

that the existing Commission rules do not encompass certain procedures required by the new legislation. The Commission finds that rulemaking is essential for the orderly administration of sections 201–204 of the Trade Act as amended by the new legislation. Furthermore, since the legislation becomes effective very shortly after enactment, the Commission has concluded that interim implementing rules should be in place as soon as practicable following the effective date of the new statute.

The Commission notes that an agency may dispense with publication of a notice of proposed rulemaking when the following circumstances exist: (1) the proposed rules 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 thereon are impracticable, unnecessary, or contrary to the public interest, and that finding (and the reasons therefor) are incorporated into the rules adopted by the agency. 5 U.S.C. § 553(b). An agency may also dispense with the publication of a notice of final rules thirty days prior to their effective date if (1) the rules are interpretive rules of statements of policy or (2) the agency finds that “good cause” exists for not meeting the advance publication requirement and that finding is published along with the rule. 5 U.S.C. § 553(d)(3).

In this instance, the Commission has determined that the requisite circumstances existed for dispensing with the notice, comment, and advance publication procedure that ordinarily precedes the adoption of Commission rules. For purposes of invoking the section 553(b) exemption from publishing a notice of proposed rulemaking which solicits public comment, the Commission finds that (1) the interim rules are “agency rules of procedure or practice”; and (2) because the new legislation becomes effective on the date of enactment in the case of the administrative protective order provision, and is projected to become effective within 1 month in the case of the other provisions, it clearly would be “impracticable” for the Commission to comply with the usual notice, comment, and advance publication procedure. For the purpose of invoking the section 553(d)(3) exemption from publishing advance notice of the interim rules thirty days prior to their effective date, the Commission finds that the fact that the new legislation either becomes effective on the date of enactment or is expected to become effective within 1 month after enactment makes such

advance publication impossible and constitutes “good cause” for the Commission not to comply with that requirement.

The Commission recognizes that interim regulations should not respond to anything more than the exigencies created by the new legislation. Having been promulgated in response to exigencies created by the new legislation, each interim rule accordingly comes under one or more of the following categories:

- (1) revision of a pre-existing rule that conflicted with the new legislation;
- (2) a technical amendment to make a pre-existing rule conform to the language of the new legislation;
- (3) rewording of a pre-existing rule to avoid confusion about how the rule is to be applied in light of the new legislation; or
- (4) a new rule covering a matter provided for in the new legislation but not covered by a pre-existing rule.

Because the interim regulations merely respond to exigencies created by the new legislation, the Commission has further determined that they do not meet the criteria described in section 3(f) of Executive Order (EO) 12866 (58 FR 51735, Oct. 4, 1993) and do not constitute a significant regulatory action for purposes of the EO.

In accordance with the Regulatory Flexibility Act (5 U.S.C. § 601 note), the Commission hereby certifies pursuant to 5 U.S.C. § 605(b) that the rules set forth in this notice are not likely to have a significant impact on a substantial number of small business entities. In any event, the Regulatory Flexibility Act is inapplicable to this rulemaking because it is not one in which a notice of proposed rulemaking is required under 5 U.S.C. § 553(b).

#### **Explanation of Proposed Amendments**

Section 206.2, which provides for the identification of type of petition or request, is amended to include a reference to petitions for extension of relief actions filed under section 204(c) of the Trade Act and Subpart F of Part 206 of the Commission’s rules. Section 302(d) of the URAA amends section 204 to provide for the filing of such petitions.

Section 206.3, concerning institution of investigations, publication of notice, and availability of petitions for public inspection, is revised to add subheadings and to indicate that there are exceptions to the general rule that the Commission will institute an investigation after receipt of a petition—namely, as set out in section 206.15(b).

Section 206.5, concerning public hearings, is amended by adding a new

paragraph (c) to state that the Commission will hold a public hearing in connection with each investigation under Subpart F of Part 206 of the Commission’s rules concerning whether an action taken by the President under section 203 of the Trade Act should be extended. Section 204(c) of the Trade Act, as amended by section 302(d) of the URAA, requires that the Commission hold a public hearing in connection with each such investigation. Current paragraph (c) of rule section 206.5 is redesignated as paragraph (d). Two minor editorial changes are made in paragraphs (a) and (d).

Section 206.6, concerning Commission reports to the President, is amended by adding new subheadings and redesignating paragraphs, and by adding language to clarify what information will be included in all Commission reports to the President under Part 206, and what additional findings and information will be included in reports containing determinations under section 202(b) of the Trade Act and section 302(b) of the North American Free Trade Agreement Implementation Act.

Section 206.7, concerning confidential business information, is retitled and subdivided into two paragraphs. Paragraph (a) largely tracks the current rule and states that the Commission will not release confidential business information except under the circumstances indicated. Language is added to provide notice that the Commission, when appropriate, will include confidential business information in reports furnished to the President; this language reflects longstanding Commission practice, and Commission questionnaires issued in connection with investigations under section 202 of the Trade Act routinely provide notice of this possibility. Paragraph (b) is new. It requires, except as the Commission may otherwise provide, that parties submitting confidential business information must also submit nonconfidential summaries of such information. It further states the circumstances under which the Commission may disregard the information when the party does not provide a summary. Section 301(a) of the URAA amended section 202(a)(8) of the Trade Act to provide that the Commission may request that parties furnish such summaries and to authorize the Commission to disregard a confidential submission when it finds that a request for confidentiality is not warranted and the party concerned is either unwilling to make the information public or to authorize its