

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Rules of General Application

AGENCY: International Trade Commission.

ACTION: Final Rule.

SUMMARY: The United States International Trade Commission (“Commission”) amends provisions of its Rules of Practice and Procedure concerning national security information. The amendments are designed to ensure that the Commission’s procedures with respect to national security information are consistent with applicable authorities.

DATES: This regulation is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary, telephone (202) 205-2000, or Clara Kuehn, Attorney-Advisor, Office of the General Counsel, telephone (202) 205-3012, United States International Trade Commission. 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 Internet server at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: 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 updates Subpart F of Part 201 of the Commission’s existing Rules of Practice and Procedure concerning national security information to ensure that Subpart F is consistent with Executive Order 13526 of December 29, 2009, and its implementing directive (32 CFR part 2001).

On April 17, 2014, the Commission published a Notice of Proposed Rulemaking (NPR) in the Federal Register. 79 FR 21658, April 17, 2014. In the NPR, the Commission proposed amendments to Subpart F that would make non-substantive changes to existing section 201.42; eliminate existing section 201.43 and existing subsections 201.44(b) through (f); and update the procedures for processing mandatory declassification review (“MDR”) requests in existing subsection 201.44(a) and incorporate them into a new section 201.43.

In the NOPR, the Commission requested public comment on the proposed rules, but no comments were received. The Commission found no reason to change the proposed rules before adopting them as final rules, which are republished below. A section-by-section analysis of the rules can be found at 79 FR 21658-21661 (April 17, 2014).

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. Although the Commission published a notice of proposed rulemaking, these regulations are “agency rules of procedure and practice,” and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). Moreover, these rules are certified as not having a significant economic impact on a substantial number of small entities.

These amended rules do not contain any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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 these amended 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, and will not significantly or uniquely affect small governments.

The Commission has determined that these amended rules do not constitute a “significant regulatory action” under section 3(f) of Executive Order 12866 (58 FR 51735, October 4, 1993).

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

These amended 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 the Act because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

#### List of Subjects in 19 CFR Part 201

Administrative practice and procedure.

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR part 201 as follows:

#### PART 201-RULES OF GENERAL APPLICATION

1. Revise the authority citation for subpart F of part 201 to read as follows:

Authority: 19 U.S.C. 1335; E.O. 13256, 75 FR 707.

2. Revise subpart F to read as follows:

Subpart F-- National Security Information

Sec. 201.42 Purpose and scope.

The following regulation supplements Executive Order 13526 of December 29, 2009, 75 FR 707, and its implementing directive (32 CFR part 2001) as it applies to the Commission.

Sec. 201.43 Mandatory declassification review.

(a) *Requests for mandatory declassification review.* (1) *Definitions.* Mandatory declassification review ("MDR") means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

(2) *Procedures.* Requests for MDR of information in the custody of the Commission that is classified under Executive Order 13526 or predecessor orders shall be directed to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. MDR requests will be processed in accordance with Executive Order 13526, its implementing directive, and this section. An MDR request must describe the document or material containing the requested information with sufficient specificity to enable Commission personnel to locate it with a reasonable amount of effort. Requests for broad types of information, entire file series of records, or similar non-specific requests may be denied processing. The Secretary shall notify a requester who has submitted a non-specific request that no further action will be taken on the request unless the requester provides additional description.

(b) *Freedom of Information Act and Privacy Act requests.* (1) Requests for records submitted under the Freedom of Information Act ("FOIA") (5 U.S.C. 552), as amended, or the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which include classified information shall be processed in accordance with the provisions of those acts and applicable Commission regulations (subpart C of this part (FOIA regulations); subpart D of this part (Privacy Act regulations)).

(2) If a requester submits a request under FOIA and also requests MDR, the Secretary shall require the requester to select one process or the other. If the requester

fails to select one or the other process, the Secretary will treat the request as a FOIA request unless the requested materials are subject only to MDR.

(c) *Referral of MDR requests.* (1) Because the Commission does not have original classification authority and all U.S. originated classified information in its custody has been originally classified by another Federal agency, the Secretary shall refer all requests for MDR and the pertinent records to the originating agency for review. Following consultations with the originating agency, the Secretary shall notify the requester of the referral unless such association is itself classified under Executive Order 13526 or its predecessor orders. The Secretary shall request that the originating agency, in accordance with 32 CFR 2001.33(a)(2)(ii) and 2001.34(e):

(i) promptly process the request for declassification,

(ii) communicate its declassification determination to the Secretary, and

(iii) if the originating agency proposes to withhold any information from public release, notify the Secretary of the specific information at issue and the applicable law that authorizes and warrants withholding such information.

(2) Unless a prior arrangement has been made with the originating agency, the Secretary shall collect the results of that agency's review and inform the requester of any final decision regarding the declassification of the requested information as follows:

(i) If the originating agency denies declassification of the requested information in whole or in part, the Secretary shall ensure that the decision provided to the requester includes notification of the right to file an administrative appeal with the originating agency within 60 days of receipt of the denial and the mailing address for the appellate authority at the originating agency.

(ii) If the originating agency declassifies the requested information in whole or in part, the Secretary shall determine whether the requested declassified information is exempt from disclosure, in whole or in part, under the provisions of a statutory authority, such as the FOIA. The Secretary shall inform the requester that an appeal from a denial of requested declassified information must be received within 60 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.

(d) *Foreign Government Information.* (1) *Definitions.* "Foreign government information" ("FGI") means information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence; information produced by the United

States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or information received and treated as FGI under the terms of a predecessor of Executive Order 13526.

(2) *MDR requests for classified records in Commission custody that contain FGI.* The Commission will handle such MDR requests consistent with the requirements of Executive Order 13526 and 32 CFR part 2001. MDR requests for FGI initially received or classified by another Federal agency shall be referred to such agency following the referral procedures in paragraph (c) of this section.

(e) *Appeals of denials of MDR requests.* MDR appeals are for the denial of classified information only. Appeals of denials are handled in accordance with 32 CFR 2001.33(a)(2)(iii), which provides that the agency appellate authority deciding an administrative appeal of the denial of an MDR request shall notify the requester in writing of the reasons for any denial and inform the requester of his or her final appeal rights to the Interagency Security Classification Appeals Panel.

By order of the Commission

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton  
Secretary to the Commission

Issued: August 1, 2014