

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, DC

19 CFR Parts 201, 206, 208, and 213, and Chapter II

Rules of General Application; Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion, and Review of Relief Actions; Investigations with Respect to Commercial Availability of Textile Fabric and Yarn in Sub-Saharan African Countries; Trade Remedy Assistance

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking; retrospective analysis of rules.

SUMMARY: The United States International Trade Commission (“Commission”) proposes to amend provisions of its Rules of Practice and Procedure concerning the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, certain investigations, and trade remedy assistance. The proposed amendments are part of the agency’s retrospective analysis of its Rules that attempts to determine whether rules should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving regulatory objectives. The Commission requests public comment both on the proposed amendments and on its rules in general.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by docket number MISC-038, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Agency Web site: <https://edis.usitc.gov>. Follow the instructions for submitting comments on the Web site.

Mail: For paper submission. U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436.

Hand Delivery/Courier: U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436. During the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC-038), along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking. All comments received will be posted without change to <https://edis.usitc.gov>, including any personal information provided. For paper copies, a signed original and 8 copies of each set of comments should

be submitted to Lisa R. Barton, Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to <https://edis.usitc.gov> and/or the U.S. International Trade Commission, 500 E Street SW., Room 112A, Washington, DC 20436.

A person seeking to submit a comment that includes confidential business information should follow the procedures set out in 19 CFR 201.6.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary, telephone (202) 205-2000, or Paul R. Bardos, Office of the General Counsel, telephone (202) 205-3061, 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: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission's Rules. This preamble provides background information, a section-by-section explanation of the proposed amendments, and a regulatory analysis of the proposed amendments. The Commission encourages members of the public to comment on the proposed amendments as well as on whether the language of the proposed amendments is sufficiently clear for users to understand.

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 seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission invites the public to comment on all of these proposed rules amendments. In any comments, please consider addressing whether the language of the proposed amendments is sufficiently clear for users to understand. In addition please consider addressing how the proposed rules amendments could be improved, and/or offer specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with provisions of section 553 of the Administrative Procedure Act ("APA") (5 U.S.C. 553), although such provisions are not mandatory with respect to this rulemaking. The APA procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

This notice of proposed rulemaking is a result of the Commission's Plan for Retrospective Analysis of Existing Rules, which was published on February 14, 2012, at 77 FR 8114. The plan was issued in response to Executive Order 13579 of July 11, 2011, and established a process under which the Commission will periodically review its significant rules to determine whether any such rules should be

modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. On August 9, 2012, at 77 FR 47572, the Commission published a notice seeking public comment on its existing Rules as part of the retrospective review. Several comments were received, and are being taken into account as the Commission continues to review its Rules.

The Commission has in the past two years issued a number of notices of rulemaking designed to improve the Commission's existing Rules. With respect to proceedings conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337), the Commission most recently published a notice of final rulemaking on May 21, 2013 (78 FR 29618). Concerning proceedings conducted under title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*), the agency published a notice of final rulemaking on June 25, 2014 (79 FR 35920). In addition, the Commission updated its Rules concerning national security information by notice published on August 8, 2014 (79 FR 46350).

The Commission's Plan calls for the agency to seek public input on its Rules every two years. As a result, the Commission is seeking input by this notice to assist it in determining whether, in addition to the proposed amendments set out below, any of the agency's Rules should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving regulatory objectives. The public is invited to comment both on the proposed amendments and any other of the Commission's Rules.

As discussed more fully below, the Commission proposes to revise provisions of its Rules concerning the Freedom of Information Act, the Privacy Act, the Government in the Sunshine Act, certain investigations, and trade remedy assistance.

Section-by-Section Analysis

The Commission proposes to amend the authority citation for part 201 to conform to the recommendation of the Office of the Federal Register with respect to statutory citation.

Section 201.17(a)(5) directs members of the public to make inquiries of the Publications Office in the Office of the Secretary when writing or calling for copies of documents. The Commission proposes to revise this provision to reflect the fact that there is no longer a Publications Office in the Secretary's Office and that many documents are available online.

Section 201.19(f) currently states that, in general, the Commission has ten (10) working days in which to respond to a Freedom of Information Act request. The Commission proposes to revise this paragraph to remove it in conformity with the applicable statutory provision (5 U.S.C. 552(a)(6)(A)(i)), which gives agencies twenty (20) working days to respond to requests. In addition, the paragraph would be revised to increase flexibility by replacing a specific deadline for filing objections to disclosure of information with a provision for the Secretary to set the deadline.

Section 201.20(j)(8) defines the term "representative of the news media." The Commission proposes to replace the existing definition with the statutory one set out at 5 U.S.C. 552(a)(4)(A)(ii).

Section 201.23(e) states that the Privacy Act Officer for the Commission is the Director of the Office of Administration. The Commission proposes to amend this provision to reflect the fact that this responsibility has been transferred to the Secretary to the Commission.

Section 201.34(a)(3) states that conference telephone calls among Commissioners generally are considered meetings under the Government in the Sunshine Act. The Commission proposes to more closely accord this statement with the statute by clarifying that this is only the case where the deliberations of the Commissioners “determine or result in the joint conduct or disposition of official [Commission] business.” See 5 U.S.C. 552b(a)(2).

Section 206.2 sets out how a petition or request for a safeguard investigation should be identified. The Commission proposes to amend the provision to add procedures for filing such documents.

The Commission proposes to remove part 208 of its Rules, which governs investigations with respect to commercial availability of textile fabric and yarn in sub-Saharan African countries. Such investigations were provided for under section 112(c) of the African Growth and Opportunity Act (19 U.S.C. 3721(c)), which was repealed by Section 3(a)(2) of the Andean Trade Preference Act, Pub. L. 110-436.

Part 213 implements 19 U.S.C. 1339 by establishing a Trade Remedy Assistance Office (TRAO) and assigning duties to that office. The Commission proposes to move part 213 to a new subchapter D. This move would clarify that part 213 applies to proceedings under several trade statutes. Currently part 213 is located in subchapter C, which is intended to cover only unfair practices in import trade.

The Commission proposes to amend the authority citation for part 213 to conform to the recommendation of the Office of the Federal Register with respect to statutory citation.

The Commission proposes to amend section 213.2 to update and simplify the definition of the term “SBA size standards.” A reference to frivolous petitions and complaints would be removed as unnecessary because, although TRAO has the statutory authority to determine that a petition or application is frivolous, the office has not received such documents. In addition, the Commission proposes to clarify that technical assistance is provided under 19 U.S.C. 1339(b), so that persons seeking information and assistance under 19 U.S.C. 1339(a) need not file the formal application required by section 213.3; a conforming change would be made to section 213.3. Also, a typographical error would be corrected.

The Commission proposes to amend sections 213.3 and 213.6 to inform the public that the agency provides information relating to trade remedy assistance on its website.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

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 final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed

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

The proposed rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

No actions are necessary under title II of the Unfunded Mandates Reform Act of 1995, Public Law 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).

The proposed 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).

The proposed amendments 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 Parts 201, 206, 208, and 213

Administrative practice and procedure; imports; foreign trade.

For the reasons stated in the preamble, under the authority of 19 U.S.C. § 1335, the United States International Trade Commission proposes to amend 19 CFR parts 201, 206, 208, and 213 as follows:

PART 201--RULES OF GENERAL APPLICATION

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

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

2. Revise paragraph (a)(5) of § 201.17 to read as follows:

§201.17 Procedures for requesting access to records.

(a) * * *

(5) Copies of public Commission reports and other publications are available online at <http://www.usitc.gov>. or can be requested by calling or writing the Office of the Secretary. Certain Commission publications are sold by the Superintendent of Documents, U.S. Government Printing Office, and are available from that agency at the price set by that agency.

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3. Revise paragraph (f) of § 201.19 to read as follows:

§201.19 Notification regarding requests for confidential business information.

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(f) **Opportunity to object to disclosure.** Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed by a deadline set by the Secretary, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of §201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

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4. Revise paragraph (j)(8) of § 201.20 to read as follows:

§201.20 Fees.

(j) * * *

(8) **The term *representative of the news media*** refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term `news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of `news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

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5. Revise paragraph (e) of § 201.23 to read as follows:

§201.23 Definitions.

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(e) **The term Privacy Act Officer** refers to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, or his or her designee.

6. Revise paragraph (a)(3) of § 201.34 to read as follows:

§201.34 Definitions.

* * * * *

(a) * * *

(3) Conference telephone calls among the Commissioners are considered meetings as defined by paragraph (a)(1) of this section if they involve the number of Commissioners requisite for Commission action, and where the deliberations of the Commissioners determine or result in the joint conduct or disposition of official Commission business.

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Part 206 -- **INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS**

7. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2112 note, 2251-2254, 2436, 2451-2451a, 3351-3382, 3805 note, 4051-4065, and 4101.

8. Revise § 206.2 to read as follows:

§ 206.2 Identification of type of petition or request.

An investigation under this part may be commenced on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in §§ 206.1 and 206.31. Each petition or request, as the case maybe, filed by an entity representative of a domestic industry under this part shall state clearly on the first page thereof “This is a [petition or request] under section [citing the statutory provision] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission.” A paper original and eight (8) true paper copies of a petition, request, resolution, or motion shall be filed. One copy of any exhibits, appendices, and attachments to the document shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary.

Part 208 -- [Removed and Reserved]

9. Remove and reserve part 208.

Subchapter D – Special Provisions

10. Under the authority of 19 USC 1335, add subchapter D with the heading set forth above, and transfer part 213, consisting of §§ 213.1 through 213.6, into new subchapter D.

Part 213 -- **TRADE REMEDY ASSISTANCE**

11. Revise the authority citation for part 213 to read as follows:

Authority: 19 U.S.C. 1335, 1339.

12. Revise paragraphs (d), (e), (f), and (g) of § 213.2 to read as follows:

§ 213.2 Definitions.

* * * * *

(d) **Technical Assistance.** Technical assistance is informal advice and assistance, including informal legal advice, provided under 19 U.S.C. 1339(b) and intended to enable eligible small businesses to determine the appropriateness of pursuing particular trade remedies, to prepare petitions and complaints and to seek to obtain the remedies and benefits available under the trade laws identified in §213.2(b). Technical assistance is available to eligible small businesses at any time until the completion of administrative review or of an appeal to the administering agency regarding proceedings under the trade laws listed in §213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf and receipt of technical assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides such technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) **Applicant.** An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity that applies for technical assistance under this part.

(f) **Eligible small business.** An eligible small business is an applicant that the Office has determined to be entitled to technical assistance under 19 U.S.C. 1339(b) in accordance with the SBA size standards and the procedures set forth in this part.

(g) **SBA size standards.** The Office has adopted for its use SBA size standards, which are the small business size standards of the Small Business Administration set forth in 13 CFR part 121.

13. Revise paragraph (a) of § 213.3 to read as follows:

§ 213.3 Determination of small business eligibility.

(a) **Application for technical assistance from small businesses.** An applicant for technical assistance under 19 U.S.C. 1339(b) must certify that it qualifies as a small business under the appropriate size standard(s) and that it is an independently owned and operated company. An application for technical assistance is available from the Office and on the Commission’s website. The application must be signed under oath by an officer or principal of the applicant. The completed application should be submitted to the Office at the address set forth in §213.2(a).

* * * * *

14. Revise § 213.6 to read as follows:

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Information is also provided on the Commission's website at <http://www.usitc.gov>.

By order of the Commission

Issued: February 2, 2015



Lisa R. Barton
Secretary to the Commission