



UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

FOIA Improvement Act; Rules of General Application

AGENCY: United States International Trade Commission.

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (“Commission”) issues a final rule amending its Rules of Practice and Procedure concerning rules of general application to reflect amendments to the Freedom of Information Act (“FOIA”) made by the FOIA Improvement Act of 2016 (“Improvement Act”). Among other things, the Improvement Act requires the Commission to amend its FOIA regulations to extend the deadline for administrative appeals for FOIA decisions, to add information on dispute resolution services, and to amend the way the Commission charges fees for FOIA requests.

DATES: This regulation is effective [insert date 30 days after date of publication].

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary, telephone (202) 205-2000 or Brian R. Battles, Esquire, Office of the General Counsel, United States International Trade Commission, telephone (202) 708-4737. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its website at <https://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these amendments to the Commission's Rules of Practice and Procedure.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties.

This rulemaking amends the Commission's existing Rules of Practice and Procedure and reflects changes to the FOIA by the Improvement Act. The Improvement Act addresses a range of procedural issues. Among other things, it requires that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that they provide dispute resolution services at various times throughout the FOIA process. The Improvement Act also updates how fees are charged.

The United States International Trade Commission amends 19 CFR Part 201 as follows:

- By amending §201.18:
 - to change the appeals deadline from sixty days to ninety days;

- to indicate that the Commission’s FOIA Public Liaison is available to offer dispute resolution services and to provide contact information for the Commission’s FOIA Public Liaison and the Office of Government Information Services.
- By amending §201.20, to add new paragraphs (c)(5), (c)(6), and (c)(7) to provide additional limitations on the fees charged by the Commission.

Good Cause for Final Adoption

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

In this instance, however, the Commission has determined that the notice and public comment procedure is unnecessary. Section 553(b)(3)(B) of the APA authorizes agencies to dispense with notice and comment procedures for rules when the agency finds that there is “good cause” in concluding that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The proposed amendments are required by statute, do

not involve Commission discretion, and provide additional protections to the public. Given these factors, the Commission finds good cause to conclude that the notice and public comment procedure are unnecessary.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

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

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

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

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

These rules are not "major rules" as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). Moreover, they are exempt from the reporting requirements of that Act because they contain rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

These rules are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), since they do not contain any new information collection requirements.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Claims, Classified information, Confidential business information, Freedom of information, Privacy, Reporting and recordkeeping requirements

As stated in the preamble, part 201 of chapter II, title 19 of the Code of Federal Regulations is amended as follows:

PART 201—RULES OF GENERAL APPLICATION

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

AUTHORITY: 19 U.S.C. 1335; 19 U.S.C. 2482, unless otherwise noted

2. In § 201.18, paragraphs (b) and (f) are revised to read as follows:

§ 201.18 Denial of requests, appeals from denial.

* * * * *

(b) An appeal from a denial of a request must be received within ninety days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any such appeal shall be in writing, and shall indicate clearly in the appeal, and if the appeal is in paper form on the envelope, that it is a “Freedom of Information Act Appeal.” An appeal may be made either in paper form, or electronically by contacting the Commission at <http://www.usitc.gov/foia.htm>.

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(f) A response to an appeal will advise the requester that the Commission's FOIA Public Liaison officer and the Office of Government Information Services both offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. The requester may contact the Commission's FOIA Public Liaison officer by telephone (202-205-2595) or email (foia.se.se@usitc.gov) or the Office of Government Information Services at National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland 20740-6001.

3. In § 201.20, add paragraphs (c)(5) through (7) to read as follows:

§ 201.20 Fees.

* * * * *

(c) * * *

(5) The Commission will not charge fees if it fails to comply with any time limit under the FOIA or these regulations, and if it has not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely written notice is given to the requester, the Commission will have an additional 10 working days to respond to the

request before fees are automatically waived under this paragraph.

(6) If the Commission determines that unusual circumstances apply and that more than 5,000 pages are necessary to respond to a request, it may charge fees if it has provided a timely written notice to the requester and discusses with the requester via mail, Email, or telephone how the requester could effectively limit the scope of the request (or make at least three good faith attempts to do so).

(7) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

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By order of the Commission.

Katherine M. Hiner
Acting Supervisory Attorney

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