

(Feb. 22, 2002) and 67 FR 38614 (June 5, 2002).

The Commission has completed three such investigations to date. See 68 FR 48938 (Aug. 15, 2003), 68 FR 8926 (Feb. 26, 2003), and 67 FR 69557 (Nov. 18, 2002). A fourth investigation is in progress. See 68 FR 54010 (Sept. 15, 2003). Each investigation was initiated in response to a petition. The Commission's experiences with those petitions and investigations have led it to conclude that provisions of the interim rules should be revised without delay.

### **The Procedure for Adopting the Interim Amendments**

The Commission ordinarily promulgates amendments to the Code of Federal Regulations in accordance with the rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). That procedure entails publishing a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed amendments, considering the public comments in deciding on the final content of the amendments, and publishing the final amendments at least 30 days prior to their effective date. In this instance, however, the Commission is amending its rules in 19 CFR part 206 on an interim basis, effective upon publication of this notice in the **Federal Register**.

The Commission's authority to adopt interim amendments without following all steps listed in section 553 of the APA is derived from section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and section 553 of the APA.

Section 335 of the Tariff Act authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. The Commission has determined that the need for interim rulemaking is clear in this instance. Section 421 of the Trade Act requires the Commission to evaluate the petition, institute the requested investigation, conduct a hearing, compile an investigative record, and make the required determination(s) in each investigation "at the earliest practicable time" but no later than the prescribed deadline. Rulemaking is essential for orderly administration and compliance with the duties, responsibilities, and deadlines imposed by section 421.

Section 553(b) of the APA allows an agency to dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) The rules in question are interpretive rules, general statements of policy, or

rules of agency organization, procedure or practice; or (2) the agency for good cause finds that notice and public comment on the rules are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates that finding and the reasons therefor into the rules adopted by the agency.

In this instance, the Commission has determined that the requisite circumstances exist for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking that solicits public comment, the Commission finds that the interim amendments to part 206 are "agency rules of procedure and practice."

In light of the statutory time constraints for an investigation under section 421(b), the petitioner and the petition must serve as primary sources of information in each investigation based on a petition. The current rules do not require the petition to provide certain information that is critical for the commencement of key investigative activity such as the preparation and issuance of Commission questionnaires and the verification of allegations set forth in the petition. As a result, the issuance of questionnaires and the verification process have been delayed and petitioners have been forced to compile and provide the necessary information on an expedited basis after the petition was filed and the statutory period for completing the investigation had begun to run.

Experience also has shown that there is a need for greater clarity regarding (1) the petitioner's service of public and/or nonconfidential copies of the petition on other parties to the investigation, (2) limitations on the content of written comments filed by parties following submission of their post-hearing briefs, and (3) the closing of the investigative record.

The facts and circumstances described above make it necessary for the Commission to amend the existing rules without delay. Hence, it would be impracticable for the Commission to publish a notice of proposed rulemaking, and to consider any comments received in response to the notice, prior to making the necessary rule changes.

Section 553(d)(3) of the APA allows an agency to dispense with the publication of notice of final rules at least thirty days prior to their effective date if the agency finds that good cause exists for not meeting the advance

publication requirement and the agency publishes that finding along with the rules. The Commission finds that the facts and circumstances described above also constitute good cause for the purpose of invoking that exemption.

The Commission recognizes that interim amendments to the rules should not respond to anything more than the exigencies created by the aforesaid facts and circumstances. Each amendment set forth in this notice accordingly does one or more of the following: (1) Addresses a concern regarding the existing rule specifying the required content of a petition under section 421(b) of the Trade Act; (2) provides clarity about the petitioner's obligation to serve copies of the petition on other parties to the investigation, the appropriate content of written comments filed after submission of the post-hearing briefs, and the closing of the investigative record; or (3) resolves a matter not adequately addressed in the current rules, such as the deadline for the petitioner to serve copies of the petition on other parties to the investigation following notification by the Secretary to the Commission of acceptance of an administrative protective order application or issuance of a service list and amendment thereto.

The Commission will replace the interim rules in part 206 with final rules promulgated in accordance with the notice, comment, and advance publication procedure prescribed in section 553 of the APA after taking into account (1) all comments received in response to the interim rules as originally adopted (see 67 FR 8183), (2) any comments received in response to the amendments set forth in this notice, and (3) the experience acquired in all investigations under section 421(b) that are conducted prior to commencement of the APA procedure for final rulemaking.

### **Section-by-Section Analysis of the Interim Amendments**

#### *Section 206.44*

Paragraphs (a)–(i) of section 206.44 list the required content of a petition for an investigation under section 421(b)(1) of the Act. The Commission amends section 206.44 by making substantive and/or technical revisions to existing paragraphs (a), (c), (j), and (i) and adding a new paragraph (j).

*Paragraph (a).* Paragraph (a) of section 206.44 imposes the basic requirement that the petition must provide specific information to support the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as