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SUPPLEMENTARY INFORMATION: On September 4, 1998, the Commission instituted an investigation based on a complaint filed by Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co., Ltd. (SSMC). 63 FR 47319. The complaint alleged violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rare-earth magnets or magnetic materials, or articles containing the same, that infringe claims 1, 4, 5, 8, 9, or 11 of U.S. Letters Patent 4,851,058, (the '058 patent); claims 1-6, 10, 14-16, or 18-20 of U.S. Letters Patent 4,802,931 (the '931 patent); claims 13-18 of U.S. Letters Patent 4,496,395 (the '395 patent); claims 1-9, 12-20, 23-27, or 29-34 of U.S. Letters Patent 4,770,723 (the '723 patent); claims 1-6, 8-10, 13-19, 21-24, 27-35, or 37-39 of U.S. Letters Patent 4,792,368 (the '368 patent); or claims 1-3, 5, 15, 18, 19, 21, or 22 of U.S. Patent Letters 5,645,651 (the '651 patent).

On September 22, 1999, the Commission determined not to review an initial determination (ID) granting complainants motion to withdraw from the investigation claims 1, 12, 23, 29, 30, and 32 of the '723 patent and claims 1, 13, 14, 22, 27, 32, 33, 34, and 39 of the '368 patent. Hence the claims in issue of the '723 patent and '368 patent are claims 2-9, 13-20, 24-27, 31, 33, and 34 of the '723 patent and claims 2-6, 8-10, 15-19, 21, 23, 24, 28-31, 35, 37, and 38 of the '368 patent.

The following respondents were named in the notice of investigation: Houghes International, Inc. (Houghes) of New York; International Magna Products, Inc. (IMI) of Indiana; Multi-Trend International Corp. a/k/a MTI-Modern Technology Inc. (Multi-Trend) of California; American Union Group, Inc. (AUG) of Maryland; High End Metals Corp. (High End) of Taiwan; Harvard Industrial America Inc. (Harvard) of California; H.T.I.E., Inc. (H.T.I.E.) of Pennsylvania; and CYNNY Magnets (CYNNY) of New Jersey.

On January 11, 1999, the Commission determined not to review an ID granting complainants' motion to amend the complaint and notice of investigation to add A.R.E., Inc. (A.R.E.) of Pennsylvania; NEOCO, L.C. (NEOCO) of Michigan; Beijing Jing Ma Permanent Magnets Materials Factory (Jing Ma) of

China; and Xin Huan Technology Development Co., Ltd. (Xin Huan) of China as respondents.

On February 1, 1999, the Commission determined not to review an ID terminating the investigation as to respondent IMI on the basis of a consent order. On February 9, 1999, the Commission determined not to review IDs terminating the investigation as to respondents AUG, CYNNY, H.T.I.E., and Houghes on the basis of consent orders.

On May 25, 1999, the Commission determined not to review an ID granting complainants' motion for partial summary determination on the importation issue. On May 28, 1999, the Commission determined not to review an ID granting complainants' motion for summary determination on the domestic industry issue.

On August 6, 1999, the Commission determined not to review an ID finding respondents A.R.E., Jing Ma, and Xin Huan in default. On September 27, 1999, the Commission determined not to review an ID finding respondent Multi-Trend in default.

The prehearing conference and evidentiary hearing were conducted on June 9 to 18, 1999. Complainants, respondent NEOCO, and the Commission investigative attorneys (IAs) participated at the hearing. Following the filing of post-hearing submissions, closing arguments were heard on July 27, 1999.

On September 7, 1999, the ALJ issued his final ID finding a violation of section 337. His determination is based on his findings that the patents in issue are valid and enforceable, and that the accused imported magnets infringed all of the asserted claims, with the exception of claims 13-20, 25-27 and 33 of the '723 patent and claims 15-19, 21, 23, 24, 28, 30, 31, and 35 of the '368 patent. On October 25, 1999, the Commission determined not to review the ID, thereby finding a violation of section 337.

The remaining issues for the Commission to decide were (1) the appropriate remedy for the aforesaid violations, (2) whether the statutory public interest factors precluded such relief, and (3) the amount of the bond during the Presidential review period under 337(j). In making those determinations, the Commission took into account the presiding ALJ's recommended determination (RD) on permanent relief and bonding under 19 CFR 210.42(a)(2), as well as any written submissions from parties, the public, and other Federal agencies. The Commission solicited but did not receive submissions from other agencies

or members of the public. The Commission received written submissions from complainants and the IAs that addressed the form of remedy, if any, that should be ordered, the effect of a remedy on the public interest, and the amount of bond that should be imposed during the 60-day Presidential review period. Complainants also filed a motion to file a sur-reply to the IAs' reply submission. That motion is hereby denied.

After considering the RD and the parties' submissions, the Commission determined that a general exclusion order is the appropriate remedy for the violations found in the subject investigation. The Commission also determined to issue three cease and desist orders directed to domestic respondents Multi-Trend, Harvard, and A.R.E.

The Commission also determined that the public interest factors enumerated in subsections (d) and (f) of section 337 do not preclude the issuance of the aforementioned general exclusion order and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the articles in question.

This action is taken under the authority of section 337 of the Tariff Act of 1930, (19 U.S.C. § 1337), the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and sections 210.45-210.51 of the Commission's rules of practice and procedure, 19 CFR 210.45-210.51.

Nonconfidential versions of Commission's Order and its Opinion on Remedy, the Public Interest, and Bonding, and all other nonconfidential documents filed in the investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202-205-1802.

Issued: December 9, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Energy Fuels Coal, Inc.

[Docket No. M-1999-106-C]

Energy Fuels Coal, Inc., P.O. Box 459, 11190 County Road 92, Florence, Colorado 91226 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its South Field Mine (I.D. No. 05-03455) located in Fremont County, Colorado. The petitioner proposes to use a diesel generator to move equipment from section to section, and use a roof bolter to rehabilitate remote areas of the mine. The petitioner states that the genset is 480 vac three-phase, mounted and grounded to a metal sled with an area of 60 square feet that is in contact with damp mine floor at all times. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

2. Wabash Mine Holding Company

[Docket No. M-1999-107-C]

Wabash Mine Holding Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219-1410 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Wabash Mine (I.D. No. 11-00877) located in Wabash County, Illinois. The petitioner proposes to: (i) equip diesel graders with devices that will limit the speed of the graders to 10 miles per hour; and (ii) train all miners who operate the graders in the proper technique for lowering the blade in order to restrict the speed and stop the grader. The petitioner asserts that application of the standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

3. Energy West Mining Company

[Docket No. M-1999-108-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Deer Creek Mine (I.D. No. 42-00121) located in Emery County, Utah, and Trail Mountain Mine (I.D. No. 42-01211) located in Carbon County, Utah. The petitioner proposes to: (i) install a speedometer on diesel graders in order to limit the speed to 25 miles per hour when operating graders in an underground coal mine or on the surface of an underground coal mine;

and (ii) train all miners who operate the graders in the proper techniques for lowering the blade in order to restrict the speed and stop the grader, proper gear selection for grading, and proper speed for grading. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

4. Blue Mountain Energy, Inc.

[Docket No. M-1999-109-C]

Blue Mountain Energy, Inc., 3607 County Road, #65, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Deserado Mine (I.D. No. 05-03505) located in Rio Blanco County, Colorado. The petitioner proposes to: (i) equip diesel graders with service brakes only on the four rear wheels; (ii) install a device on the graders that will limit the speed to a maximum of 15 miles per hour; and (iii) train personnel on proper techniques for lowering the blade if additional slowing or stopping capability is needed, and on proper travel speeds consistent with road conditions. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

5. Black Beauty Coal Company

[Docket No. M-1999-110-C]

Black Beauty Coal Company, P.O. Box 176, Wheatland, Indiana 47597 has filed a petition to modify the application of 30 CFR 1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Air Quality Mine (I.D. No. 12-02010) located in Knox County, Indiana. The petitioner proposes to: (i) limit the maximum speed of six-wheeled graders to less than 10 miles per hour; and (ii) train grader operators to lower the moldboard for additional stopping capability in emergency situations, and on how to recognize the appropriate speeds to use on different roadway conditions and slopes. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

6. Ohio County Coal Company

[Docket No. M-1999-111-C]

Ohio County Coal Company, 3740 North Main Street, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its Freedom Mine (I.D. No. 15-17587) located in Hopkins County,

Kentucky. The petitioner proposes to use only one low-level carbon monoxide sensor where a belt drive discharges into a belt conveyor tailpiece as a continuation of a belt conveyor, or when the belt drive discharges at an angle onto the conveyor belt system the discharge roller is within 50 feet of the tailpiece, and the belt conveyor tailpiece, belt take-up, and belt conveyor tailpiece are on the same split of air. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries where a monitoring system identifies a sensor location, instead of identifying each belt flight. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

7. Bledsoe Coal Corporation

[Docket No. M-1999-112-C]

Bledsoe Coal Corporation, Route 2008, Box 351A, Big Laurel, Kentucky has filed a petition to modify the application of 30 CFR 75.900 (low-medium-voltage circuits serving three-phase alternating current equipment; circuit breakers) to its Mine No. 4 (I.D. No. 15-11065), and Mine No. 60 (I.D. No. 15-12941) both located in Leslie County, Kentucky. The petitioner proposes to use contactors for protection on circuit breakers instead of using under-voltage protection and continue using short circuit protection by a circuit breaker for interrupting retrips. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

8. Mountain Coal Company

[Docket No. M-1999-113-C]

Mountain Coal Company, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its West Elk Mine (I.D. No. 05-03672) located in Gunnison County, Colorado. The petitioner proposes to: (i) equip road graders with service brakes only on the four rear wheels in order to limit the speed to a maximum of 15 miles per hour; and (ii) train all personnel who operate the graders on the proper techniques for lowering the blade if additional slowing or stopping capability is needed. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

9. Snyder Coal Company

[Docket No. M-1999-114-C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its Rattling Run Mine (I.D. No. 36-08713) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

10. Wabash Mine Holding Company

[Docket No. M-1999-115-C]

Wabash Mine Holding Company, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219-1410 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Wabash Mine (I.D. No. 11-00877) located in Wabash County, Illinois. Due to deteriorating roof conditions, the petitioner asserts that to inspect the seals in the required manner will be unsafe, the petitioner proposes to establish a permanent monitoring station to monitor the air for oxygen and methane after it passes the seals and links the monitoring station to the mine-wide monitoring (DAN) system, and on a weekly basis evaluate the air that passes the seals. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

11. Jim Walter Resources, Inc.

[Docket No. M-1999-116-C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 53444 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) to its No. 4 Mine (I.D. No. 01-01247), Mine No. 5 Mine (I.D. No. 01-01322), and Mine No. 7 (I.D. No. 01-01401) all located in Tuscaloosa County, Alabama. The petitioner proposes to use one 480-volt, three-phase, 260KW/325KVA diesel powered generator set to supply power to a 250 KVA three-phase transformer and three-phase power circuits utilizing the specific terms and

conditions listed in this petition. The petitioner asserts that application of the mandatory standard will result in a diminution of safety. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

12. Energy West Mining Company

[Docket No. M-1999-117-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Trail Mountain Mine (I.D. No. 42-01211) located in Emery County, Utah. The petitioner requests that some of the requirements in the Decision and Order (D&O) for its previously granted petition, docket number M-98-019-C, be amended because the requirements have proven to be outdated due to changes in circumstances that originally supported the terms and conditions of the D&O. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the granted D&O and will not result in a diminution of safety provided by the existing standard.

13. Energy West Mining Company

[Docket No. M-1999-118-C]

Energy West Mining Company, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Trail Mountain Mine (I.D. No. 42-01211) located in Emery County, Utah. The petitioner requests that some of the requirements in the Decision and Order (D&O) for its previously granted petition, docket number M-98-020-C, be amended because the requirements have proven to be outdated due to changes in circumstances that originally supported the terms and conditions of the D&O. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the granted D&O and will not result in a diminution of safety provided by the existing standard.

14. Consolidation Coal Company

[Docket No. M-1999-119-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.312(c) (main mine fan examinations and records) to its Shoemaker Mine (I.D. No. 46-01436) located in Marshall County, West Virginia. The petitioner proposes to test automatic closing doors and automatic

fan signal devices every 31 days without shutting down the fan and without removing miners from the mine. The petitioner has listed in this petition specific procedures for complying with the alternative method. The petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

15. Knox Creek Coal Corporation

[Docket No. M-1999-120-C]

Knox Creek Coal Corporation, P.O. Box 519, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Tiller No. 1 Mine (I.D. No. 44-06804) located in Buchanan County, Virginia. The petitioner proposes to use belt air to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that application of the standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method will provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 14, 2000. Copies of these petitions are available for inspection at that address.

Dated: December 6, 1999.

Carol J. Jones,*Acting Director, Office of Standards, Regulations, and Variances.*

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