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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Docket No. 120618174-3303-01

RIN: 0625-AA91

Definition of Factual Information and Time Limits for Submission of Factual Information

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the Department) is modifying its regulations, which define “factual information” and establish time limits for the submission of factual information in antidumping (AD) and countervailing duty (CVD) proceedings. The modifications to the definition of factual information more clearly describe the types of information that can be submitted by a person or placed on the record by the Department in a segment of the proceeding. The modifications to the time limits enable the Department to efficiently determine the type of information being submitted and whether it is timely filed; they also ensure that the Department has sufficient opportunity to review submissions of factual information.

DATES: *Effective date:* [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Applicability date:* This rule will apply to all segments initiated on or after this date.

FOR FURTHER INFORMATION CONTACT: Joanna Theiss at (202) 482-5052 or Charles Vannatta at (202) 482-4036.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 10, 2012, the Department published a proposed modification of its regulations regarding the definition of factual information and time limits for submission of factual information. See *Modification of Regulations Regarding the Definition of Factual Information and Time Limits for Submission of Factual Information*, 77 FR 40534 (July 10, 2012) (*Proposed Rule*). The *Proposed Rule* explained the Department's proposal to modify two of its regulations, to allow for a more accurate classification of factual information, and to establish time limits for the submission of factual information, which are based on the type of factual information that is being submitted. The Department received numerous comments on the *Proposed Rule* and has addressed those comments below. The *Proposed Rule*, comments received, and this final rule can be accessed using the Federal eRulemaking portal at <http://www.Regulations.gov> under Docket Number ITA-2012-0004. After analyzing and carefully considering all of the comments that the Department received in response to the *Proposed Rule*, the Department has adopted the modification, with certain changes, and amended its regulations accordingly.

##### Explanation of Regulatory Provision and Final Modification

The Department is modifying two regulations related to AD and CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). Prior to this modification, 19 CFR 351.102(b)(21) defined factual information as: "(i) initial and supplemental questionnaire responses; (ii) data or statements of fact in support of allegations; (iii) other data or statements of facts; and (iv)

documentary evidence.” The Department is modifying this definition in order to create distinct descriptive categories of factual information that can be submitted in a segment of a proceeding.

The final rule identifies five categories of factual information, which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i) – (iv). The definition does not change the types of information that can be submitted in a segment of a proceeding; rather, it allows for more accurate classification of factual information.

Prior to this modification, 19 CFR 351.301 set forth the time limits for submission of factual information, including general time limits, time limits for certain submissions such as responses to questionnaires, and time limits for certain allegations. The Department is modifying 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted, in accordance with the modification to 19 CFR 351.102(b)(21). The modification enables the Department to review and analyze the factual information at the appropriate stage in the proceeding, based on the Department’s experience in administering the AD and CVD laws, rather than being required to review large amounts of factual information on the record of a proceeding when it is too late to adequately examine, analyze, conduct follow-up inquiries regarding and, if necessary, verify the information. This modification provides clarity to persons concerning the deadlines for submissions of certain factual information in a segment of a proceeding, including the submission of factual information to rebut, clarify, or correct factual information that is already on the record.

The final rule requires any person, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. This enables the Department and interested parties to efficiently identify the factual information and to analyze it in accordance with the purpose for which it is being submitted.

#### Response to Comments on the *Proposed Rule*

The Department received numerous comments on its *Proposed Rule*. Below is a summary of the comments, grouped by issue category, followed by the Department's response.

##### 1. *Time Limits Based on the Type of Factual Information Being Submitted*

Many commenters argue that the Department should maintain general time limits and should not base time limits on the type of factual information being submitted, arguing that there is no evidence that the time limits in the prior rule prevented the Department from sufficiently analyzing factual information; that the time limits in the final rule are arbitrary and abrogate the Department's responsibility to calculate accurate dumping margins; and that it is the Department that is responsible for the extent to which factual information in a segment is lacking, due to, for instance, the Department's habit of extending time limits for the preliminary results and delays in selecting respondents. One commenter suggests that there is more than sufficient time after the preliminary determination or preliminary results for the Department to make its determinations without changing the time limits.

*Response:* The Department has not adopted this proposal in its final rule. The commenters' views are contrary to the Department's experience in administering the AD and

CVD laws. The Department continues to believe that time limits based on the type of factual information being submitted will result in increased certainty and more effective administration of the AD and CVD laws. The Department never intended a general factual information time limit to permit the submission of factual information for which a specific time limit was applicable (*e.g.*, submission of information responsive to a questionnaire). Because parties have used the general time limit as a means of submitting factual information that should have been submitted at an earlier stage in the proceeding, the Department often received factual information when there was insufficient time for adequate comment, rebuttal, verification, and analysis. In addition, the general time limits often resulted in large volumes of factual information being placed on the administrative record at such a late stage of a proceeding that parties did not have the opportunity to see how the Department used the information in its calculations until the final determination or final results.

Further, although the commenters may perceive that the Department has adequate opportunity to consider factual information in an investigation or a review, this is a misperception of the operational procedures required to complete an investigation or review. For instance, Department officials must make certain internal decisions much earlier than the due date of the preliminary determination or preliminary results, in order to issue questionnaires, supplemental questionnaires, consider all allegations, determine whether critical factual information is missing from the record, conduct a complete and thorough analysis of all the factual information on the record as well as making a myriad of individual decisions with respect to the treatment of each of the facts on the record in relation to applicable regulatory, statutory, and case and legal precedent.

Under the prior rule, the Department often could not fully analyze an issue because parties could submit factual information on that issue long after the issue became ripe for analysis. Given the necessity of allocating Department resources as efficiently as possible, the Department must complete the record for an issue when that issue arises, so that the parties and the Department are presented with all of the record facts to present their arguments and to analyze those arguments in light of the record facts, respectively. As the Department stated in response to a party's argument that the Department should not have rejected factual information to value factors after the time limit for such submissions had passed, "because the submission of wholly new [surrogate value] information can generate the submission of yet more 'rebuttal' information, it has the potential to seriously erode the finality of the record necessary for interested parties to make complete assessments of the record for purposes of the submission of complete briefs." *Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 77 FR 14493 (March 12, 2012) and accompanying Issues and Decision Memorandum at Issue 3. In other words, both the parties and the Department have an interest in finalizing the record at a stage in the segment of the proceeding when there is adequate opportunity to sufficiently analyze the record facts.

If parties find that the administrative record is lacking factual information, the parties should explain what additional information they wish to submit, explain why it was not available for timely submission, and request that the Department accept the information. If there is adequate time for rebuttal, comment, analysis, and thorough consideration of the new, previously unavailable information and the Department could potentially verify this information, then the

Department may elect to permit submission. Otherwise, the reliability of such late-submitted information cannot be assured.

2. *Time Limits for the Submission of Factual Information to Value Factors under 19 CFR 351.408(c)*

Several commenters argue that the time limits for the submission of factual information to value factors pursuant to 19 CFR 351.408(c) should not occur before the preliminary determination in an investigation, and preliminary results in an administrative review, because the selection of surrogate values has a significant impact on dumping margins in non-market economy cases, and establishing a time limit before the preliminary determination or preliminary results will result in either a deluge of factual information based on the parties' guesses as to what the case may require, or a lack of quality factual information. Several commenters argue that the Department has created uncertainty concerning the time limit for the submission of factual information to value factors because the time limit is based on the scheduled date of the preliminary determination or preliminary results, which can be extended by the Department. One commenter suggests that there be a separate rulemaking to address issues concerning the submission of factual information to value factors; that the burden be on domestic interested parties to make the initial suggestion of a surrogate country and factual information to value factors; that the Department explain why it was not using certain factual information in the preliminary determination or preliminary results; and that the Department should notify parties of "deficiencies" with their factual information to value factors, akin to the requirements of section 782(d) of the Tariff Act of 1930 as amended (the Act). One commenter questions why the Department focused on small entities in the *Proposed Rule*, arguing that the negative effect will be the same for entities regardless of size.

*Response:* We have not adopted these proposals. We agree that factual information to value factors under 19 CFR 351.408(c) is important in non-market economy cases, and consider that a time limit for the submission of this information before the preliminary determination or preliminary results will increase certainty to parties and result in better quality comments on the information. We note that parties are permitted to file multiple submissions of factual information to value factors. If the Department extends the date of the preliminary determination or preliminary results, parties may submit additional factual information to value factors any time before the new deadline, even if they have already filed a submission based on the original deadline.

Under the prior rule, the Department routinely received submissions of factual information to value factors after the preliminary determination or preliminary results, and the Department may have used that information in the final determination without an opportunity for interested parties to review or comment upon the calculations incorporating such information. By requiring parties to submit this information before the preliminary determination or preliminary results, all parties will have the benefit of knowing all record information and what factual information the Department preliminarily relied upon, in order to more effectively comment upon the Department's selections. The purpose of this rulemaking is to improve 19 CFR 351.301 so that the Department may review and analyze factual information at the appropriate stage in the proceeding, rather than be required to review large amounts of information when it is too late to adequately conduct its analysis. Whether or not the Department will undertake additional rulemakings on separate, albeit related, matters is beyond the scope of this rulemaking. Concerning the comment that the domestic interested parties should be required to make the initial suggestion of a surrogate country and factual information to value factors, it is to all

parties' advantage to submit surrogate country and corresponding factual information to value factors early in the proceeding. We also note that all interested parties may submit factual information to rebut, clarify, or correct factual information to value factors, as long as that information is submitted solely for rebuttal and not for purposes of establishing new surrogate values. *See* 19 CFR 351.301(c)(3)(iv). Concerning the comment that the Department should point out "deficiencies" in factual information to value factors and permit parties the opportunity to correct these deficiencies, we have not adopted this proposal. The Act provides that the Department shall value factors of production using "the best available information," and the Department weighs many factors to determine what constitutes the best available information. *See* section 773(c)(1) of the Act. Information that is not selected is not necessarily deficient; it is simply not the best available information. Parties are not required to submit surrogate factual information to value factors, nor does the Department apply adverse inferences where a party does not submit surrogate factual information to value factors. We also note that the Department's discussion of the impact of the proposed rule on small entities was completed as part of its Initial Regulatory Flexibility Analysis, which is required by statute.

### *3. Time Limit for the Submission of Factual Information to Rebut, Clarify, or Correct*

#### *Questionnaire Responses*

Several commenters oppose elimination of the general time limit for the submission of factual information to rebut, clarify, or correct questionnaire responses, and argue that the *Proposed Rule* does not provide sufficient time because it is time consuming to develop factual information for purposes of rebuttal, clarification, or correction, as parties must work with their clients using public versions of responses, and it often involves time-consuming market research. Some commenters argue that the time limit for the submission of factual information to rebut,

clarify, or correct questionnaire responses should be extended to at least 30 days. Significant facts may become apparent only in later submissions, by which point the time limit may be passed. If the Department does not ask questions relevant to an issue in supplemental questionnaires, then the parties are prevented from submitting rebuttal factual information. The incentive will be for parties to submit voluminous rebuttal information early on, in case it becomes relevant later. The commenters argue that the Department's certification requirements under 19 CFR 351.303(g) require additional time for the preparation of the submission of rebuttal factual information.

*Response:* The Department has not adopted these proposals. We find that the rebuttal time limit provides sufficient time to develop rebuttal factual information, and the development of a complete record early in the proceeding is an advantage, not a disadvantage. The early stages of a segment of a proceeding should be used to develop a complete record on most issues and identify those issues where the record needs to be further developed. Later submissions afford opportunities to rebut those submissions. Parties are expected to consider how much time is required to comply with the Department's regulations as they prepare their submissions. The holding of relevant information until later stages of a segment of a proceeding to see whether submission of the information is advantageous to a party's interests is not a proper incentive to maintain general time limits from the Department's perspective. The Department can request information at any time from any party, and parties can argue at any point that the record is deficient on a particular issue and urge the Department to request or gather additional information. Further, parties can request an extension of a time limit pursuant to 19 CFR 351.302.

#### 4. *Opportunity for Surrebuttal*

Several commenters argue that the Department should allow interested parties an additional opportunity to submit factual information to rebut, clarify, or correct another interested party's rebuttal factual information (surrebuttal), arguing that: the volume of factual information on the record will greatly increase because parties must anticipate all potential challenges that may arise in another party's submission of rebuttal factual information; and by providing the opportunity of surrebuttal only to respondents, the respondents will be incentivized to submit incomplete data in their responses to questionnaires. Another commenter argues that respondents should have the "final" right of rebuttal of factual information, because respondents must respond to allegations of dumping in AD proceedings.

*Response:* We have not adopted either proposal. Section 351.301(c)(1)(v) of the Department's regulations, which permits the original submitter of a questionnaire response to submit factual information to rebut, clarify, or correct factual information submitted in another party's rebuttal, clarification, or correction factual information, is consistent with the Department's current practice. Currently and under the final rule, if a respondent submits incomplete factual information in its questionnaire response, the Department generally issues a supplemental questionnaire requesting that the respondent correct all deficiencies, noting the possible consequences of incomplete submissions, pursuant to section 776 of the Act. We also note that, in the final rule, parties retain the ability to submit factual information to rebut, clarify, or correct a respondent's factual information submitted in response to a supplemental questionnaire. *See* 19 CFR 351.301(c)(1)(v). Further, the final rule does not limit the parties' ability to argue that the record is deficient on a particular issue and to urge the Department to request and/or collect additional factual information as to that issue.

Concerning one commenter’s argument that respondents should have the “final” right of rebuttal of factual information, the Department has not adopted this proposal. As discussed above, the original submitter of a questionnaire response may submit surrebuttal factual information. Further, it is unclear how this proposal would operate where the respondent is not the original submitter of factual information, because the respondent has the opportunity to submit factual information to rebut, clarify, or correct factual information on the record under the final rule. To the extent that the commenter is arguing that a respondent would be able to submit factual information after other interested parties in all instances, this proposal has not been adopted because the Department has eliminated the general time limits for the submission of factual information.

#### 5. *Definition of Factual Information*

One commenter argues that, in revising 19 CFR 351.102(b)(21), the Department is substituting the term evidence for “data or statements” without defining evidence, and that it is not clear what the Department intends by 19 CFR 351.102(b)(21)(v) (“evidence, including statements of fact, documents, and data, other than factual information described in (i)-(iv) of this section”).

*Response:* As the commenter acknowledges, by revising 19 CFR 351.102(b)(21), the Department is not changing the types of information that can be submitted. Rather, the definition of factual information allows for the more accurate classification of factual information using consistent terminology. The subsections of 19 CFR 351.102(b)(21) define evidence to include statements of fact, documents, and data. Section 351.102(b)(21)(v) of the Department’s regulations is intended to include factual information that is not captured by subsections (i) through (iv). However, it is unlikely that parties will submit information under

this subsection, because nearly all factual information submitted in a segment of an AD or CVD proceeding will fall into subsections (i) through (iv) of 19 CFR 351.102(b)(21). The Department does not intend for this subsection to be used as a “catch-all” category. Accordingly, if a party indicates that its factual information falls under this subsection, that party “must explain why the information does not satisfy the definitions described in § 351.102(b)(21)(i)-(iv).” *See* 19 CFR 351.301(b)(1).

#### 6. *Time Limits for the Allegation of New Subsidies*

One commenter stated that the time limits for the submission of allegations of new subsidies in the *Proposed Rule* do not take into account instances in which a respondent submits factual information after the time limits for new subsidy allegations (40 days before the preliminary determination in an investigation and 20 days after all responses to an initial questionnaire have been filed in an administrative review). The commenter argues that the Department should modify the time limits to allow domestic interested parties to allege new subsidies in an investigation or review within 15 days after receipt of factual information provided by a respondent.

*Response:* The Department has not adopted this proposal. The final rule maintains the same time limits as before the modification because the Department has found that these time limits have been efficiently applied in CVD proceedings for many years. We note that both 19 CFR 351.301(c)(2)(iv)(A) and (B) specify that the Department may extend or alter the time limits for new subsidy allegations in an investigation or administrative review, respectively, and parties may request extensions to these time limits pursuant to 19 CFR 351.302. We also note that the Department routinely grants extensions for the filing of new subsidy allegations in CVD proceedings.

### *7. Factual Information Submitted in Prior Segments*

Several commenters suggest that the Department incorporate the administrative record from prior segments of a proceeding into the record of an ongoing segment. The comments range from suggesting incorporation of the records of the two immediately preceding segments to the records from all preceding segments. The commenters argue that this would enable all parties to benefit from the information developed in prior segments, the importance of which may not be recognized until well after the time limits for the submission of factual information in the ongoing segment. The commenters also argue that this practice would reduce the amount of factual information which would have to be submitted by parties in each segment of a proceeding and would allow the Department to rely on the information from preceding segments.

*Response:* The Department has not adopted this proposal. Including the administrative records from some or all preceding segments of a proceeding would unnecessarily increase the volume of information on the record of the ongoing segment and would be burdensome for the Department to analyze. Further, the administrative record of a given segment is intended to reflect the specific facts for the period under review, and automatically transferring information from previous periods would be likely to introduce irrelevant factual information that may also be inaccurate, unsupported, or have changed in the period under review. If an interested party finds that factual information from a preceding segment is relevant to the ongoing segment, then the party may submit such factual information on the record of the ongoing segment, subject to certain limitations. *See* 19 CFR 351.306(b). If the time limit for the submission of that type of factual information has passed, then the party may request that the Department accept the factual information.

### *8. The Department's Placement of Factual Information on the Record*

One commenter argues that the Department is imposing discipline on interested parties that may be prone to exploit ambiguities in the time limits for the submission of factual information, but is reserving for itself the discretion to place factual information on the record at any time, and to set the time limits for the submission of factual information to rebut, clarify, or correct that information. This commenter proposes that the regulation provide that the Department may place factual information on the record of the proceeding only up to 14 days before the time limit set forth in 19 CFR 351.301(c)(5).

*Response:* The Department has not adopted this proposal. Although “the burden of creating an adequate record lies with respondents and not with Commerce,” *Longkou Maimeng Mach. Co. v. United States*, 617 F. Supp. 2d 1363, 1372 (CIT 2009), the Department finds that adopting such a proposal would abrogate its responsibility as the administering authority of the AD and CVD laws. The Department is legally required to render administrative determinations under the Act on the basis of the record developed in and for the segment under consideration. Given the time constraints imposed by the Act, at any point in the proceeding when the Department finds that the administrative record is lacking factual information, the Department may appropriately place factual information on the record to ensure that its determination is supported by substantial evidence. To this end, and to ensure transparency and active and meaningful participation by parties, 19 CFR 351.301(c)(4) states that when the Department places factual information on the record, all interested parties are provided with an opportunity to submit factual information to rebut, clarify, or correct that factual information. We also note that the Department’s practice permits it to place factual information on the record of a segment, and in such situations, it regularly provides interested parties with the opportunity to submit factual

information to rebut, clarify, or correct that information; the final rule merely codifies this practice in the regulation.

#### 9. *Service Requirements*

One commenter argues that the Department should require that surrogate value submissions, apart from the petition, be served by hand by all interested parties within the business day that they are due (or by express mail for all parties not located in Washington, DC). Another commenter suggests that the proposed deadlines create difficulties arising from the service methods given that, pursuant to 19 CFR 351.303(f)(i), either personal service or service via first class mail can be chosen. This commenter is concerned that a respondent could choose service by mail for the purpose of limiting the rebuttal time for domestic interested parties. This commenter suggests that the time period for rebuttal should be triggered by the actual receipt of the submission by an interested party. In the alternative, this commenter suggests that the Department adopt an interim rule to clarify when the time period for rebuttal begins until implementation of Phase III of IA Access.

*Response:* The Department has not adopted this proposal. The Department is not modifying 19 CFR 351.303(f)(i) at this time. Any changes in service requirements must be made through 19 CFR 351.303(f)(i), not based on the implementation of phases of IA Access. We also note that although Phase III of IA Access will not address service requirements, it should give parties earlier access to submissions with business proprietary information. This change should mitigate the concern over delayed access resulting from service by mail. Further, to the extent that parties require an extension due to service delays, an extension request, citing this circumstance, may be filed pursuant to 19 CFR 351.302.

#### 10. *Verification Exhibits*

One commenter suggests that the Department clarify whether verification exhibits will be considered evidence placed on the record by the Department, as defined by proposed 19 CFR 351.102(b)(21)(iv), or evidence placed on the record by the interested party which was verified, as defined by 19 CFR 351.102(b)(21)(i), so that parties may know the time limit for providing rebuttal factual information. The commenter argues that the Department should address late or incomplete service of verification exhibits, bracketing inconsistencies and failure to translate exhibits, and should clarify that the interested party which was verified may not later attempt to cure deficiencies in verification through the submission of a surrebuttal to the verification exhibits.

*Response:* We have not adopted this suggestion because documents that are retained by the Department and designated as verification exhibits in the verification report serve only to support statements in the respondents' questionnaire responses and the Department's verification report; therefore, parties may not submit factual information to rebut, clarify, or correct verification exhibits and verification reports. This is consistent with *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27332 (May 19, 1997), in which the Department declined to adopt a proposal that would permit interested parties to submit factual information to rebut, clarify, or correct factual information in the Department's verification report because "the Department is unable to verify post-verification submissions of new factual information." Under the final rule, parties are free to comment on the results of verification in case briefs filed pursuant to 19 CFR 351.309, drawing on factual information already on the record. The Department has not adopted the commenter's suggestion that we address late or incomplete service of verification exhibits because, under Department practice, parties are required to serve verification exhibits as soon as possible after verification. *See Antidumping Duties;*

*Countervailing Duties*, 62 FR at 27338. Further, should a party encounter difficulties such that the party requires additional time to submit its case brief, it may request an extension to that time limit pursuant to 19 CFR 351.302.

#### 11. *Clarifying that the Final Rule Does Not Apply to Argument*

One commenter notes that the Department's proposed 19 CFR 351.301(c)(3)(iv) indicates that parties have one opportunity to submit arguments to rebut, clarify, or correct factual information pursuant to 19 CFR 351.408(c) or 19 CFR 351.511(a)(2), and that arguments, normally governed by 19 CFR 351.309, should not be thus restricted.

*Response:* We agree with the commenter and have adopted this proposal. Section 351.301 of the Department's regulations governs the submission of factual information, not argument, and thus have removed the word "arguments" from 19 CFR 351.301(c)(3)(iv) in the final rule.

#### 12. *Consideration of Holidays*

One commenter suggests that whenever a public holiday in the United States or relevant foreign country falls within the time limit for a response, the Department should be required to extend the time limit by the number of days of the intervening holiday, because time limits are unrealistic if they fail to account for the fact that personnel are unavailable on holidays.

*Response:* The suggestion is unworkable because the time limits within which the Department must work do not expand by the number of holidays that occur during the segment. The Department understands that it is occasionally necessary to extend time limits on a case-by-case basis, and has provided procedures for parties to request such extensions when necessary. *See* 19 CFR 351.302.

#### 13. *Purpose and Effect of 19 CFR 351.301(b)*

Several commenters inquire as to the purpose and legal effect of failing to comply with the requirement in 19 CFR 351.301(b) that every submission of factual information be accompanied by a written explanation identifying the subsection of 19 CFR 351.102(b)(21) under which the information is being submitted, and argue that it may be difficult for parties to comply with this requirement because company representatives will not have access to another party's business proprietary information (BPI), and so would not be able to certify what specific information is being rebutted, all of which could result in delays for the Department. Another commenter argues that, when submitting factual information, parties should explain how it is relevant in the segment of the proceeding.

*Response:* Section 351.301(b) of the Department's regulations requires parties submitting factual information to indicate what type of information is being submitted, so that the Department may efficiently and quickly identify the factual information and analyze it in accordance with the purpose for which it is being submitted. Regarding the commenter's proposal that a party submitting factual information explain why it is relevant to the segment, we find that the requirement that the factual information be identified by type of information will enable the Department and other interested parties to determine the purpose for which the information is being submitted. Concerning the legal effect of failing to identify the type of information that is being submitted, the Department may reject the party's submission of factual information. We disagree that 19 CFR 351.301(b) will be unduly burdensome or complicate participation in segments of proceedings, because a party submitting factual information should know what type of factual information it is submitting, and 19 CFR 351.301(b) simply requires that the party identify the information by type. We do not find that a company representative's lack of access to another party's BPI will complicate compliance with 19 CFR 351.301(b)(2).

The final rule does not require that counsel reveal protected information, but rather that the party identify the information by the interested party that submitted it, and the date on which it was submitted, with as much specificity as possible. The final rule does not impose any additional certification requirements because currently the company representative will certify rebuttal, correction, or clarification factual information without having access to BPI.

#### 14. *Adequate Time to Respond to Sections of an AD Questionnaire*

One commenter suggests that the Department should modify 19 CFR 351.301(c)(1)(i) to indicate that a submitter will have “adequate” time to respond to individual sections of an initial questionnaire, if the time limit is less than the 30 days allotted for response to the full questionnaire. Another commenter argues that the final rule should specify a time limit for supplemental questionnaire responses, rather than a “date specified by the Department.”

*Response:* The Department has not incorporated these proposals into the final rule because the Department will continue to provide adequate time to respond to individual sections of an initial questionnaire, as under the prior rule. To the extent that an interested party requires additional time to complete individual sections of an initial questionnaire, it should request an extension of the time limit pursuant to 19 CFR 351.302. We have not adopted the proposal concerning the establishment of specific time limits for supplemental questionnaire responses, because the length and complexity of supplemental questionnaires—and the time available for providing a usable response—vary considerably, depending on the nature and extent of the deficiencies.

#### 15. *Time Limit for Initial Questionnaire Responses*

One commenter argues that the *Proposed Rule* underestimates the difficulties in compiling initial questionnaire responses, and so the Department should provide longer than 30

days to submit initial questionnaire responses, and permit extensions and the opportunity to submit corrections and clarifications to their own submissions.

*Response:* The Department has not extended the time period for the submission of initial questionnaire responses. As under the prior regulation, interested parties are permitted 30 days to submit initial questionnaire responses and, contrary to the commenter's assumption, the final rule does not limit a party's ability to request an extension of this time limit under 19 CFR 351.302.

#### *16. Factual Information Concerning Allegations*

One commenter argues that the Department failed to provide an opportunity for parties to rebut, clarify, or correct various allegations such as market viability, sales below cost, or targeted dumping, and inadvertently left out a provision concerning the submission of factual information in support of allegations concerning targeted dumping.

*Response:* The *Proposed Rule* provides interested parties the opportunity to submit factual information to rebut, clarify or correct factual information submitted in support of allegations, and this remains unchanged in the final rule. *See* 19 CFR 351.301(c)(2)(vi). In addition, the *Proposed Rule* permits parties to submit factual information in support of "other allegations," and this also remains unchanged in the final rule. *See* 19 CFR 351.301(c)(2)(v).

#### *17. Limit Supplemental Questionnaires and Extensions for Supplemental Questionnaire*

##### *Responses*

Two commenters argue that the Department's regulation should specify that the initial questionnaire response should be complete and include all requested materials, and one commenter suggests that the final rule should specify that, in general, the Department will issue only one supplemental questionnaire designed to meet the requirements of section 782(d) of the

Act. Another commenter argues that the final rule should indicate that the Department will provide fewer and shorter extensions for the submission of initial and supplemental questionnaire responses.

*Response:* We have not adopted these proposals. First, under Department practice interested parties are expected to respond in full to the Department's questionnaires. Second, we do not find that regulating, even as a general matter, the number of supplemental questionnaires that will be issued will improve the administration of AD and CVD proceedings, because each segment presents different circumstances. We note that, pursuant to section 776 of the Act, the Department will continue to resort to the application of facts available should an interested party fail to provide necessary information. Third, the Department will continue to grant extensions of time limits to the extent that they are warranted and deadlines for the segment permit. *See* 19 CFR 351.302; *see also Modification of Regulation Regarding the Extension of Time Limits*, 78 FR 3367 (January 16, 2013).

#### 18. *Restrict Reporting Methods*

One commenter argues that, where a respondent participating in an ongoing segment has participated in a preceding segment, the Department should require the respondent to report its factual information using the same method that the Department previously accepted. If the respondent wishes to report the information differently, this reporting will be provided only in addition to the reporting in the previous manner.

*Response:* We have not incorporated this proposal into the final rule because it relies on a specific circumstance in which a respondent has participated in a prior segment and also assumes that the previously accepted reporting method is still relevant to the facts of the ongoing segment. It also could amount to increasing unnecessarily the reporting burden on the

respondent where, for instance, facts have changed in the period under review such that the previously accepted reporting method has been rendered obsolete.

*19. Enforce 19 CFR 351.304(c)*

One commenter urges the Department to increase the rigor of enforcement of 19 CFR 351.304(c), which requires parties to provide a public version of BPI.

*Response:* The Department appreciates the importance of consistent enforcement of the requirements in 19 CFR 351.304(c), but notes that we are not modifying 19 CFR 351.304(c) in this rulemaking.

Changes from the Proposed Rule

In the final rule, the Department has removed the word “arguments” from section 351.301(c)(3)(iv).

Classification

*Executive Order 12866*

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

The Department has prepared the following Final Regulatory Flexibility Analysis.

1. *A Statement of the Need for, and Objectives of, the Rule*

This final rule is intended to alter the Import Administration’s regulations for AD and CVD proceedings; specifically, to change the definition of factual information and the deadlines for submitting information in AD and CVD proceedings.

The final rule would alter several deadlines for submitting factual information in a segment of a proceeding. Information submitted to rebut, clarify, or correct factual information generally

has a deadline of 10 days from the date that the initial factual information is served on the interested party or filed with the Department, except for factual information submitted to rebut, clarify, or correct information in an initial questionnaire response, which is due 14 days after the initial response is filed with the Department. Factual information voluntarily provided to support allegations regarding market viability and the basis for determining normal value is due 10 days after the respondent interested party files the response to the relevant section of the questionnaire. Factual information provided to support an allegation of an upstream subsidy is due no later than 60 days after the preliminary determination.

Deadlines for submissions of factual information to value factors of production and to measure the adequacy of remuneration have been codified or shortened, as appropriate, but this is expected to have a beneficial impact on small entities that participate in AD and CVD proceedings because they will have the opportunity to review and comment on the Department's preliminary analysis of the information, which is not the case under the prior rule.

2. *A Statement of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, A Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes in the Proposed Rule as a Result of Such Comments.*

The Department received no comments concerning the Initial Regulatory Flexibility Analysis.

3. *The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments*

The Department received no comments from the Chief Counsel for Advocacy of the Small Business Administration.

4. *A Description of and an Estimate of the Number of Small Entities to which the Rule will Apply or an Explanation of Why No Such Estimate is Available*

The final rule will apply to all persons submitting information to the Department in AD and CVD proceedings. This could include exporters and producers of merchandise subject to AD and CVD proceedings and their affiliates, importers of such merchandise, domestic producers of like products, and foreign governments.

Exporters and producers of subject merchandise are rarely U.S. companies. Some producers and exporters of subject merchandise do have U.S. affiliates, some of which may be considered small entities under the appropriate Small Business Administration (SBA) small business size standard. The Department is not able to estimate the number of U.S. affiliates of foreign exporters and producers that may be considered small entities, but anticipates, based on its experience in these proceedings, that the number will not be substantial.

Importers may be U.S. or foreign companies, and some of these entities may be considered small entities under the appropriate SBA small business size standard. The Department does not anticipate that the final rule will impact a substantial number of small importers because importers of subject merchandise who are not also producers and exporters (or their affiliates) rarely submit factual information in the course of the Department's AD and CVD proceedings, and those that do tend to be larger entities.

Some domestic producers of like products may be considered small entities under the appropriate SBA small business size standard. Although it is unable to estimate the number of producers that may be considered small entities, the Department does not anticipate that the

number affected by the final rule will be substantial. Frequently, domestic producers that bring a petition account for a large amount of the domestic production within an industry, so it is unlikely that these domestic producers will be small entities.

In sum, while recognizing that exporter and producer affiliates, importers, and domestic producers that submit information in AD and CVD proceedings will likely include some small entities, the Department, based on its experience with these proceedings and the participating parties, does not anticipate that the final rule would impact a substantial number of small entities.

5. *A Description of the Projected Reporting, Recordkeeping, and other Compliance*

*Requirements of the Final Rule*

The final rule will require persons submitting factual information to the Department to specify under which subsection of the final definition the information is being submitted. If it is being submitted to rebut, clarify, or correct factual information already on the record, the person will be required to identify the information already on the record that the factual information seeks to rebut, clarify, or correct. This will not amount to a significant burden as the submitter should already be aware of the relevant subsection pursuant to which it is submitting factual information; in addition, all of the required information should be readily available to any person submitting factual information to the Department.

6. *A Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes, including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency which Affect the Impact on Small Entities was Rejected*

The Department has taken steps to minimize the significant economic impact on small entities. As discussed above, all parties may request an extension pursuant to section 351.302, and the Department will continue to grant extensions of time limits to the extent that they are warranted and deadlines for the segment permit. Further, the Department considered significant alternatives to the final rule. The alternatives are:

- 1) Modifying the definition of factual information and modifying the time limits as described in the final rule (the Department's preferred alternative);
- 2) Maintaining the status quo definition of factual information and the time limits for the submission of factual information;
- 3) Modifying the definition of factual information but maintaining all time limits; and
- 4) Modifying the definition of factual information and extending the time limits.

First, the Department does not anticipate that the first, preferred alternative will have a significant economic impact on small entities. The changes to the definition of "factual information" do not impose any significant burden on the parties in AD or CVD proceedings; the changes do not alter the types of information that may be submitted, but merely re-categorize them into more logical groupings than the current definition. The changes to the deadlines for submitting factual information are also not expected to have a significant economic impact on small entities. Although some deadlines are shortened, these are either not expected to have a significant impact on small entities or will actually have a positive impact. For example, for the submission of factual information in support of allegations, or to rebut, clarify, or correct factual information, in the Department's experience the parties submitting these allegations or rebuttals/clarifications/corrections will possess the relevant information with sufficient time to submit them before the information would be due.

By contrast, shortening the time limits for the submission of factual information to value factors of production will have a beneficial impact on any small entities that are participating in an AD proceeding, because it will provide them with an opportunity to review and comment on the Department's preliminary analysis of this information. Because the time limits currently permit such information to be submitted after the Department issues its preliminary calculations, parties wishing to assess the significance of this information would need to undertake their own analysis of the often voluminous information submitted. Such analysis of the often voluminous information may be particularly burdensome for small entities. In addition, parties continue to have a significant amount of time to gather this type of information in advance of the time limit because the Department accepts only publicly available information pursuant to this provision. Further, establishing a time limit for the submission of factual information to measure the adequacy of remuneration under § 351.511(a)(2), where the current regulation does not include any time limit, will provide certainty to parties, including those who wish to submit factual information to rebut, clarify or correct the factual information submitted under this provision.

Under alternative two, the Department determined that maintaining the definition of factual information and the time limits provision would not serve the objective of the proposed rules to permit the Department and interested parties adequate opportunity to review and analyze submissions of factual information in an efficient manner. If the Department were to maintain the current rules, then persons would still be able to submit large amounts of factual information on the record of an AD or CVD segment very close to the Department's statutory deadlines for making certain determinations, thus limiting the Department's ability to consider, analyze and, if applicable, verify the information submitted. The current definition and time limits also do not provide sufficient clarity to persons participating in an AD or CVD proceeding, because the

current rules do not require persons submitting information to identify the type of information which is being submitted. Although this alternative was considered, it was not adopted because it does not serve the Department's objectives of creating certainty for participants in AD and CVD proceedings.

The Department also considered modifying the definition of factual information without modifying the time limits provision, listed as alternative three. This alternative would serve the objective of the proposed rules to identify more clearly the types of factual information which are submitted in AD and CVD proceedings, but does not serve the goal of enabling the Department to efficiently examine factual information at an appropriate stage in the proceeding. For instance, the Department determined that continuing to allow factual information in an AD or CVD investigation "seven days before the date on which verification of any person is scheduled to commence," 19 C.F.R. § 351.301(b)(1), would run counter to the objectives of the proposed rules because the Department often does not have sufficient opportunity to review adequately submissions of factual information when they are submitted at this stage of the proceeding. In addition, maintaining the time limits for, for instance, the submission of factual information to value factors could deprive persons of the opportunity to comment on the Department's preliminary analysis of these submissions in their case briefs. The changes to the definition to more clearly describe the types of factual information which is submitted in an AD and CVD proceeding, without a corresponding modification to the time limits provision, would not serve the objectives of the Department and, thus, has not been adopted.

Finally, as alternative four, the Department considered extending the time limits for the submission of factual information, but this alternative has not been adopted. The Department is required to make certain determinations for AD and CVD proceedings within prescribed

statutory deadlines. The prior rule sometimes did not provide the Department with a sufficient opportunity to examine and analyze submissions of factual information before those statutory deadlines, and in some instances deprived parties of the opportunity to comment on the submissions of factual information in their case briefs. An extension of time limits would exacerbate the problem, which the proposed rules seek to address. Therefore, this alternative has not been adopted.

#### *Small Business Compliance Guide*

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, the agency has published a guide to assist small entities in complying with the rule.

#### *Paperwork Reduction Act*

This final rule does not require a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

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Paul Piquado  
Assistant Secretary  
for Import Administration

April 2, 2013  
Date

For the reasons stated, 19 CFR Part 351 is amended as follows:

**PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES**

1. The authority citation for 19 CFR part 351 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. In § 351.102, revise paragraph (b)(21) to read as follows:

**§ 351.102 Definitions.**

\* \* \* \* \*

(b) \* \* \*

(21) *Factual information.* “Factual information” means:

- (i) Evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party;
- (ii) Evidence, including statements of fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party;
- (iii) Publicly available information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2), or, to rebut, clarify, or correct such publicly available information submitted by any other interested party;
- (iv) Evidence, including statements of fact, documents and data placed on the record by the Department, or, evidence submitted by any interested party to rebut, clarify or correct such evidence placed on the record by the Department; and

(v) Evidence, including statements of fact, documents, and data, other than factual information described in paragraphs (b)(21)(i) - (iv) of this section, in addition to evidence submitted by any other interested party to rebut, clarify, or correct such evidence.

\* \* \* \* \*

3. Revise § 351.301 to read as follows:

**§ 351.301 Time limits for submission of factual information.**

(a) *Introduction.* This section sets forth the time limits for submitting factual information, as defined by § 351.102(b)(21). The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding or provide additional opportunities to submit factual information. Section 351.302 sets forth the procedures for requesting an extension of such time limits, and provides that, unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established in the Department's regulations. Section 351.303 contains the procedural rules regarding filing (including procedures for filing on non-business days), format, translation, service, and certification of documents. In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the following: the time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit the requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and § 351.308.

(b) *Submission of factual information.* Every submission of factual information must be accompanied by a written explanation identifying the subsection of § 351.102(b)(21) under which the information is being submitted.

(1) If an interested party states that the information is submitted under § 351.102(b)(21)(v), the party must explain why the information does not satisfy the definitions described in § 351.102(b)(21)(i)-(iv).

(2) If the factual information is being submitted to rebut, clarify, or correct factual information on the record, the submitter must provide a written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify, or correct, including the name of the interested party that submitted the information and the date on which the information was submitted.

(c) *Time limits.* The type of factual information determines the time limit for submission to the Department.

(1) *Factual information submitted in response to questionnaires.* During a proceeding, the Secretary may issue to any person questionnaires, which includes both initial and supplemental questionnaires. The Secretary will not consider or retain in the official record of the proceeding unsolicited questionnaire responses, except as provided under § 351.204(d)(2), or untimely filed questionnaire responses. The Secretary will reject any untimely filed or unsolicited questionnaire response and provide, to the extent practicable, written notice stating the reasons for rejection (see § 351.302(d)).

(i) Initial questionnaire responses are due 30 days from the date of receipt of such questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30

days allotted for response to the full questionnaire. In general, the date of receipt will be considered to be seven days from the date on which the initial questionnaire was transmitted.

- (ii) Supplemental questionnaire responses are due on the date specified by the Secretary.
- (iii) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is to be submitted in writing within 14 days after the date of the questionnaire or, if the questionnaire is due in 14 days or less, within the time specified by the Secretary.
- (iv) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.
- (v) *Factual information submitted to rebut, clarify, or correct questionnaire responses.*

Within 14 days after an initial questionnaire response and within 10 days after a supplemental questionnaire response has been filed with the Department, an interested party other than the original submitter is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction to a questionnaire response, the original submitter of the questionnaire response is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction. The Secretary will reject any untimely filed rebuttal, clarification, or correction submission and provide, to the extent practicable, written notice stating the

reasons for rejection (see § 351.302). If insufficient time remains before the due date for the final determination or final results of review, the Secretary may specify shorter deadlines under this section.

(2) *Factual information submitted in support of allegations.* Factual information submitted in support of allegations must be accompanied by a summary, not to exceed five pages, of the allegation and supporting data.

(i) *Market viability and the basis for determining normal value.* Allegations regarding market viability in an antidumping investigation or administrative review, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit.

(ii) *Sales at prices below the cost of production.* Allegations of sales at prices below the cost of production made by the petitioner or other domestic interested party are due within:

(A) In an antidumping investigation, on a country-wide basis, 20 days after the date on which the initial questionnaire was issued to any person, unless the Secretary alters this time limit; or, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(B) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant

questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(C) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(iii) *Purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.* An allegation of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production made by the petitioner or other domestic interested party is due within 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limits.

(iv) *Countervailable subsidy; upstream subsidy.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination, unless the Secretary extends this time limit for good cause; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(C) Exception for upstream subsidy allegation in an investigation. In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than 60 days after the date of the preliminary determination.

(v) *Other allegations.* An interested party may submit factual information in support of other allegations not specified in paragraphs (c)(2)(i)-(iv) of this section. Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection. If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

(vi) *Rebuttal, clarification, or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is served on an interested party.

(3) *Factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).*

(i) *Antidumping or countervailing duty investigations.* All submissions of factual information to value factors of production under § 351.408(c) in an antidumping investigation, or to measure the adequacy of remuneration under § 351.511(a)(2) in a countervailing duty investigation, are due no later than 30 days before the scheduled date of the preliminary determination;

(ii) *Administrative review, new shipper review, or changed circumstances review.* All submissions of factual information to value factors under § 351.408(c), or to measure the adequacy of remuneration under § 351.511(a)(2), are due no later than 30 days before the scheduled date of the preliminary results of review; and

(iii) *Expedited antidumping review.* All submissions of factual information to value factors under § 351.408(c) are due on a date specified by the Secretary.

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).* An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information submitted pursuant to § 351.408(c) or § 351.511(a)(2) 10 days after the date such factual information is served on the interested party. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this subsection. Additionally, all factual information submitted under this subsection must be accompanied by a written explanation identifying what information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).

(4) *Factual information placed on the record of the proceeding by the Department.* The Department may place factual information on the record of the proceeding at any time. An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding by the Department by a date specified by the Secretary.

(5) *Factual information not directly responsive to or relating to paragraphs (c)(1) – (4) of this section.* Paragraph (c)(5) applies to factual information other than that described in § 351.102(b)(21)(i)-(iv). The Secretary will reject information filed under paragraph (c)(5) that

satisfies the definition of information described in § 351.102(b)(21)(i)-(iv) and that was not filed within the deadlines specified above. All submissions of factual information under this subsection are required to clearly explain why the information contained therein does not meet the definition of factual information described in § 351.102(b)(21)(i)-(iv), and must provide a detailed narrative of exactly what information is contained in the submission and why it should be considered. The deadline for filing such information will be 30 days before the scheduled date of the preliminary determination in an investigation, or 14 days before verification, whichever is earlier, and 30 days before the scheduled date of the preliminary results in an administrative review, or 14 days before verification, whichever is earlier.

- (i) Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection.
- (ii) If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

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