INTERNATIONAL TRADE COMMISSION

19 CFR Part 208

Implementing Rules for the United States-Mexico-Canada Agreement

AGENCY: United States International Trade Commission.

ACTION: Interim rule; request for comments.

SUMMARY: The United States International Trade Commission (Commission) is adopting interim rules that will amend the Commission's rules of practice and procedure to implement the provisions of the United States-Mexico-Canada Agreement (USMCA) Implementation Act (the Act) regarding investigations of United States-Mexico cross-border long-haul trucking services (cross-border long-haul trucking services).

DATES: Effective July 10, 2020 and applicable July 1, 2020.

Deadline for Filing Written Comments: August 10, 2020.

ADDRESSES: You may submit comments, identified by docket number MISC–045, Rulemaking regarding USMCA Implementation, by any of the following methods:

—*Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

—*Agency Website: https://edis.usitc.gov.* Follow the instructions for submitting comments on the website.

Instructions: All submissions received must include the agency name and docket number (MISC–045, Rulemaking regarding USMCA Implementation), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to *https://edis.usitc.gov* and including any personal information provided. For access to the docket and to read background documents or comments received, go to *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning general inquiries, Lisa R. Barton, Secretary, United States International Trade Commission, telephone (202) 205–2000. Concerning part 208, William Gearhart, Office of the General Counsel, United States International Trade Commission, telephone (202) 205–3091. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website at *https://www.usitc.gov.*

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these amendments to the rules of practice and procedure to implement sections 321–324 of the Act. This preamble provides background information, and a regulatory analysis, section-by-section explanation, and description of the new rules. The Commission encourages members of the public to comment on whether the language of the amendments is sufficiently clear for users to understand, and to submit any other comments they wish to make on the amendments.

These Rules are being promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553) (APA), and will be codified in 19 CFR part 208.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) (Tariff Act) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. In addition, sections 103(b), 322(f), and 324(e) of the Act (19 U.S.C. 4513(b),

[3] Commodity Exchange Act section 4s(e).

[4] G20 Information Centre, Cannes Summit Final Declaration, *http://www.g20.utoronto.ca/2011/2011-cannes-declaration-111104-en.html.*

[5] IFR, Section II.

4572(f), and 4574(e), respectively) authorize the Commission to prescribe implementing regulations necessary or appropriate to carry out actions required or authorized by the Act.

The Commission is amending its rules of practice and procedure to implement the provisions of the Act regarding its investigations of cross-border long-haul trucking services.

A. Part 208

Annex II of the USMCA sets out a process by which the United States may impose limitations on grants of authority to persons of Mexico to undertake cross-border long-haul trucking services where such limitations are necessary to address material harm or threat of material harm caused to U.S. suppliers, operators, or drivers of cross-border long-haul trucking services.

Subtitle C of Title III of the Act implements procedures to undertake investigations of cross-border long-haul trucking services. Section 322 of the Act requires that the Commission undertake an investigation, upon filing of a petition or request, and make a determination as to whether a grant of authority has caused material harm or threatens material harm to U.S. suppliers of cross-border long-haul trucking services, and if affirmative, to recommend a remedy to the President. Additionally, Section 324 of the Act requires that the Commission, at the request of the President or an interested party, undertake an investigation and make a determination as to whether an extension of relief granted by the President is necessary to prevent or remedy material harm. The Act specifies certain procedures for such investigations, including who may file a petition or request such investigations, the holding of hearings and publication of notices regarding investigations, the timelines for such investigations and determinations, and the issuance of reports that include the determination, an explanation thereof, and any recommendation for relief. These rules of procedure are implemented in the amendments to part 208 of the Commission's regulations.

Procedure for Adopting the Proposed Amendments

The Commission ordinarily promulgates amendments to the Code of Federal Regulations in accordance with the notice-and-comment rulemaking procedure in section 553 of the APA (5 U.S.C. 553). That procedure entails publication of proposed rulemaking in the **Federal Register** that solicits public comments on the proposed amendments, consideration by the Commission of public comments on the contents of the amendments, and publication of the final amendments at least 30 days prior to their effective date.

In this instance, however, the Commission is amending rules in 19 CFR part 208 on an interim basis effective upon July 1, 2020, when the USMCA goes into effect. 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 (19 U.S.C. 1335), sections 103(b) and 322(f) of the Act (19 U.S.C. 4513(b) and 4572(f)), and section 553 of the APA.

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. 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 requirements and the agency publishes that finding along with the rules.

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)(3)(A) exemption from publishing a notice of proposed rulemaking that solicits public comment, the Commission finds that the interim amendments to part 208 are ''agency rules of procedure and practice.'' Moreover, the Commission finds under section 553(b)(3)(B) that good cause exists to waive prior notice and opportunity for comment. Rules of procedure are necessary to allow for the filing of petitions regarding cross-border long-haul trucking services consistent with the Act. The requirements of the Act thus make establishing necessary procedures a matter of urgency. It would be impracticable for the Commission to comply with the usual notice of proposed rulemaking and public comment procedure, and therefore the Commission has determined that interim rules are needed under these circumstances.

For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim amendments to part 208 at least thirty days prior to their effective date, the Commission finds the fact that the Act was signed by the President on January 29, 2020, but requires the Commission to have a complete process in place no later than July 1, 2020, makes such advance publication impracticable and constitutes good cause for not complying with that requirement.

The Commission recognizes that interim rule amendments should not respond to anything more than exigencies created by the new legislation. Each interim amendment to part 208 concerns a new rule covering a matter addressed in the new legislation.

After taking into account all comments received and the experience acquired under the interim rules, the Commission will replace them with final rules promulgated in accordance with the notice, comment, and advance publication procedure prescribed in section 553 of the APA.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the proposed amendments to the rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993) and thus do not constitute a ''significant regulatory action'' for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute.

The interim rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1531–1538) because the proposed interim rules will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year (adjusted annually for inflation), and will not significantly or uniquely affect small governments, as defined in 5 U.S.C. 601(5).

These interim rules are not ''major rules'' as defined by section 251 of the Small Business Regulatory Enforcement

Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of that Act because they contain rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

Section-by-Section Explanation of the Proposed Amendments

Part 208—Procedures For Investigations Of United States-Mexico Cross-Border Long-Haul Trucking Services.

Section 208.1 describes the applicability of these regulations and the authority under the Act.

Section 208.2 provides definitions applicable to investigations under this part, as provided in the Act.

Section 208.3 outlines the applicability of provisions under subpart B of part 208, which concern investigations of material harm or threat of material harm.

Section 208.4 describes who may file a petition, request, or resolution for an investigation under this part.

Section 208.5 describes the information and contents required in a petition filed under this part, including a description of the identity of the claimant, the nature of the claim, the relief sought, and supporting information.

Section 208.6 describes the time for determinations and issuance of reports, consistent with the Act.

Section 208.7 describes information that will be included in a report to the president for an investigation under this part.

Section 208.8 describes information to be included in a public report for an investigation under this part.

Section 208.9 describes the applicability of provisions under subpart C of part 208, which concern investigations relating to an extension of relief.

Section 208.10 describes who may file a petition or request under this part.

Section 208.11 describes the time for filing a petition or request under this part.

Section 208.12 describes the information and contents required in a petition filed under this part.

Section 208.13 describes the information that will be provided in a report to the President in an investigation under this part.

Section 208.14 describes the applicability of provisions under subpart D of part 208, which addresses general notice and filing provisions.

Section 208.15 provides filing requirements for any petition, request, or resolution under this part.

Section 208.16 describes the Commission's institution and notice procedures for an investigation under this part.

Section 208.17 describes the contents of an institution notice and the procedures for public inspection of such notice.

Section 208.18 describes the notification of other federal agencies of an investigation instituted under this part, as required by the Act.

Section 208.19 describes the public hearing to be conducted by the Commission pursuant to an investigation under this part.

Section 208.20 describes the requirements for certifications, service, and filing of information pursuant to an investigation under this part.

Section 208.21 addresses procedures concerning the Commission's treatment of confidential business information and the provision of nonconfidential summaries pursuant to an investigation under this part.

Section 208.22 prescribes the procedures and requirements for limited disclosure of certain confidential business information under an administrative protective order; it also prescribes the procedures for an investigation of any breach of an administrative protective order under this part.

List of Subjects in 19 CFR Part 208

Administrative practice and procedure, Trade agreements.

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR chapter II by adding part 208 to subchapter II to read as follows:

PART 208—INVESTIGATIONS OF UNITED STATES–MEXICO CROSS–BORDER LONG–HAUL TRUCKING SERVICES

Sec.
208.1 Applicability of part.

Subpart A—Definitions

208.2 Definitions applicable to this part.

Subpart B—Investigations relating to Material Harm or Threat of Material Harm

208.3 Applicability of subpart.
208.4 Who may file a petition, request, or resolution.
208.5 Contents of petition.
208.6 Time for determinations, reporting.
208.7 Report to the President.
208.8 Public report.

Subpart C—Investigations Relating to Extension of Relief

208.9 Applicability of subpart.
208.10 Who may file a petition or request.
208.11 Time for filing.
208.12 Contents of petition.
208.13 Report to the President.

Subpart D—General notice and filing provisions.

208.14 Applicability of subpart.
208.15 Identification and filing of petitions; filing of requests and resolutions.
208.16 Initiation and notice of investigation.
208.17 Publication of notice; and availability for public inspection.
208.18 Notification of other agencies.
208.19 Public hearing.
208.20 Service, filing, and certification of documents.
208.21 Confidential business information; furnishing of nonconfidential summaries thereof.
208.22 Limited disclosure of certain confidential business information under administrative protective order.

Authority: 19 U.S.C. 4574(e).

§ 208.1 Applicability of part.

Part 208 applies to proceedings of the Commission under sections 321–324 of the United States-Mexico-Canada Agreement (USMCA) Implementation Act, 19 U.S.C. 4571–4574 (19 U.S.C. 4501 note).

Subpart A— Definitions

§ 208.2 Definitions applicable to this part.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) *Act* means the USMCA Implementation Act.

(b) *Border commercial zone* means:

(1) The area of United States territory of the municipalities along the United States-Mexico international border and the commercial zones of such municipalities as described in subpart B of 49 CFR part 372.; and

(2) Any additional border crossing and associated commercial zones listed in the Federal Motor Carrier Safety Administration OP–2 application instructions or successor documents.

(c) *Cargo originating in Mexico* means any cargo that enters the United States by commercial motor vehicle from Mexico, including cargo that may have originated in a country other than Mexico.

(d) *Change in circumstance* may include a substantial increase in services supplied by the grantee of a grant of authority.

(e) *Commercial motor vehicle* means a commercial motor vehicle, as such term is defined in 49 U.S.C. 31132 (1), that meets the requirements of 49 U.S.C. 31132(1)(A).

(f) *Cross-border long-haul trucking services means:*

(1) The transportation by commercial motor vehicle of cargo originating in

Mexico to a point in the United States outside of a border commercial zone; or

(2) The transportation by commercial motor vehicle of cargo originating in the United States from a point in the United States outside of a border commercial zone to a point in a border commercial zone or a point in Mexico.

(g) *Driver* means a person that drives a commercial motor vehicle in cross-border long-haul trucking services.

(h) *Grant of authority* means registration granted pursuant to 49 U.S.C. 13902, or a successor provision, to persons of Mexico to conduct cross-border long-haul trucking services in the United States.

(i) *Interested party* means:

(1) Persons of the United States engaged in the provision of cross-border long-haul trucking services;

(2) A trade or business association, a majority of whose members are part of the relevant United States long-haul trucking services industry;

(3) A certified or recognized union, or representative group of suppliers, operators, or drivers who are part of the United States long-haul trucking services industry;

(4) The Government of Mexico; or

(5) Persons of Mexico.

(j) *Material harm* means a significant loss in the share of the United States market or relevant sub-market for cross-border long-haul trucking services held by persons of the United States.

(k) *Operator* or *supplier* means an entity that has been granted registration under 49 U.S.C. 13902, to provide cross-border long-haul trucking services.

(l) *Persons of Mexico* includes:

(1) Entities domiciled in Mexico organized, or otherwise constituted under Mexican law, including subsidiaries of United States companies domiciled in Mexico, or entities owned or controlled by a Mexican national, which conduct cross-border long-haul trucking services, or employ drivers who are non-United States nationals; and

(2) Drivers who are Mexican nationals.

(m) *Persons of the United States* includes entities domiciled in the United States, organized or otherwise constituted under United States law, and not owned or controlled by persons of Mexico, which provide cross-border long-haul trucking services and long-haul commercial motor vehicle drivers who are United States nationals.

(n) *Threat of material harm* means material harm that is likely to occur.

(o) *Trade Representative* means the United States Trade Representative.

(p) *United States long-haul trucking services industry* means:

(1) United States suppliers, operators, or drivers as a whole providing cross-border long-haul trucking services; or

(2) United States suppliers, operators, or drivers providing cross-border long-haul trucking services in a specific sub-market of the whole United States market.

(q) *USMCA* means United States-Mexico-Canada Agreement.

Subpart B—Investigations Relating to Material Harm or Threat of Material Harm

§ 208.3 Applicability of subpart.

The provisions of this subpart B apply to investigations under section 322(a) of the Act relating to material harm or threat of material harm. For other applicable rules, see subpart A and subpart D of this part.

§ 208.4 Who may file a petition, request, or resolution.

An investigation under this subpart may be commenced on the basis of a petition properly filed by an interested party described in § 208.2(i) of this part which is representative of a United States long-haul trucking services industry; at the request of the President or the Trade Representative; or upon the resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate.

§ 208.5 Contents of petition.

(a) *Nature of the claim.* Each petition filed under this subpart shall state whether the petition:

(1) Claims that a request by a person of Mexico to receive a grant of authority that is pending as of the date of the filing of the petition threatens to cause material harm to a United States long-haul trucking services industry; or

(2) Claims that a person of Mexico who has received a grant of authority on or after the date of entry into force of the USMCA and retains such grant of authority is causing or threatens to cause material harm to a United States long-haul trucking services industry; or

(3) Claims that, with respect to a person of Mexico who received a grant of authority before the date of entry into force of the USMCA and retains such grant of authority, there has been a change in circumstances such that such person of Mexico is causing or threatens to cause material harm to a United States long-haul trucking services industry.

(b) *Identity of the petitioner and basis for the claim that it is representative of a United States long-haul trucking services industry.* (1) Each petition shall state the basis for the petitioner's status as an interested party pursuant to the definition described in § 208.2(i).

(2) If the petition is filed on behalf of providers of such services in a specific sub-market, the petition shall include a description of the claimed sub-market. Specifically:

(i) If the petition claims the sub-market is a specific geographic area in the United States for such services, it shall define such market and provide a justification for such delineation;

(ii) If the petition claims a sub-market on criteria other than geographic terms, it shall define the applicable criteria and provide justification for such delineation.

(3) Each petition shall include the names, physical addresses, email addresses, and telephone numbers of the firms represented in the petition and/or the entities employing or previously employing the suppliers, operators, and/or drivers represented in the petition and the locations of their establishments;

(4) Each petition shall also indicate, or estimate (and provide the basis therefor), the percentage of the United States long-haul trucking services industry as a whole, or of the claimed sub-market of the United States market, accounted for by the petitioning suppliers, operators, and/or drivers and the basis for claiming that such suppliers, operators, and/or drivers are representative of an industry; and

(5) Each petition shall include the names, physical addresses, email addresses, and telephone numbers of all other domestic entities, including firms, trade or business associations, and/or certified or recognized unions, or representative group of suppliers, operators, or drivers known to the petitioner who are part of the United States long-haul trucking services industry or the specific sub-market in the United States market to which the petition pertains.

(c) Identification of Grant or Grants of authority. Each petition shall identify the grant or grants of authority, or those that are pending, upon which the petition is based. In addition, each petition shall indicate whether it is based on:

(1) A request for a grant of authority by a person of Mexico that is pending as of the date of filing of the petition (pursuant to section 332(a)(1) of the Act); or

(2) A grant of authority that was granted to, and retained by, a person of Mexico after the date of entry into force of the USMCA (pursuant to section 332(a)(2) of the Act); or

(3) A grant of authority that was received before the date of entry into

force of the USMCA and that the holder retains (pursuant to section 332(a)(3) of the Act); and

(d) *Identification of a Change in Circumstances.* Each petition that identifies a grant of authority pursuant to § 208.5(c)(iii) shall also identify the claimed change in circumstances, and provide supporting information with respect to this claimed change in circumstances, including:

(1) Where relevant, information relating to any increase in services supplied by a grantee of such grant of authority; or information relating to any other claimed change in circumstances; and

(2) An explanation of how the change in circumstances is believed to cause or threaten to cause material harm to the long-haul trucking services industry as a whole or in a claimed specific sub-market thereof, supported by pertinent data and available information.

(e) *Additional required information and data.* Each petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(1) Quantitative data and other information for the United States long-haul trucking industry as a whole, or for the claimed specific sub-market, for the most recent three (3) full calendar years, and part-year for the current calendar year if available, showing:

(i) Volume and tonnage of merchandise transported by the industry as a whole or within the claimed specific sub-market;

(ii) Employment, wages, hours of service, and working conditions relating to the industry as a whole or claimed specific sub-market;

(iii) With respect to cargo originating in Mexico, the principal ports of entry along the United States-Mexico border of such shipments, and the principal destination(s) within the United States for such shipments;

(iv) With respect to cargo originating in the United States, the principal place(s) where such cargo is loaded, and principal destination(s) in Mexico or the border commercial zone, as defined in § 208.2(b);

(v) With respect to claims of material harm or the threat of material harm to the industry as a whole or within the claimed specific sub-market, data regarding whether there has been or is a threat of a significant loss in the share of the United States market as a whole, or in the claimed specific sub-market, to persons of Mexico, as defined in § 208.2(l); and

(vi) Any other relevant information, including pricing information and any evidence of cross-border long-haul trucking services lost to persons of Mexico in the market as a whole or claimed specific sub-market.

(f) *Cause of injury.* Each petition shall include an enumeration and description of the causes believed to be resulting in the material harm, or threat thereof, and a statement regarding the extent to which one or more grants of authority are believed to be such a cause of material harm or the threat thereof to the United States industry as a whole or in a sub-market thereof, supported by pertinent data and information;

(g) *Relief sought and purpose thereof.* A statement describing the relief sought.

§ 208.6 Time for determinations, reporting.

(a) *Determinations.* (1) The Commission will make its determination with respect to the petition, request, or resolution no later than 120 days after the date on which an investigation is initiated under section 322(a) of the Act, except that:

(2) If the Commission determines, before the 100th day after an investigation is initiated under section 322(a) of the Act, that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days after the date on which an investigation is initiated.

(b) *Reporting.* The Commission will submit its report to the President not later than the date that is 60 days after the date on which the determination is made under section 322(a) of the Act.

§ 208.7 Report to the President.

In its report to the President, the Commission will include the following:

(a) The determination made and an explanation of the basis for the determination;

(b) If the determination is affirmative or if the Commission is equally divided in its determination, the recommendation of members of the Commission who agreed to the affirmative determination for the action that is necessary to address the material harm or threat of material harm found, and an explanation of the basis for the recommendation.

(c) Any dissenting or separate views by members of the Commission regarding the determination.

§ 208.8 Public report.

Upon submitting a report to the President of the results of an investigation to which this part relates, the Commission will promptly make such report public (with the exception of information that the Commission determines to be confidential business information) and publish a summary of the report in the **Federal Register**.

Subpart C—Investigations Relating to Extension of Relief

§ 208.9 Applicability of subpart.

The provisions of this subpart C apply to investigations under section 324(d)(2) of the Act relating to an extension for relief. For other applicable rules, see subpart A and subpart D of this part.

§ 208.10 Who may file a petition or request.

An investigation under this subpart may be commenced upon the request of the President or upon receipt of a petition, properly filed, by an interested party described in § 208.2(i) of this part, which is representative of a United States long-haul trucking services industry, as defined by the Commission in its determination under section 322 of the Act.

§ 208.11 Time for filing.

A request or petition may be filed with the Commission not earlier than the date that is 270 days, and not later than 240 days, before the date on which any action taken under section 324 of the Act of is to terminate.

§ 208.12 Contents of petition.

The petition shall include information in support of the claim that action under section 324 of the Act continues to be necessary to remedy or prevent material harm to the industry, as defined by the Commission in its determination under section 322 of the Act, including information relating to changes since the action was taken with respect to:

(a) The volume and tonnage of merchandise transported by the industry;

(b) Employment, wages, hours of service, and working conditions relating to the industry;

(c) With respect to cargo originating in Mexico, the principal ports of entry along the United States-Mexico border of such shipments, and the principal destinations within the United States for such shipments;

(d) With respect to cargo originating in United States, the principal place(s) where such cargo is loaded, and principal destination(s) in Mexico or inside a border commercial zone as defined in § 208.2(b);

(e) The share of the United States market as a whole, or the share of the specific sub-market, held by persons of Mexico; and

(f) Any other relevant information in support of the claim that action continues to be necessary.

§ 208.13 Report to the President.

The Commission will submit a report on its investigation and determination to the President no later than 60 days before relief provided under section 324(a) of the Act is to terminate, or such other date as determined by the President.

Subpart D—General Notice and Filing Provisions

§ 208.14 Applicability of subpart.

The provisions of this subpart D apply to investigations under sections 322(a) and 324(d)(2) of the Act.

§ 208.15 Identification and filing of petitions; filing of requests and resolutions.

(a) Each petition filed by an entity representative of a United States long-haul trucking services industry must state clearly on the first page thereof whether the petition is filed under section 322 or section 324(d)(2) of the Act as applicable. Unless otherwise directed or authorized by the Secretary, a public and confidential version of a petition must be filed electronically on the Commission's Electronic Document Information System (''EDIS''). One copy of each of the public and confidential versions of any exhibits, appendices, and attachments to the document may be filed on EDIS or in other electronic format approved by the Secretary.

(b) Each request or resolution may be submitted in paper form or filed on EDIS.

§ 208.16 Initiation and notice of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, after acceptance of a properly filed petition under this part 208, the Commission will promptly initiate an appropriate investigation and will publish notice thereof in the **Federal Register**.

(b) *Exception.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 322 of the Act with respect to the same subject matter as a previous investigation under section 322 of the Act unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

§ 208.17 Publication of notice; and availability for public inspection.

(a) *Contents of notice.* The notice will indicate whether the initiation is based on a petition, request, or resolution, as appropriate; and will identify the grant or grants of authority, or the request for a grant or grants of authority, that are the subject of the investigation; the nature and timing of the determination to be made; the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents; any limits on page lengths for briefs, statements, or other documents to be filed; and the name, address, and telephone number of the Commission office that may be contacted for more information.

(b) *Availability for public inspection.* The Commission will promptly make the public version of each petition available for public inspection through EDIS.

§ 208.18 Notification of other agencies.

For each investigation subject to the provisions of this part 208, the Commission will transmit copies of the petition, request, or resolution to the Trade Representative and the Secretary of Transportation, along with a copy of the notice of investigation.

§ 208.19 Public hearing.

(a) *Public hearing.* The Commission will provide notice of, and hold, a public hearing in connection with each investigation initiated under section 322(a) or section 324(d)(2) of the Act and under this part after reasonable notice thereof has been published in the **Federal Register**.

(b) *Opportunity to appear.* The Commission will afford all interested parties, as defined in section 321(8) of the Act and § 208.2(i) of this part, an opportunity to be present, to present evidence, to respond to presentations of other parties, and otherwise to be heard.

§ 208.20 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of any interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 208.22(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 208.22(a)(4), an application under § 208.22(a) is approved. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 208.22, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand, by overnight mail, or by electronic means. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission will make available through EDIS each public document placed in the docket file.

(c) *Filing generally.* Documents to be filed with the Commission must comply with applicable rules, including Part 201 of this chapter, as may be further explained in the Commission's Handbook on Filing Procedures. Failure to comply with these requirements may result in the rejection of the document as improperly filed.

(d) *Filing of confidential business information.* If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file and, if the submitter is a party, serve the confidential version of the document on or before the deadline and may file and serve the nonconfidential version of the document no later than one business day after filing the document. The confidential version shall enclose all confidential business information in brackets and have the following warning marked on every page: ''Bracketing of CBI not final for one business day after date of filing.'' The bracketing becomes final one business day after the date of filing of the document, *i.e.,* at the same time as the nonconfidential version of the document is due to be filed. Until the bracketing becomes final, recipients

of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers that it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time that it files the nonconfidential version. No changes to the document, other than bracketing and deletion of confidential business information, are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

§ 208.21 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* Except as provided for in § 208.22, in the case of an investigation under this part, the Commission will not release information that the Commission considers to be confidential business information within the meaning of § 201.6 of this chapter, including such information obtained under section 322(e)(2) of the Act, unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President, the Trade Representative, and the Secretary of Transportation; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time that it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted, and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

§ 208.22 Limited disclosure of certain confidential business information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.,* all confidential business information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type that there is a clear and compelling need to withhold from disclosure, *e.g.,* trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term ''confidential business information'' is defined in § 201.6 of this chapter, and it includes information obtained under section 322(e)(2) of the Act.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance, but at least five days before the deadline for filing post-hearing briefs in the investigation, and they shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party that is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party that is a party to the investigation; or

(D) An authorized representative of an interested party that is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decision-making for an interested party that is a party to the investigation. Involvement in ''competitive decision-making'' includes past, present, or likely future activities, associations, and relationships with an interested party that is a party to the investigation, which involves the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (*e.g.,* pricing, product design, etc.).

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific confidential business information as expeditiously as possible, but in no event later than fourteen (14) days from the filing of the information, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

(ii) Should the Secretary determine pursuant to this section that materials sought by a person to be protected from public disclosure do not constitute confidential business information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release confidential business information only to an authorized applicant whose application has been accepted and who

presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph, along with adequate personal identification.

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the confidential business information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

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

(ii) The person or agency from whom the confidential business information was obtained,

(iii) A person whose application for access to confidential business information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision-making on behalf of an interested party that is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such confidential business information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such confidential business information was obtained;

(4) Whenever materials (*e.g.,* documents, computer disks, etc.) containing such confidential business information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing confidential business information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing confidential business information with a cover sheet identifying the materials as containing confidential business information;

(7) Comply with the provisions of this section;

(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 breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall destroy all physical and electronic copies of materials released to authorized applicants pursuant to this section and all other materials containing confidential business information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to the applicant's personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender 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, the offender or the party represented by the offender, denial of further access to confidential business 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.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of;

(i) The date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) Upon the completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe that a breach has occurred and that the person has a reasonable opportunity to present views on whether a breach has occurred. If the Commission subsequently determines that a breach has occurred and that further investigation is warranted, then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present views, the Commission shall determine what sanction, if any, to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two-year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two-year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service.* (1) Any party filing written submissions that include confidential business information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in § 208.20(c), a nonconfidential version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular confidential business information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of § 208.20(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Confidential business information in submissions must be clearly marked as such when submitted by enclosing such information within brackets, and it must be segregated from other material being submitted.

(g) *Exemption from disclosure.* (1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this part, or any other submission to the Commission during the course of an investigation under this part. Such a request shall be granted only if the Secretary finds that such information is non-disclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, non-disclosable confidential business information is privileged information, classified information, or specific information (*e.g.,* trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the property of the requester, and it shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the non-disclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 201.6 of this chapter and § 208.20(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: ''CBI exempted from disclosure under APO enclosed in triple brackets.'' The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 208.20(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

Issued: June 22, 2020.

By order of the Commission.

William Bishop,

Supervisory Hearings and Information Officer.

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