business day interval between the filing of the confidential and the filing of the nonconfidential document. A party desiring to make any other changes, including correction of typographical errors, must request leave of the Commission to do so.

Case A: Counsel to a party in an investigation filed a public version of the postconference brief which contained text which was not present in the confidential version of the brief. Leave of the Commission was not sought to make the non-bracketing change, nor was any mention of the additional material made when the public version of the brief was filed. The Commission determined that counsel violated Commission Rule 207.3 and issued a warning letter to each of the four attorneys who were signatories on the brief. In its letter, the Commission, noting that counsel's letter responding to the Commission inquiry stated that the change was made within one business day, advised counsel that the rule permits only bracketing changes and deletion of confidential information. Parties must request leave of the Commission to make a late filing to make any other changes to a previously filed document.

In reaching its decision to issue warning letters, the Commission considered that the addition of text appeared to be inadvertent and counsel had no previous record of violating the 24-hour rule.

Case B: (*See* Case 5 of the APO Breaches.) Two attorneys representing a party to a Commission investigation made changes to a submission that did not involve bracketing of information without receiving prior leave of the Commission. The Commission determined that the two attorneys had violated the 24-hour rule by making the non-bracketing changes to submissions without seeking prior leave from the Commission. The Commission also found that the attorneys had breached the APO in the same investigation, but determined not to impose any additional sanction upon the attorneys for violation of rule 207.3, the 24-hour rule. One attorney received a warning letter for the APO breach and the 24-hour rule violation. The Commission issued a private letter of reprimand to the second attorney for the APO breach and the 24-hour rule violation because it was his second breach violation within several months.

The Commission determined not to hold a third attorney at the firm responsible for violation of the 24-hour rule because he played no role in the preparation of the brief.

Case C: Three attorneys submitted a change to the filing of the public version of their prehearing brief prior to being granted leave to make the change. The Commission determined that the attorneys violated Commission Rule 207.3(c) and issued warning letters. In determining to issue warning letters, the Commission considered that the three attorneys had no previous record of having violated Rule 207.3(c). In addition, since the attorneys had sought to make the change in their BPI version of the brief, filing the change to the public version prior to approval of this leave appeared to be an inadvertent procedural error.

By order of the Commission.

Issued: April 29, 1998.

Donna R. Koehnke,

Secretary.

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