

Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulation for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \*

#### ASO KY E5 Covington, KY [Revised]

Covington, Cincinnati/Northern Kentucky International Airport KY  
(lat. 39°02'30" N, long. 84°39'38" W)  
Cincinnati Municipal Airport-Lunken Field

(lat. 39°09'33" N, long. 84°25'06" W)

Cincinnati NDB

(lat. 39°09'33" N, long. 84°20'32" W)

Clermont County Airport, Batavia, OH

(lat. 39°04'42" N, long. 84°12'38" W)

Cincinnati-Blue Ash Airport, OH

(lat. 39°14'48" N, long. 84°23'21" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Cincinnati/Northern Kentucky International Airport, and within a 10.5-mile radius of Cincinnati Airport-Lunken Filed and within 2.6 miles each side of the 044° bearing from Cincinnati NDB and extending from the 10.5-mile radius to 7.4 miles northeast of the NDB, and within a 6.8-mile radius of Clermont County Airport, Batavia, OH, and within a 6.3-mile radius of Cincinnati-Blue Ash Airport, OH.

\* \* \* \*

Issued in College Park, Georgia, on September 4, 1997.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division,  
Southern Region.*

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#### INTERNATIONAL TRADE COMMISSION

#### 19 CFR Parts 201 and 207

#### Notice of Proposed Amendments to Rules of Practice and Procedure

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of Proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (the Commission) proposes to amend its Rules of Practice and Procedure concerning antidumping and countervailing duty investigations and reviews in 19 CFR parts 201 and 207. The proposed amendments will establish procedures for five-year reviews of antidumping and countervailing duty orders and suspension agreements that the Commission will begin to conduct in 1998 pursuant to the provisions of section 751(c) of the Tariff Act of 1930, as amended (the Act).

**DATES:** To be assured of consideration, written comments must be received not later than December 22, 1997. Rebuttal comments must be received not later than January 21, 1998.

**ADDRESSES:** A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of General

Counsel, U.S. International Trade Commission (telephone: 202–205–3087, e-mail: mbernstein@usitc.gov), or Vera A. Libeau, Office of Investigations, U.S. International Trade Commission (telephone 202–205–3176, e-mail: vlibeau@usitc.gov). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Uruguay Round Agreements Act (URAA) fundamentally revised the Act by requiring that antidumping and countervailing duty orders and suspension agreements be revoked after five years unless revocation would be likely to lead to a continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry. The URAA assigns to the Commission the responsibility of determining whether revocation of an antidumping or countervailing duty order, or termination of a suspension agreement, is likely to lead to the continuation or recurrence of material injury. The URAA requires that the Department of Commerce (Commerce) begin initiating five-year reviews in July 1998, that all five-year reviews of "transition orders"—those antidumping and countervailing duty orders and suspension agreements in effect on January 1, 1995, when the United States acceded to the Uruguay Round Agreements—be initiated by December 31, 1999, and that all reviews of transition orders be completed by June 30, 2001. The URAA further requires that Commerce initiate a five-year review of each order or agreement that is not a "transition order" no later than 30 days before the fifth anniversary of publication of the order or agreement in the **Federal Register**.

This notice proposes new procedures for five-year reviews. As described below, some of the proposed procedures will be reflected in changes to the Commission's Rules of Practice and Procedure. Other proposed procedures, such as scheduling, relate to internal agency practices and do not require regulations. Nevertheless, this notice describes several of these proposals and invites public comment on all proposed regulations and procedures.

The Commission has determined that these proposed regulations do not meet the criteria described in section 3(f) of the Executive Order 12866 (58 FR 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory

action for purposes of the EO. The Regulatory Flexibility Act (5 U.S.C. 601 note) is inapplicable to this rulemaking, because it is not one for which a Notice of Proposed Rulemaking (NOPR) is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish an NOPR, these proposed regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

The draft notice of institution reproduced at Annex A to this Notice constitutes an information collection request subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. After consultation with the Office of Management and Budget (OMB), the Commission believes that the contemplated collection of information pursuant to the draft notice of institution is encompassed within a clearance OMB has given the Commission under the Paperwork Reduction Act to collect information for antidumping and countervailing duty investigations and reviews, including those undertaken pursuant to section 751 of the Act. This clearance has been assigned OMB Control Number 3117-0016.

#### **Request for Comment**

The Commission solicits comments pertaining to its proposals concerning five-year reviews. The Commission will conduct a two-step comment process. Initial comments should be received by the Commission Secretary not later than December 22, 1997. Rebuttals to the initial comments may also be filed. Any rebuttal comments should be received by the Commission Secretary not later than January 21, 1998. All comments will be available for public inspection in the Commission's Public Docket Room between the hours of 8:45 am and 5:15 pm, Monday through Friday (except Federal Holidays).

Commenters are invited to address several distinct matters in their comments and rebuttal comments. The Commission requests that, to facilitate its review, commenters organize their comments as follows:

*Section I* of the comments should address the proposed amendments to the part 201 and 207 regulations presented in this notice.

*Section II* of the comments should address proposed procedures for five-year reviews that the Commission has discussed in this notice, but has not incorporated into the proposed amendments to the part 201 and part 207 regulations. These would include, for example, comments on the format or specific questions of the sample notice

of institution appearing as Annex A to this notice, or comments on the proposed schedule appearing as Annex B to this notice.

*Section III* of the comments should address any other issues commenters may desire to raise pertaining to five-year reviews. The regulations proposed below solely concern the procedures that the Commission intends to use in conducting five-year reviews. The proposed regulations do not address what methodology the Commission, or individual Commissioners, may use to determine whether revocation of an order, or termination of a suspended investigation, would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Nor do the proposed regulations address how the Commission, or individual Commissioners, will analyze the various factors specified in section 752(a) of the Act in making determinations in five-year reviews.

Although the Commission does not intend to issue regulations pertaining to methodological or analytical issues in five-year reviews, many private practitioners may desire the opportunity to address the Commission about such issues before the reviews begin. The Commission therefore invites persons to file comments on such issues in conjunction with their comments on the procedural matters discussed in this NOPR.

#### **Hearing**

The Commission also intends to hold a public hearing at which interested persons will be invited to present their views regarding the procedural matters discussed in this NOPR as well as methodological and analytical issues relating to five-year reviews. The Commission will issue a notice in advance of the hearing setting forth the date of the hearing and the procedures that will be followed at the hearing. The hearing will be held after the submission of the rebuttal comments.

#### **Overview of the Proposed Regulations**

The Commission is proposing to promulgate a series of new regulations, to be codified in Subpart F of Part 207, establishing procedures for five-year reviews. Several of the proposed regulations closely resemble current regulations in Subpart C of Part 207 concerning final phase antidumping and countervailing duty investigations. Others establish new procedures that address unique aspects of the five-year review mechanism created by the URAA.

The statute requires Commerce to initiate all five-year reviews

automatically. As part of the initiation, Commerce and the Commission are authorized to request that interested parties submit certain information needed to conduct the review. Accordingly, one of the proposed regulations describes the information that the Commission will request from interested parties upon initiation of the review. Each interested party will be requested to state its willingness to participate in the review, and describe the likely effects of revocation of the order or termination of the suspended investigation under review. In addition, the Commission will request that each interested party provide other information or industry data, including a statement concerning conditions of competition in the pertinent domestic industry, a listing of U.S. producers of the domestic like product and importers and foreign producers of the subject merchandise, and certain quantitative data concerning its operations. All interested parties will be requested to furnish this information to the Commission within 30 days. (Interested parties that desire to participate as parties in the Commission review must also file entries of appearance with the Commission within 21 days.) These provisions will aid the Commission in ascertaining whether interested parties have sufficient willingness to participate in a five-year review. They will also provide the Commission with record information for use in an expedited determination, if appropriate.

Section 751(c)(3)(B) of the Act authorizes the Commission to make an expedited determination without further investigation when interested party responses to the notice of initiation are inadequate. Interested parties that have entered appearances in the review and have responded to the notice of institution and other parties that have entered appearances in the review will be permitted to file a brief submission concerning whether an expedited determination is appropriate based on the adequacy of interested party responses to the notice of institution.

The Commission will consider these comments and the responses to the notice of institution and determine whether the review should be expedited approximately 95 days after publication of the notice of institution. Should the Commission determine to expedite the review, interested parties that have entered appearances in the review and have responded adequately to the notice of institution and other parties that have entered appearances in the review will be provided the opportunity to submit comments concerning the merits of the review before the Commission's

determination on the merits. The record evidence in the expedited review will be limited to that already available to the Commission.

Should the Commission determine not to expedite the review, the review will proceed in a manner closely resembling a final phase antidumping or countervailing duty investigation. Several of the proposed regulations apply existing procedures to five-year reviews. For example, parties that have entered appearances in the review will have the opportunity to submit written comments on draft questionnaires. They will receive prehearing and final reports from the Commission staff, and will have the opportunity to present testimony at a hearing before the Commission and to file prehearing and posthearing briefs and final comments.

### Section-by-Section Analysis of the Proposed Regulations

#### Section 201.11

Section 201.11 concerns the filing of entries of appearance in Commission investigations and reviews. The Commission is proposing to add new paragraphs (b)(4) and (b)(5) to this section to govern the filing of entries of appearance in five-year reviews. Under proposed section 201.11(b)(4), a party will have 21 days from publication of the Commission's notice of institution of five-year review to file an entry of appearance.

If the Commission determines not to expedite the review, it will issue a notice of scheduling approximately 95 days after institution of the review. (See proposed section 207.62.) Under proposed section 201.11(b)(5), a party will have an additional 45 days after publication of this notice to file an entry of appearance.

#### Section 207.3

Section 207.3(b) requires parties to provide hand or overnight service of, *inter alia*, prehearing briefs, hearing testimony, and posthearing briefs filed in antidumping and countervailing duty investigations. The proposed amendment adds cross-references to several of the new provisions in Subpart F to existing requirements regarding service.

#### Section 207.45

Section 207.45 concerns changed circumstances reviews pursuant to section 751(b) of the Act. The proposed amendment changes the statutory cross-reference in section 207.45(a) so it specifically cites section 751(b). No substantive change is intended.

#### Section 207.46

Section 207.46 is an interim regulation that establishes procedures for investigations under section 753 of the Act, which concerns countervailing duty orders issued under former section 303 of the Act without an injury determination by the Commission.<sup>1</sup> The proposed regulation contains three changes from the interim regulation. First, in the caption for subsection 207.46(g) and in the first sentence of section 207.46(g)(1), the word "expedited" has been deleted to avoid any confusion between simultaneous reviews conducted pursuant to section 753(e) of the Act and five-year reviews that are expedited pursuant to section 751(c)(3)(B) of the Act. Second, the second sentence of section 207.46(g)(1) has been deleted as unnecessary. This sentence requires that requests for simultaneous five-year reviews under section 753(e) of the Act contain a statement why revocation of the order to be reviewed would lead to continuation or recurrence of material injury. Should a simultaneous five-year review be conducted, a similar statement will be requested in the notice of institution. Third, the final sentence in section 207.46(g)(2) has been amended to refer to the new Subpart F governing five-year reviews.

#### Section 207.60

Proposed section 207.60 defines certain terms used in Subpart F of Part 207 concerning five-year reviews. The first three definitions, "five-year review," "expedited determination," and "notice of institution," are proposed to promote economy of wording. "Five-year review" is a five-year review investigation conducted under section 751(c) of the Act. "Expedited determination" is a determination made under section

751(c)(3)(B) of the Act. "Notice of institution" is the notice of institution of five-year review that the Commission will publish in the **Federal Register** upon initiation of a review. The remaining three terms, "domestic like product," "domestic industry," and "subject merchandise," are terms commonly used in antidumping and countervailing duty proceedings, and are based on sections 771(10), 771(4)(A), and 771(25) of the Act, respectively.

#### Section 207.61

When Commerce initiates a five-year review, the Commission will publish a notice of institution of five-year review in the **Federal Register** informing interested parties and other persons of their opportunity to provide information to the Commission. Proposed section 207.61 describes what interested parties will be requested to submit to the Commission in response to the notice of institution.

Each interested party (as that term is defined in section 771(9) of the Act) may respond to the notice of institution whether or not it entered an appearance in the Commission review proceedings. If interested parties do not file adequate responses, however, the Commission may determine not to conduct a full review investigation, but instead may issue an expedited determination based on the facts available pursuant to section 751(c)(3)(B) of the Act. The Commission's evaluation of adequacy is described below in the discussion of proposed section 207.62.

Proposed § 207.61(a) states that responses to the notice of institution must be submitted to the Commission no later than 30 days after publication of the notice in the **Federal Register**. The Commission believes that 30 days will be ample time for interested parties to submit the requested information, particularly since the Commission will provide public notice (through this rulemaking and other actions) of the type of information that will be requested in five-year reviews well in advance of the actual institution of any five-year reviews. Moreover, the Commission intends that it will jointly prepare with Commerce a final schedule of all transition reviews, which will be published in the **Federal Register** before the initiation of the first review. This notice will provide interested parties with sufficient advance notice of scheduling of all transition reviews to enable them to know approximately when such information will be due before publication of the actual notice of institution. This notice will also be mailed to the embassy in Washington, D.C. of each country that will be a

<sup>1</sup>Section 207.46 became effective on January 1, 1995, together with several other interim regulations that were designed to conform to the Commission's Rules of Practice and Procedure to the URAA pending adoption of final regulations. See 60 Fed. Reg. 18 (Jan. 3, 1995). When the Commission proposed adopting its other interim regulations as final regulations, it did not do so with respect to section 207.46, because it perceived section 207.46 to relate to the general question of five-year reviews and stated that "the Commission is not prepared to address the question of 'sunset' reviews at this time." 60 Fed. Reg. 51748, 51753 (Oct. 3, 1995). Now that the Commission is establishing procedures for five-year reviews, it believes that proposing to adopt section 207.46 as a final regulation is appropriate. (The Commission contemplates that it will be conducting investigations under section 753, pursuant to pending requests, during 1997-98. Additionally, there is a theoretical possibility that future requests for section 753 investigations may be filed if additional countries become Subsidies Agreement countries.)

subject country in any five-year review. Persons who are not interested parties will also be provided an opportunity to respond under proposed § 207.61(e), as discussed below.

Proposed paragraphs (b) and (c) describe what interested parties will be requested to submit to the Commission in response to the notice of institution. Sections 751(c)(2)(A), (B), and (C) of the Act expressly direct the Commission and Commerce to request interested parties to submit: (1) A statement expressing their willingness to participate in the review by providing information requested by the agencies, (2) a statement regarding the likely effects of revocation of the order or termination of the suspension agreement under review, and (3) such other information or industry data as the agencies may specify. The URAA's legislative history specifically contemplates that the Commission may seek detailed quantitative data from interested parties upon initiation of a five-year review, such as "certain key data regarding sales, prices, imports, and market conditions."<sup>2</sup>

The Commission has two reasons for requesting the submission of certain information and quantitative data from interested parties upon initiation of a five-year review. First, the Commission must determine whether there is sufficient willingness among interested parties to participate in the review and adequate indication that parties will submit requested information throughout the proceeding. The Commission could not effectively ascertain whether such willingness exists—and whether any future investigative efforts are likely to be fruitful—if interested parties were permitted merely to submit *pro forma* statements of intent to participate. When such willingness does not exist or is limited, an expedited review will be more efficient for both the parties and the Commission than conducting a full review.

Second, the responses to the notice of institution will provide the Commission with information for the record it can use in making a determination, particularly an expedited determination pursuant to section 751(c)(3)(B) of the Act. Section 752(a) of the Act requires the Commission to consider a number of factors when it makes its determination, including an expedited determination, in a five-year review. Additionally, the Commission's expedited determinations are subject to review by U.S. courts,

NAFTA Chapter 19 panels, and/or the WTO Dispute Settlement Body.

As a practical matter, the Commission's sole opportunity in expedited reviews to obtain information that will enhance its ability to reach a defensible determination—beyond what is available from the original record—is to request such information in the notice of institution. Thus, because of the possibility of an expedited determination in any five-year review, there is a certain amount of information gathering at the initiation stage that is simply unavoidable and any resulting burden on interested parties is inherent in the statutory scheme. Moreover, the information to be submitted is the same type of information that the Commission necessarily would seek at some point in the review. At most, therefore, the proposed regulations request interested parties to submit information earlier in the review process. The Commission nevertheless solicits comments addressing what amount and type of information should be requested in the notice of institution that will enable the Commission to assess the willingness of interested parties to participate in a full five-year review and to make an expedited determination when such a determination is appropriate, while minimizing burdens on interested parties.

Interested party responses to the notice of institution will be in two parts. One part will be filed with the Secretary. The other will be submitted to the Office of Investigations. The Commission believes that such a bifurcated filing process will reduce the burdens to interested parties in submitting business proprietary information (BPI), because, as explained below, the parties need not justify proprietary treatment for information they will submit to the Office of Investigations or prepare and file a public version of this submission. The evaluation of whether the response of an individual interested party is adequate will be based on that party's response to both parts of the notice.

The first part of the response, which proposed section 207.61(b) addresses, will be filed with the Secretary pursuant to the requirements of Commission rules 201.8 and 207.3. This submission will include the material specified in section 751(c)(2)(A) and (B) of the Act: a statement that the submitter is willing to participate in the review by providing requested information and a statement regarding the likely effects of revocation of the order or termination of the suspended investigation. These requirements are set forth in proposed sections 207.61(b)(1) and (b)(2). The

submission will also provide identifying information: the submitter's name, address, telephone number, facsimile number, electronic mail address and (if applicable) World Wide Web site address, and a statement indicating whether it is a producer of the domestic like product, a U.S. importer of subject merchandise, a foreign producer or exporter of subject merchandise, or another type of interested party.

Interested parties will also be asked to list all known and currently operating U.S. producers of the domestic like product, all known and currently operating U.S. importers of subject merchandise, and all known and currently operating producers of the subject merchandise in each subject country that currently export or have exported subject merchandise to the United States or to any other country during the period specified in the notice of institution. This material will aid the Commission in determining the adequacy of interested party responses to the notice of institution. Interested parties will be required only to furnish information in their possession to compile these lists. If this information is not in the interested party's possession, however, it must expressly so indicate in its response to the Commission pursuant to proposed section 207.61(d).

Additionally, each interested party will be provided the option of stating whether it agrees with the definitions of the domestic like product and domestic industry that the Commission adopted in its original investigation(s). Interested parties that respond that they disagree with an original definition will be requested to explain why and to provide an alternative definition. This information will assist the Commission to ascertain the like product and domestic industry issues that may arise in each review, and the extent and nature of any future investigative activity it may conduct.

The second part of the response to the notice of institution, which proposed section 207.61(c) addresses, will be a submission to the Commission's Office of Investigations. Domestic producers, foreign producers of subject merchandise, and U.S. importers of subject merchandise will be requested to furnish certain quantitative data to the Office of Investigations concerning their operations. Each domestic producer will be asked to provide information about the domestic like product(s) defined by the Commission in the original investigation(s) giving rise to the review, including information on capacity, production, commercial shipments, inventories, employment, financial performance, and prices. Each

<sup>2</sup> URAA Statement of Administrative Action (SAA), H.R. Rep. 316, 103d Cong., 2d Sess., vol. 1 at 879 (1994).

importer of subject merchandise will be asked to provide information about its import volumes, commercial shipments, inventories, and prices for the subject merchandise. Each foreign producer of subject merchandise will be asked to provide information about its capacity, production, home market shipments, export shipments, and inventories of the subject merchandise. The Commission will request each party to submit actual data for the most recently completed calendar year, and projections for the succeeding calendar year (which will generally be the calendar year in which the notice of institution is published) in accordance with generally accepted accounting principles. The notice of institution for each review will specify the particular data that interested parties are to furnish.

Each interested party will also be requested to provide certain narrative information to the Office of Investigations. First, each interested party will be requested to identify significant changes in the supply of and demand for the domestic like product that have occurred since the order(s) or agreement(s) under review became effective. This will provide the Commission with information concerning conditions of competition that it can use in making a determination. Additionally, interested parties in grouped reviews involving multiple subject countries will be asked to explain the extent to which the domestic like product competes or is likely to compete with subject merchandise from each subject country, and the degree to which merchandise from each subject country competes or is likely to compete with merchandise from each other subject country. This will provide the Commission with information pertinent to its determination on cumulation.

Finally, under proposed section 207.61(c)(2), interested parties will be free to furnish any other information or data relevant to the Commission's determination. For example, interested parties may desire to provide information not specifically requested in the notice of institution pertinent to one or more of the factors that the Commission is to consider under section 752(a) of the Act in rendering a determination in a five-year review. Interested parties may also desire to indicate which domestic producers are related parties under section 771(4)(B) of the Act.

Any submission that interested parties make pursuant to section 207.61(c) will be submitted to the Office of Investigations and will not be subject to the filing requirements of section

201.8. Instead, only a single copy of the submission need be filed with the Office of Investigations. The Commission contemplates that substantially all of the information contained in this submission will be business proprietary. Consequently, the Commission will automatically accord such submissions proprietary treatment, except to the extent the information is otherwise publicly available. A submitter need not submit the justification for proprietary treatment or public versions of the submissions that would otherwise be required by Commission rules 201.6 or 201.8. This procedure will accord the same treatment to these submissions that has long been accorded to questionnaires submitted to the Office of Investigations in Commission investigations. Pursuant to Commission rule 207.3(b), interested parties that entered appearances in the review must serve the public version of the submission described in section 207.61(b) on all other parties to the review and the proprietary versions of both parts of their response to the notice of institution (i.e., the submissions described in both sections 207.61(b) and 207.61(c)) on all representatives on the Administrative Protective Order (APO) service list.

A sample notice of institution appears at Annex A to this notice. The Commission contemplates that interested parties will be able to obtain forms, whose use will be optional, to respond to the notice of institution in a specific review from the Office of Investigations or the Commission's World Wide Web site.

Proposed section 207.61(d) addresses situations in which an interested party cannot furnish the information requested in the notice of institution in the form or manner requested. In such instances, the interested party should explain in its response why it is unable to comply and indicate alternative forms in which it can provide such information. This section is intended to apply the provisions of section 782(c)(1) of the Act in the context of responses to notices of institution.

Pursuant to section 782(b) of the Act and Commission rule 207.3(a), any person that submits information in response to the notice of institution or that makes a submission pursuant to section 207.61(e) must certify that the information is accurate and complete to the best of its knowledge. The Commission contemplates that the standard forms it will make available for responses to the notice of institution will contain specific language, such as that currently used in questionnaires in antidumping and countervailing duty

investigations, for the required certification. Interested parties must certify both parts of their responses (i.e., the submissions described in section 207.61(b) and section 207.61(c)).

Each individual interested party response to the notice of institution will be reviewed for completeness by Commission staff immediately upon its receipt. Commission staff will attempt to notify each interested party of any deficiencies in its response, will state the nature of the deficiency and will, to the extent practicable, provide it with a brief period of time (approximately 5–10 days) in which to remedy or explain the deficiency. The Commission will not collect or accept any additional information or conduct other investigative activity thereafter unless it decides to proceed to a full review. This notification procedure is intended to apply the provisions of section 782(d) of the Act in the context of responses to notices of institution.

The Act provides the Commission with several potential courses of action when interested parties fail to provide responses to the notice of institution or provide responses that are deficient. Under section 782(d) of the Act, when a person fails to respond in a satisfactory or timely manner to a request to remedy or explain a deficiency in a submission, the Commission may disregard all or part of the submission. Under section 776(b) of the Act, when an interested party fails to cooperate by not acting to the best of its ability to comply with a Commission request for information, the Commission may take an adverse inference against the party in reaching a determination. Consequently, when an interested party neither provides the information requested in the notice of institution nor provides an acceptable explanation of its inability to provide such information, the Commission may take an adverse inference against that party in reaching any determination in a five-year review, including an expedited determination.

Proposed section 207.61(e) provides an opportunity for those persons that are not interested parties as defined by the Act (such as industrial users, and, if merchandise under investigation is sold at the retail level, representative consumer groups) to submit information they consider relevant to the Commission's five-year review. Such information must be filed with the Commission Secretary in accordance with the provisions of section 201.8 within the 30-day period applicable to interested party responses to the notice of institution.

### Section 207.62

Section 751(c)(3)(B) of the Act permits the Commission to make expedited determinations in five-year reviews when "interested parties provide inadequate responses to a notice of initiation." Proposed section 207.62 describes the procedures for issuing expedited determinations under section 751(c)(3)(B).

Proposed section 207.62(a) authorizes certain parties to file brief comments to the Commission within a time specified in the notice of institution, which will generally be no later than 60 days after publication of the notice. Parties authorized to file comments are: (1) Interested parties that have entered appearances in the review and have responded to the notice of institution; and (2) all parties that have entered appearances in the review that are not interested parties. The sole issue these comments may address is whether an expedited determination under section 751(c)(3)(B) of the Act is appropriate. These comments may not include any new factual information (such as supplementation of the response to the notice of institution) and will be limited to five pages.

Representatives of interested parties that have entered into a Commission APO will have access to other parties' proprietary responses to the notice of institution well before these comments are due. Under section 207.3(b), responses to the notice of institution submitted by parties that have entered appearances in the investigation must be served on all other parties on the service list. The Commission will release under APO responses to the notice of institution filed by interested parties that have not entered appearances in the investigation approximately two weeks before the section 207.62(a) comments are due. At approximately the same time, the Commission intends to release confidential versions of the Commission's opinion(s) in the original investigation and staff reports and non-privileged memoranda prepared in connection with that investigation (where available) to representatives under the APO. Public versions of these documents (where available) will also be released. The Commission will also release official import statistics and estimates of domestic and foreign industry production compiled by Commission staff, where such information is available.

After all comments are received, the Commission will determine whether interested party responses are adequate. The SAA provides that the purpose of

the expedited review mechanism is to promote administrative efficiency by eliminating needless reviews. The SAA also states that the determination of adequacy is committed to the Commission's (and, separately, Commerce's) discretion.<sup>3</sup>

Responses will be evaluated for adequacy on both an individual and an aggregate basis. In assessing the adequacy of responses in the aggregate, the Commission will consider only those responses that individually are considered adequate. The Commission will separately determine the adequacy of response (in the aggregate) of: (1) Interested parties described in sections 771(9)(C), (D), (E), (F), and (G) of the Act (a group that consists of, inter alia, U.S. producers of the domestic like product and labor unions or groups of workers which are representative of an industry producing the domestic like product; this group will be referred to as "domestic producers/unions"), and (2) interested parties described in sections 771(9)(A) and (B) of the Act (a group that consists of, inter alia, U.S. importers and foreign exporters or producers of subject merchandise and subject country governments; this group will be referred to as "foreign producers/importers").

The Commission will make the determination of adequacy on a case-by-case basis taking several factors into account. One factor that the Commission will consider in determining adequacy is the responding parties' likely share of domestic production (for domestic producers/unions) or of subject imports or production of the subject merchandise (for foreign producers/importers). The Commission does not intend to apply strict numerical tests to determine adequacy of interested party responses. Nevertheless, to provide some guidance to interested parties, the Commission can tentatively identify certain circumstances in which it will consider that response rates are sufficiently high or low to provide a strong indication that interested party responses are either adequate or inadequate. Specifically, responses from parties accounting for more than 50 percent of domestic production will normally be considered to be a strong indication of an adequate response from domestic producers/unions. Responses from parties accounting for more than 50 percent of subject imports or production of subject merchandise will normally be considered to be a strong indication of an adequate response from foreign producers/importers. Consequently, a

sufficient response by either U.S. importers or foreign producers of the subject merchandise may constitute an adequate response from foreign producers/importers. By contrast, responses accounting for less than 25 percent of domestic production, on the one hand, or subject imports or production of subject merchandise, on the other, will normally be considered to be a strong indication of inadequate responses by domestic producers/unions and foreign producers/importers, respectively.

The Commission will not rely solely on numerical tests and will take other factors into account in determining whether interested party responses are adequate. For example, a response rate that may seem to be inadequate for a highly concentrated industry may be adequate for a highly fragmented industry.

Additional factors that the Commission intends to consider include the structure of the pertinent domestic industry and industry producing the subject merchandise, the potential of particular foreign producers to export to the United States, the extent to which subject imports are effectively excluded from the U.S. market by the order or suspension agreement under review, and, for domestic producers/unions, the prevalence of related party producers. The Commission invites parties to comment on the appropriateness of relying on these factors to determine whether interested party responses are adequate, and whether there are additional or different factors that the Commission should consider in making such a determination. The Commission also invites parties to comment on the appropriateness of making expedited determinations in grouped reviews involving subject merchandise from several countries, if responses from the foreign producers/importers are adequate with respect to some of the subject countries within the group but inadequate with respect to others.

Pursuant to proposed section 207.62(b), if the Commission determines that interested party responses are adequate, it will conduct a full five-year review. In such cases, the Commission will publish its schedule of the remaining procedures in the **Federal Register**. (A sample schedule appears as Annex B to this notice.) Under proposed section 201.11(b)(5), parties will have 45 days after publication of this **Federal Register** notice to file additional entries of appearance and APO applications.

By contrast, proposed section 207.62(c) describes procedures that apply when the Commission concludes that interested party responses are

<sup>3</sup> SAA at 880.

inadequate and an expedited determination is appropriate. In such circumstances, the Secretary will notify all parties that submitted timely entries of appearance in the Commission review that the Commission has decided to make an expedited determination. The notice will invite interested parties that responded adequately to the notice of institution and all parties that are not interested parties to submit comments on the merits of the review by a specific deadline (which will generally be approximately 30–35 days from issuance of the notice). Other persons who are not interested parties will have the opportunity to submit a brief written statement on the merits of the review by the same deadline.

The comments to be filed under proposed section 207.62(c), which will satisfy the requirements of section 782(g) of the Act, give parties their sole opportunity to submit comments to the Commission on the merits of an expedited determination. These comments may not contain new factual information and may not exceed 25 pages. Consistent with Commission practice under section 207.30(b), comments containing new factual information will be accepted into the record, but new factual information and arguments based on that new factual information will be disregarded. Any compilations by the Commission of information collected and not previously released to representatives under APO will be released under APO approximately 20 days before these comments are due. The information released will include a staff report that will compile information obtained in response to the notice of institution as well as official import statistics, and, where available, estimates of domestic and foreign industry production compiled by the Commission staff. A public version of the staff report will also be released.

Proposed section 207.62(d) allows the Commission to delegate to a senior member of the staff, such as the Director of Operations or the Director of Investigations, authority to make decisions concerning whether interested party responses to the notice of institution are adequate or inadequate. Initially, the Commission will itself make all such decisions. Should the Commission decide to delegate decisionmaking authority concerning whether interested party responses are inadequate, it will retain sole authority to issue the expedited determination in any particular review.

#### *Section 207.63*

Proposed section 207.63 concerns circulation of draft questionnaires in five-year reviews. As stated in proposed section 207.63(a), when the Commission does not issue an expedited determination in a five-year review, it will circulate draft questionnaires to the parties that have entered appearances in the review. The Commission anticipates sending questionnaires to U.S. producers of the domestic like product, foreign producers of subject merchandise, U.S. importers of subject merchandise, and U.S. purchasers. Questionnaires will commonly seek data in more detail (particularly with respect to financial performance and pricing), for additional periods of time, and, when warranted, for additional products than will the notice of institution. The Commission anticipates that draft questionnaires will be circulated to the parties to the review approximately 150 days after initiation. The Commission invites comment on the content and format of questionnaires in five-year reviews.

Parties that desire to comment on the draft questionnaires may submit written comments to the Commission, as indicated by proposed section 207.63(b). The Commission anticipates that such comments will be due approximately 30 days after circulation of the draft questionnaires.

Proposed section 207.63(b) requires each party to present all data collection requests in its questionnaire comments. The Commission will disregard any subsequent arguments that are premised on the collection of new data if the data collection request was not asserted in the questionnaire comments. Thus, if the draft questionnaires in a review propose collecting data for only one product, and a party believes that data should be collected for two products, it must request data collection for two products, and provide a legal basis for its request, in its comments on the questionnaire. It may not request collection of such data for the first time, for example, in its prehearing brief or at the hearing.

The Commission believes this procedure is necessary to focus its data collection efforts. In original antidumping and countervailing duty investigations, the Commission has found issuing supplemental questionnaires in the late stages of an investigation to be impractical because of time and staffing constraints. These problems will be exacerbated in five-year reviews. Therefore, any data collected in a five-year review must be collected pursuant to the notice of

institution and in the questionnaires. It is imperative that the Commission be apprised of all data collection issues before questionnaires are issued. The Commission believes that this procedure will impose no hardship on representatives of interested parties who have entered an APO, who will have the benefit of pertinent portions of the record of the original investigation, as well as access under APO to all information collected in response to the notice of institution, before they are to file comments on the questionnaires. This material should allow interested party representatives ample time to determine what information they believe the Commission should seek and consider. Likewise, parties to the review that are not interested parties will have ample notification and access to the public record to provide an informed basis for comment.

#### *Section 207.64*

Proposed section 207.64 concerns staff reports in five-year reviews. It tracks current section 207.22 concerning staff reports in final phase antidumping and countervailing duty investigations.

#### *Section 207.65*

Proposed section 207.65 concerns prehearing briefs. It is adapted from current section 207.23. In a five-year review, every party to the review is to submit a prehearing brief on the date specified in the scheduling notice.

#### *Section 207.66*

Proposed section 207.66 concerns hearings in five-year reviews. The Commission will conduct a hearing in each five-year review in which it does not render an expedited determination. Hearing procedures will conform to those established in current section 207.24 concerning final phase antidumping and countervailing duty investigations.

#### *Section 207.67*

Proposed section 207.67 concerns posthearing briefs and statements. It is based on current sections 207.25 and 207.26.

#### *Section 207.68*

Proposed section 207.68 concerns final comments on information in five-year reviews. It is based on the final comment procedure in section 207.30 currently used in final phase antidumping and countervailing duty investigations.

The procedures in section 207.68 will be used in five-year reviews where the determination is not expedited. In five-year reviews where the determination is

expedited, the final comment procedure is specified in proposed section 207.62(c).

**Section 207.69**

Proposed section 207.69 requires the Commission to publish and serve its determinations in five-year reviews. It tracks current section 207.29.

**List of Subjects**

**19 CFR Part 201**

Administrative practice and procedure, Investigations, Imports.

**19 CFR Part 207**

Administrative practice and procedure, Antidumping, Countervailing duties, Investigations.

For the reasons stated in the preamble, 19 CFR parts 201 and 207 are proposed to be amended as set forth below:

**PART 201—[AMENDED]**

1. The authority citation for part 201 continues to read as follows:

**Authority:** Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) and § 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. New paragraphs (b)(4) and (b)(5) are added to § 201.11 to read as follows:

**§ 201.11 Appearance in an investigation as a party.**

\* \* \* \* \*

(b) *Time for filing.* \* \* \*

(4) In the case of reviews conducted under subpart F of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication in the **Federal Register** of the notice of institution described in § 207.60(c).

(5) Notwithstanding paragraph (b)(4) of this section, a party may file an entry of appearance in a review conducted under subpart F of part 207 of this chapter for a period of 45 days after publication in the **Federal Register** of the notice specified under § 207.62(b).

\* \* \* \* \*

**PART 207—[AMENDED]**

3. The authority citation for part 207 continues to read as follows:

**Authority:** 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

4. Paragraph (b) of § 207.3 is revised to read as follows:

**§ 207.3 Service, filing, and certification of documents**

\* \* \* \* \*

(b) *Service.* Any party submitting a document for inclusion in the record of

the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. 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 § 207.7, 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 pursuant to §§ 207.10, 207.15, 207.23, 207.24, 207.25, 207.65, 207.66, and 207.67 shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

\* \* \* \* \*

5. Paragraph (a) of § 207.45 is revised to read as follows:

**§ 207.45 Investigation to review outstanding determination**

(a) *Request for review.* Any person may file with the Commission a request for the institution of a review investigation under section 751(b) of the Act. The person making the request shall also promptly serve copies of the request on the parties to the original investigation upon which the review is to be based. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission.

\* \* \* \* \*

6. Paragraph (g) of § 207.46 is revised to read as follows:

**§ 207.46 Investigations concerning certain countervailing duty orders.**

\* \* \* \* \*

(g) *Request for simultaneous section 751(c) review.* (1) A requesting party who requests a section 753 review may at the same time request from the Commission and the administering authority a review under section 751(c) of the Act of a countervailing or antidumping duty order involving the

same or comparable subject merchandise.

(2) Should the administering authority, after consulting with the Commission, determine to initiate a section 751(c) review, the Commission shall conduct a consolidated review under sections 751(c) and 753 of the Act of the orders involving the same or comparable subject merchandise. Any such consolidated review shall be conducted under the applicable procedures set forth in subparts A and F of this part.

(3) Should the administering authority, after consulting with the Commission, determine not to initiate a section 751(c) review, the Commission will consider the request for a section 753 review pursuant to the procedures established in this section.

7. A new subpart F is added to read as follows:

**Subpart F—Five-Year Reviews**

- 207.60 Definitions.
- 207.61 Responses to notice of institution.
- 207.62 Adequacy of responses to notice of institution.
- 207.63 Circulation of draft questionnaires.
- 207.64 Staff reports.
- 207.65 Prehearing briefs.
- 207.66 Hearing.
- 207.67 Posthearing briefs and statements.
- 207.68 Final comments on information.
- 207.69 Publication of determinations.

**§ 207.60 Definitions.**

- For purposes of this subpart:
- (a) The term *five-year review* means a five-year review investigation conducted pursuant to section 751(c) of the Act.
  - (b) The term *expedited determination* means a determination issued by the Commission pursuant to section 751(c)(3)(B) of the Act.
  - (c) The term *notice of institution* shall refer to the notice of institution of five-year review that the Commission shall publish in the **Federal Register** requesting that interested parties provide information to the Commission upon initiation of a five-year review.
  - (d) The term *domestic like product* means a product produced in the United States which is like, or in the absence of like, most similar in characteristics and uses with, the articles subject to a five-year review.
  - (e) The term *domestic industry* means the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.
  - (f) The term *subject merchandise* means the class or kind of merchandise

that is within the scope of the five-year review.

**§ 207.61 Responses to notice of institution.**

(a) *When information must be filed.* Responses to the notice of institution shall be submitted to the Commission no later than 30 days after its publication in the **Federal Register**.

(b) *Information to be filed with the Secretary.* The notice of institution shall direct each interested party to make a filing pursuant to §§ 201.8 and 207.3 of this chapter containing the following:

(1) A statement expressing its willingness to participate in the review by providing information requested by the Commission;

(2) A statement regarding the likely effects of revocation of the order(s) or termination of the suspended investigation(s) under review;

(3) Other information requested in the notice of institution.

(c) *Information to be submitted to the Office of Investigations.* The notice of institution shall further direct each interested party to submit the following material to the Commission's Office of Investigations:

(1) Such information or industry data as the Commission may specify in the notice of institution;

(2) Any other information or data the party considers relevant to the Commission's determination.

(d) *When requested information cannot be supplied.* Any interested party that cannot furnish the information requested by the notice of institution shall explain in its response(s) why it is unable to provide the information and indicate alternative forms in which it can provide equivalent information.

(e) *Submissions by persons other than interested parties.* Any person who is not an interested party may submit to the Commission, in a filing satisfying the requirements of § 201.8 of this title, information relevant to the Commission's review no later than 30 days after publication of the notice of institution in the **Federal Register**.

**§ 207.62 Adequacy of responses to notice of institution.**

(a) *Comments to the Commission.* (1) Comments to the Commission concerning whether the Commission should make an expedited determination in that review may be submitted by:

(i) Any interested party that is a party to the investigation and that has responded to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the investigation.

(2) Comments shall be submitted within the time specified in the notice of institution. Comments shall not exceed five (5) pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches. Comments containing new factual information shall be disregarded.

(b) *Determination that responses are adequate.* If the Commission concludes that interested parties' responses to the notice of institution are adequate, investigative activities pertaining to that review will continue. The Commission will publish in the **Federal Register** a notice of scheduling pertaining to subsequent procedures in the review.

(c) *Determination that responses are inadequate.* (1) If the Commission concludes that interested parties' responses to the notice of institution are inadequate, it may decide to issue an expedited determination. In that event, the Commission shall direct the Secretary to issue a notice stating that the Commission has decided to make an expedited determination and inviting those parties to the review described in paragraph (c)(2) of this section to file written comments with the Secretary on what determination the Commission should reach in the review. The date on which such comments must be filed will be specified in the notice to be issued by the Secretary. Comments shall not exceed twenty-five (25) pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches. Comments containing new factual information shall be disregarded.

(2) The following parties may file the comments described in paragraph (c)(1) of this section:

(i) Any interested party that is a party to the investigation and that has filed an adequate response to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the investigation.

(3) Any person who is neither a party to the investigation nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review within the time specified for the filing of written comments.

(d) *Delegation of responsibilities.* Notwithstanding any other provision of this part, the Commission may delegate its responsibilities pursuant to this section to a member of the Commission staff.

**§ 207.63 Circulation of draft questionnaires.**

(a) In each five-year review in which the Commission has not issued an expedited determination, the Director shall circulate draft questionnaires to the parties for comment.

(b) Any party desiring to comment on the draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new data must be presented at this time. The Commission will disregard subsequent arguments that are premised on requests for collection of new data if such requests were not included in the comments on the draft questionnaires.

**§ 207.64 Staff reports.**

(a) *Prehearing staff report.* The Director shall prepare and place in the record, prior to the hearing, a prehearing staff report containing information concerning the subject matter of the five-year review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under § 207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

**§ 207.65 Prehearing briefs.**

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination.

**§ 207.66 Hearing.**

(a) *In general.* The Commission shall hold a hearing in each five-year review in which it does not make an expedited determination. The date of the hearing

shall be specified in the scheduling notice.

(b) *Procedures.* Hearing procedures in five-year reviews will conform to those for final phase antidumping and countervailing duty investigations set forth in § 207.24.

**§ 207.67 Posthearing briefs and statements.**

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, on stationery measuring 8½ × 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

(b) *Statements from nonparties.* Any person other than a party may submit a brief written statement of information pertinent to the review within the time specified for the filing of posthearing briefs.

**§ 207.68 Final comments on information.**

(a) The Commission shall specify a date after the filing of posthearing briefs on which it will disclose to all parties to the five-year review all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 207.7.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, on stationery measuring 8½ × 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new

factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

**§ 207.69 Publication of determinations.**

Whenever the Commission makes a determination concluding a five-year review, the Secretary shall serve copies of the determination and, when applicable, the nonbusiness proprietary version of the final staff report on all parties to the review, and on the administering authority. The Secretary shall publish notice of such determination in the **Federal Register**.

By order of the Commission.

Issued: October 20, 1997.

**Donna R. Koehnke,**  
Secretary.

**Note:** The following annexes would not appear in the Code of Federal Regulations.

**Annex A—Notice of Institution of Five-Year Review**

**Definitions**

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review. In this review, the Department of Commerce has defined the *Subject Merchandise* as **DEFINE**.

(2) The *Subject Country* in this review is **COUNTRY**.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics or uses with, the *Subject Merchandise*. In its original determination, the Commission defined the *Domestic Like Product* as **DEFINE. One Commissioner/certain Commissioners defined the Domestic Like Product differently.**

(4) The *Domestic Industry* is the producers as a whole of a *Domestic Like Product*, or those producers whose collective output of a *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as producers of **DEFINE**.

(5) The *Order Date* is the date that the **countervailing duty order/antidumping duty order/suspension agreement** under review became effective. In this review, the *Order Date* is **DATE**.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Certification**

In accordance with Commission rule 207.3, any person submitting information to the Commission in connection with this investigation must certify that the information is accurate and complete to the best of the submitter's knowledge. This certification must be included in both the information to be submitted to the Commission's Secretary and the information to be submitted to the Commission's Office of Investigations specified below. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

**Information to be Submitted to the Secretary**

Responses filed with the Secretary must conform with the provisions of section 201.8 of the Commission's rules. If business proprietary treatment is desired for portions of a response, submitters must follow the requirements set forth in sections 201.6, 207.3, and 207.7 of the Commission's rules. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the investigation you do not need to serve your response). Any interested party that cannot furnish the information requested should explain why it is unable to do so and indicate alternative forms in which it can provide equivalent information. **(Added if more than one country is involved)** If you are a domestic producer, import/export *Subject Merchandise* from more than one *Subject Country*, or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*.

The response to the Secretary should include:

(1) The name and address of your firm (including World Wide Web address if available) and name, telephone number,

fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm is a U.S. producer of the *Domestic Like Product*, a U.S. importer of the *Subject Merchandise*, a foreign producer/exporter of the *Subject Merchandise*, or another interested party (including an explanation).

(3) A statement indicating whether your firm is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the **revocation of the countervailing duty order/antidumping duty order/termination of the suspension agreement** on the *Domestic Industry* in general and/or your firm specifically.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*.

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in **COUNTRY** that currently export or have exported *Subject Merchandise* to the United States or other countries since **(YEAR OF PETITION)**.

(7) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

#### Information To Be Submitted to the Office of Investigations

Responses filed with the Office of Investigations will be treated as business proprietary unless the information is otherwise publicly available and should be submitted to **INVESTIGATOR**, Office of Investigations, U.S. International Trade Commission, Room 615, 500 E Street, SW, Washington, DC 20436. Only one copy of the response needs to be submitted to the Office of Investigations, but each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the BPI service list), and a certificate of service must accompany the document (if you are not a party to the investigation you do not need to serve your response). Any interested party that cannot furnish the information requested should explain why it is unable to do so and indicate alternative forms in which it can provide equivalent information. **(Added if more than one country is involved)** If you are a domestic producer, import/export *Subject Merchandise* from more than one *Subject Country*, or produce *Subject Merchandise* in

more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*.

The response to the Office of Investigations should include:

(1) The name and address of your firm (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) If your firm is a U.S. producer of **PRODUCT**, provide the following information on your firm's operations on that product during calendar year **PRECEDING YEAR** and your projections, in accordance with Generally Accepted Accounting Principles (GAAP), for calendar year **CURRENT YEAR** (report *quantity* data in **UNITS** and *value* data in thousands of dollars):

(a) Annual production capacity (*quantity*) (report the practical capacity of your plant(s) using the machinery and equipment in place at the end of the year and specify that the capacity reported is based on operating \_\_\_ hours per week, \_\_\_ weeks per year);

(b) end-of-year inventories (*quantity*);

(c) production (*quantity*) (including, if known, an estimate of the percentage of total U.S. production of **PRODUCT** accounted for by your firm's production in **PRECEDING YEAR**);

(d) the *quantity* and *value* of U.S. commercial shipments of product produced in your U.S. plant(s);

(e) the *quantity* of product produced in your U.S. plant(s) that you consumed internally or transferred within your company;

(f) the *quantity* and *value* of exports of product produced in your U.S. plant(s);

(g) the average number of production workers;

(h) your firm's net sales and operating income or (loss); and

(i) average prices for **SPECIFIC PRODUCT**.

(3) If your firm is a U.S. importer of the *Subject Merchandise*, provide the following information on your firm's operations on that product **FOR EACH COUNTRY SUBJECT TO THIS REVIEW INVESTIGATION** during calendar year **PRECEDING YEAR** and your projections, in accordance with GAAP, for calendar year **CURRENT YEAR** (report *quantity* data in **UNITS** and *value* data in thousands of dollars):

(a) The *quantity* and *value* of U.S. imports (including, if known, an estimate of the percentage of total U.S. imports of **PRODUCT** from **COUNTRY** accounted for by your firm's imports in **PRECEDING YEAR**);

(b) end-of-year inventories (*quantity*);

(c) the *quantity* and *value* of U.S. commercial shipments of imported product; and

(d) average prices for **SPECIFIC PRODUCT**.

(4) If your firm is a producer of the *Subject Merchandise* in **COUNTRY**, provide the following information on your firm's operations on that product during calendar year **PRECEDING YEAR** and your projections, in accordance with GAAP, for calendar year **CURRENT YEAR** (report *quantity* data in **UNITS** and *value* data in thousands of dollars):

(a) Annual production capacity (*quantity*) (report the practical capacity of your plant(s) using the machinery and equipment in place at the end of the year and specify that the capacity reported is based on operating \_\_\_ hours per week, \_\_\_ weeks per year);

(b) end-of-year inventories (*quantity*);

(c) production (*quantity*) (including, if known, an estimate of the percentage of total production of **PRODUCT** in **COUNTRY** accounted for by your firm's production in **PRECEDING YEAR**);

(d) the *quantity* and *value* of home market shipments of product produced in your plant(s) (including any internal consumption and company transfers);

(e) the *quantity* and *value* of your firm's exports to the United States of product produced in your plant(s) (including, if known, an estimate of the percentage of total exports to the United States of **PRODUCT** from **COUNTRY** accounted for by your firm's exports in **PRECEDING YEAR**); and

(f) the *quantity* and *value* of your firm's exports to all other countries of product produced in your plant(s).

(5) Identify any significant changes in the supply of and demand for the *Domestic Like Product* that have occurred in the United States since the *Order Date*. Address changes in factors such as technology; production methods; the availability and price of major production inputs; consumption patterns; new alternative products that compete for sales; availability of imports from nonsubject countries; the degree of interchangeability between the *Domestic Like Product*, *Subject Merchandise*, and nonsubject imports; and demand for U.S. products in export markets.

(6) **(Asked in reviews involving multiple subject countries)** Explain (a) whether the *Domestic Like Product* and *Subject Merchandise* from each *Subject Country* compete or are likely to compete with each other in the United States and (b) whether *Subject Merchandise* from each individual *Subject Country* competes or is likely to

compete in the United States with *Subject Merchandise* from each other *Subject Country*. In determining whether (likely) competition exists between two products, you may consider such factors as (i) the degree of (likely) fungibility between the products, (ii) whether the products are (likely to be) sold in the same geographic markets in the United States, (iii) whether the products are (likely to be) sold in common channels of distribution, and (iv) whether the products are (likely to be) sold in the U.S. market simultaneously.

(7) (OPTIONAL) Provide any other information or data that you consider relevant to the Commission's determination.

**Annex B—Proposed Schedule for Sunset Reviews<sup>1</sup>**

| Action/Event  | Day |
|---|-----|
| Notice of Institution (Published in the FEDERAL REGISTER) .....     | 0   |
| Entries of Appearance/APO Applications Due .....                    | 21  |
| Responses to Notice of Institution Due .....                        | 30  |
| Comments on Appropriateness of Expedited Review Due .....           | 60  |
| Notice of Inadequacy/Expedited Review or Adequacy/Full Review ..... | 95  |

<sup>1</sup> The Commission may extend its deadline by up to 90 days in all transition reviews and other extraordinarily complicated cases.

**INADEQUATE RESPONSES/EXPEDITED REVIEW**

| Action/Event   | Day |
|--|-----|
| Staff Report/Data Compilation to Commission and Parties .....        | 110 |
| Commerce Expedited Determination (If Issued) .....                   | 120 |
| Written Submission on Merits ("Final Comments") by Parties Due ..... | 130 |
| Commission Vote .....  | 140 |
| Commission Determination and Views to Commerce .....                 | 150 |

**ADEQUATE RESPONSES/FULL REVIEW**

| Action/Event   | Day |
|--|-----|
| New Entries of Appearance/APO Applications Due .....   | 140 |
| Draft Questionnaires to Parties for Comment .....  | 150 |
| Written Comments on Draft Questionnaires Due (Final Opportunity for Parties to Raise Issues Affecting Data Collection) ..... | 180 |
| Questionnaire Mail Date .....  | 225 |
| Commerce Subsidy/Dumping Determination .....   | 240 |
| Questionnaire Return Date .....  | 265 |
| Prehearing Report to Commission and Parties .....  | 299 |
| Prehearing Briefs Due .....  | 305 |
| Hearing .....  | 313 |
| Posthearing Briefs Due .....   | 320 |
| Staff Report to Commission and Parties .....   | 330 |

**ADEQUATE RESPONSES/FULL REVIEW—Continued**

| Action/Event   | Day |
|--|-----|
| Final Comments Due .....                             | 340 |
| Commission Vote .....                                | 348 |
| Commission Determination and Views to Commerce ..... | 360 |

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BILLING CODE 7020-02-P

**RAILROAD RETIREMENT BOARD**

**20 CFR Part 216**

**RIN 3220-AB27**

**Eligibility for an Annuity**

**AGENCY:** Railroad Retirement Board.  
**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board proposes to amend its regulation under the Railroad Retirement Act concerning when a child of a railroad employee is considered a full-time elementary or secondary student. The proposed changes reflect the current trend in most States and jurisdictions to recognize home schooling and independent study programs as comparable to traditional education.

**DATES:** Comments must be received on or before December 22, 1997.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, (312) 751-4513, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:** Section 2(d)(4) of the Railroad Retirement Act (45 U.S.C. 231a(d)(4)) provides, in pertinent part, that an annuity is payable to a child of a deceased employee until such child attains age 18 or 19 if such child is in full-time attendance at an elementary or secondary school. Section 2(d)(4) of the Act incorporates the provisions of section 202(d)(7) of the Social Security Act (42 U.S.C. 402(d)(7)), which defines the terms full-time elementary or secondary student. Section 202(d)(7) of the Social Security Act in turn provides that a full-time elementary or a secondary student is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of the Social Security Administration (by

regulations prescribed by the Commissioner).

Before July 24, 1996, section 404.367 of the Social Security Administration's regulations under the Social Security Act (20 CFR 404.367) defined a full-time student as an individual enrolled in an educational institution including public, private, and religious schools. The Social Security Administration's previous policy, as reflected in its regulation, was aligned with the traditional definition of educational programs. However, recently most States and other jurisdictions have broadened the definition of education programs to include home schooling and independent study programs. Because of this trend, the Social Security Administration revised section 404.367 to include such types of schooling in the definition of elementary and secondary schools. See, 61 FR 38363 (1996). The Board, therefore, proposes to revise its regulations to include students enrolled in home schooling or independent study programs authorized by a State or other jurisdiction within the definition of a full-time elementary or secondary school student.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866. There are no information collections associated with this rule.

**List of Subjects in 20 CFR Part 216**

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 216—ELIGIBILITY FOR AN ANNUITY**

1. The authority citation for part 216 continues to read as follows:

**Authority:** 45 U.S.C. 231f.

2. Section 216.74 is revised to read as follows:

**§ 216.74 When a child is a full-time elementary or secondary school student.**

(a) A child is a full-time elementary or secondary school student if he or she meets all of the following conditions:

- (1) The child is in full-time attendance at an elementary or secondary school; or
- (2) The child is instructed in elementary or secondary education at home in accordance with a home school