

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment provides for the expeditious processing of certain conveyances at designated locations within a port of entry or at Customs stations designed to best provide inspection services for the identified conveyances, and concerns issues of public health and safety. Accordingly, the proposed amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information: The principal author of this document was Gregory R. Vilders, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 123

Administrative practice and procedure, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Imports, International boundaries (Land border), Mexico, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Part 123 of the Customs Regulations (19 CFR part 123), as set forth below:

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for Part 123 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624; Section 123.1 also issued under 19 U.S.C. 1459;

* * * * *

2. In § 123.1, paragraph (b) is amended by adding two new sentences after the first sentence to read as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

* * * * *

(b) *Vehicles.* * * * A port director, for good cause such as reducing traffic congestion or to protect public health

and safety, may require certain types of vehicles or vehicles carrying certain types of merchandise to enter only at specified border crossing points within the jurisdiction of the port director. The port director shall communicate this requirement to the public by means of local instructions, as provided in paragraph (d) of this section. * * *

George J. Weise,
Commissioner of Customs.

Approved: September 24, 1997

John P. Simpson,
Deputy Assistant Secretary of the Treasury.
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INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Revision of Public Notice, Freedom of Information Act, and Privacy Act Regulations, and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The United States International Trade Commission (Commission) proposes to amend its rules of practice and procedure to make certain changes to rules relating to public notices, availability of information under the Freedom of Information Act (FOIA), and safeguarding of individual privacy under the Privacy Act of 1974 (Privacy Act). The intended effect of the changes is to implement the Electronic Freedom of Information Act Amendments of 1996 and otherwise to bring the rules into conformity with current Commission practices and procedures, and with current costs of providing services.

DATES: Comments must be submitted on or before December 17, 1997.

ADDRESSES: Written comments (original and 14 copies) concerning these proposed rule amendments may be submitted to the Secretary, U.S. International Trade Commission, 500 E. Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION: For further information contact the following persons in the Commission's Office of General Counsel: For the proposed Privacy Act and public notice rules amendments, Paul R. Bardos, telephone 202-205-3102; and for the proposed FOIA rules amendments, William W.

Gearhart, telephone 202-205-3091. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

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

Public Notices

Commission rule § 201.10, which relates to public notices, currently provides that the Commission, *inter alia*, will publish a notice for every properly filed document that it receives, and that the Commission will furnish an announcement regarding notices to the Treasury Department for publication in *Treasury Decisions* and to the Department of Commerce for publication in *International Commerce*. The Commission seeks to bring the rule into conformity with current agency practice and eliminate both requirements. Because the Commission believes that it would be wasteful and unnecessary to provide public notice for every document filed, agency practice has been to not issue such notices. Nevertheless, the Commission will retain the discretion to provide public notification of properly filed documents as appropriate. The Commission no longer furnishes announcements of all public notices to Treasury and Commerce for further publication by those agencies and the agencies have not objected.

Freedom of Information Act

The Commission's Freedom of Information Act rules are set forth in subpart C of part 201 (currently 19 CFR 201.17 through 201.21). The Commission proposes to amend §§ 201.17, 201.18, and 201.20 to provide for expedited treatment of certain FOIA requests (as required by the Electronic Freedom of Information Act Amendments of 1996 (Pub.L. 104-231)), adjust its charges for search, review, and computer time to reflect current agency staff salary levels, and make certain other changes to clarify and update the rules.

More specifically, the Commission proposes to reorganize and amend § 201.17 of its rules to provide, in new paragraph (b), for expedited processing of FOIA requests under certain circumstances. The Commission also proposes to amend paragraph (a) of § 201.17 to state that FOIA requests will be processed in the order in which they

are filed, except when expedited processing has been requested and granted; and to advise the public that requests for agency publications can be made to the Publications Office within the Commission's Office of the Secretary and do not need to be submitted under FOIA. Finally, in new paragraph (c) the Commission would advise the public that it maintains a public reading room in the Office of the Secretary, through which the public can obtain access to agency records that the FOIA requires be made regularly available for public inspection and copying, including access in electronic form to agency records created on or after November 1, 1996. The purpose of these changes is to implement the requirements of section 8 of the Electronic Freedom of Information Act Amendments of 1996 and provide additional information on how the public can access records and how it can obtain certain agency records, such as agency publications, most expeditiously. These changes parallel rules on expedited processing recently promulgated by the U.S. Department of Justice. See proposed DOJ rules §§ 16.2 and 16.5, 62 FR 45185 (Aug. 26, 1997). Although these rules amendments are not yet in effect, the Commission is prepared currently to entertain requests for expedited treatment according to the procedures set out in the proposed amendments.

The Commission proposes to amend paragraph (b) of § 201.18 to provide that appeals to the Commission of denials of requests by the Secretary must be filed within 60 days of the date of the letter denying the request. This will give finality to the request process. The Commission would also delete the reference in the current rule to the right to file an appeal if a response to a FOIA request is not forthcoming within 10 days of the filing of the request. The Electronic FOIA Amendments have changed the 10-day response requirement to 20 days. A requester would still have the right to file an appeal if no response were forthcoming after 20 days.

The Commission proposes to amend paragraph (c) of § 201.18 for conformity to state that persons filing an appeal of a denial of a FOIA request may request expedited processing of that appeal, and that the request for expedited processing should conform with the process set out in § 201.17(b) of the rules.

Finally, the Commission proposes to amend § 201.20 to adjust the fees for search and review and computer time to reflect current agency personnel costs. The fees for searches will continue to reflect the distinction between lower grade clerical/professional and higher

grade professional/managerial staff costs. They are based on January 1997 salary levels for GS-8, step 1, and GS 12, step 1, respectively, plus agency-paid benefits, as calculated by the Commission's Office of Finance and Budget. The Commission estimates that these are the average staff grades in each of these two categories of personnel likely to be doing such searches. The fees for computer searches and review are also based on salary level GS-12, step 1, plus agency-paid benefits, which the Commission estimates is the average staff grade of personnel likely to be doing such computer searches or review. Other Commission fees will remain the same: the Commission's copying charge will remain at 10 cents per page, and no fee will be charged unless the fee exceeds \$25.00.

Privacy Act

The Commission's Privacy Act rules are set forth in subpart D of section 201 (currently 19 CFR 201.22 through 201.32). The proposed amendments to the Commission's Privacy Act rules are in response to a comprehensive review of the Commission's Privacy Act compliance conducted by the Commission's Office of Inspector General and Office of General Counsel. In general, the Commission proposes to update and clarify its Privacy Act rules and conform them to the Commission's new and revised systems of records. See 62 FR 23485 (April 30, 1997). Where appropriate, the Commission has also based several of the proposed amendments on the recently published proposed revisions to the Department of Justice's Privacy Act regulations. See 62 FR 45184 (Aug. 26, 1997).

For clarity, this notice sets forth the Commission's Privacy Act rules in their entirety although revisions are not proposed for every provision of the rules. Throughout the proposed rules, the Commission has changed all references from the "Director of Personnel" to "Privacy Act Officer" since the Director of Personnel is no longer the designated Privacy Act Officer. Where necessary, the Commission has made revisions to cross-references because new sections have been added and certain paragraphs have been deleted, and has made other minor changes of a typographical or stylistic nature.

The Commission proposes to amend § 201.22, governing the purpose and scope of the regulations, by deleting the current text of the rule and replacing it with language that would clarify that the Privacy Act rules apply only to those records of individuals found in systems of records governed by the

Privacy Act maintained by the Commission that are retrieved by an individual's name or other personal identifier. The Commission also proposes to add a sentence to § 201.22 describing the scope of the rules, i.e., that the rules set forth procedures governing access to individual records, requests for amendment or correction of records, and requests for accounting of disclosures of records. These proposed changes were modeled on the Department of Justice's proposed changes to its Privacy Act regulations. See DOJ proposed rule § 16.40(a), 62 FR 45192 (Aug. 26, 1997).

The only change the Commission proposes for § 201.23, covering the definitions of the subpart, is to indicate that the Commission's Privacy Act Officer is now the Director of Administration, rather than the Director of Personnel.

Section 201.24 governs the procedures an individual must follow to request his or her records in a system of records. Paragraph (b) of that section currently requires an individual requesting records to furnish the name of the system(s) of records containing the requested records or reasonably describe the requested records. The Commission proposes to amend paragraph (b) to require that an individual "whenever possible" furnish the name of the system of records, reasonably describe the requested records, and also identify the time period in which the records were compiled. These revisions will enable the Commission to locate the requested records in the most efficient and quickest manner possible and are also in conformity with the Department of Justice's requirements for access to records. See DOJ proposed rule § 16.41(b), 62 FR 45192 (Aug. 26, 1997). The Commission proposes to clarify in paragraph (c) of section 201.24 that any denials of requests for access to records will be made in writing, which also is in accordance with the Department of Justice's proposed rules amendments. See DOJ proposed rule § 16.43(b), 62 FR 45193 (Aug. 26, 1997).

Section 201.25 governs the times, places, and requirements for identification of individuals making Privacy Act requests. As currently drafted, § 201.25(d) states that the Commission "may" provide for copies of an individual's records to be sent by mail under certain circumstances. The Commission proposes to revise that paragraph to entitle an individual to obtain access to his or her records by certified mail without first having to establish that the individual is unable to appear in person, as the rule currently

requires. That amendment would appear in paragraph (c) rather than (d). Proposed paragraph (d) contains the requirements for verification of identity, currently set forth in paragraph (c), and adds identification requirements for individuals requesting records by certified mail. Such requirements are consistent with the Department of Justice's proposed identification rules. See proposed DOJ rule § 16.41(d), 62 FR 45192 (Aug. 26, 1997).

With respect to § 201.26, governing disclosure of requested information to individuals, the Commission proposes to amend paragraph (a). The Commission proposes to revise the first sentence by explicitly requiring that the Privacy Act Officer inform an individual in writing that his or her request for access to the individual's records has been granted once the Privacy Act Officer has determined to grant a request for records. This change conforms more closely to the Department of Justice's proposed Privacy Act revisions. See proposed DOJ rule § 16.43(b), 62 FR 45193 (Aug. 26, 1997). The Commission proposes to amend the second sentence by deleting a cross-reference to paragraph (c) of § 201.32, since the Commission is proposing to delete that paragraph, and instead cross-reference to § 201.32 generally (governing exemptions to disclosure requirements).

The only change the Commission proposes to make in § 201.27, governing procedures for access to an individual's medical records, is to change all references from the Director of Personnel to the Privacy Act Officer.

In § 201.28(a), governing requests for correction or amendment of records, the Commission proposes to add certain requirements which have been modeled on the Department of Justice's proposed Privacy Act rules amendments. See DOJ proposed rule § 16.46(a), 62 FR 45194 (Aug. 26, 1997). If an individual requests an amendment to his or her records, the Commission proposes to require that the request identify each particular record in question and the system(s) of records wherein the records are located, specify the amendment requested, and specify the reasons why the records are not correct, relevant, timely or complete. The Commission also proposes to have individuals submit any documentation that would be helpful in determining whether the requested amendment should be granted.

The Commission proposes to move current § 201.29, governing review by the Commission of requests for correction or amendment of records, and renumber it as § 201.30. The

Commission proposes that current § 201.30, which governs disclosure of records to persons other than the individual to whom it pertains, would become § 201.29. The Commission proposes this reordering because it proposes to expand the section governing review by the Commission of requests for amendment (currently § 201.29) to add provision for Commission review of requests for access to records and requests for accounting of disclosure of records. It is thus more logical to have the section setting forth requests for an accounting of disclosure, which will be covered in proposed § 201.29, to precede the section on review by the Commission.

In addition to renumbering the section governing disclosure of records as § 201.29, the Commission proposes to make other amendments to that section. First, the Commission proposes to change the statutory reference in paragraph (a) of proposed § 201.29 from "5 U.S.C. 552a(b)(1)–(b)(11)" to "5 U.S.C. 552a(b)." In 1982, the Privacy Act was amended to add subsection (b)(12) (authorizing agencies to disclose bad-debt information to credit bureaus), which is not reflected in the current Commission rule. The Commission also proposes to include in § 201.29 a new paragraph setting forth procedures to be followed if an individual requests an accounting of disclosures made of his or her records. The procedures would be in conformity with those for other Commission Privacy Act requests such as requests for access to records and amendment of records. The Commission proposes to insert the provisions governing request procedures at paragraph (e) and redesignate current paragraph (e) as paragraph (f). Finally, the Commission proposes to rename the section "Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures" to reflect the expanded scope of the rule.

Under the proposed revisions, current § 201.29—entitled "Commission review of request for correction or amendment to record"—would become § 201.30. The Commission proposes to expand the scope of that rule to include Commission review of denial of requests for access to records and denial of requests for an accounting of disclosure of records. Currently, the Commission rules contain no procedures for an individual to appeal to the Commission a denial by the Privacy Act Officer or Inspector General of a request for access or accountings of disclosure of records. The same appeal process would apply to all types of denials of requests under the Privacy Act rule. In addition, the

Commission proposes to require an individual to make such an appeal within 60 days of receipt of the denial of a request by the Privacy Act Officer or Inspector General. These changes are consistent with the proposed Privacy Act rules amendments of the Department of Justice. See DOJ proposed rules §§ 16.45(a), 16.46(c), and 16.47(c), 62 FR 45194–45195 (Aug. 26, 1997). To reflect the expanded scope of section 201.30, the Commission proposes to change the name of the section from "Commission review of request for correction or amendment to record" to "Commission review of requests for access to records, for correction or amendment of records, or for an accounting of record disclosures."

In the rule governing fees for Privacy Act requests, § 201.31, the Commission will maintain its charge of \$0.10 per page for copying an individual's Privacy Act records, but change the provision to require such fees only if the total cost of copying exceeds \$25 rather than \$0.50 as the rule currently provides. This would harmonize the Privacy Act's fees with the fees charged under FOIA procedures.

In addition, pursuant to 5 U.S.C. 552a(k), the Commission proposes to amend § 201.32, governing exemptions to certain Privacy Act requirements, by adding one exemption and deleting three exemptions currently set forth in the rules. The Commission proposes to delete three unnecessary general exemptions covering classified records, statistical records, and investigatory material compiled for determining suitability for employment, federal contracts, and other purposes. These exemptions are currently set forth at paragraphs (a), (b), and (c), respectively. Because these three exemptions are not applied to specific systems of records, as required by the Privacy Act, the Commission is proposing to delete them. The remaining two current exemptions covering Inspector General Investigative Files (General) and Inspector General Investigative Files (Criminal) will be retained and become paragraphs (a) and (b) of § 201.32, respectively. The Commission proposes to add an exemption for the system of records entitled "Personnel Security Investigative Files Records" from subsections (c)(3), (d), (e)(1), (e)(1)(G), (H) and (I), and (f) of the Privacy Act. For a complete description of the Personnel Security Investigative Files Records system, see 62 FR 23485–23496 (April 30, 1997). The Commission proposes to set forth this new exemption at paragraph (c), to protect from disclosure classified and other sensitive information.

Finally, the Commission proposes to add new § 201.33 entitled "Employee conduct." This proposed rule would implement the requirement of the Privacy Act, set forth at 5 U.S.C. 552a(e)(9), that agencies establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of the Privacy Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), the Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules amendments set forth in this notice will not significantly affect any business or other entities, and thus are not likely to have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Commission has determined that the proposed rules amendments do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) (EO) and thus do not constitute a significant regulatory action for purposes of the EO, since the revisions will not result in (1) an annual effect on the economy of \$100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required.

Unfunded Mandates Reform Act of 1995

The proposed rules amendments 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. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

Small Business Regulatory Enforcement Fairness Act of 1996

The proposed rules amendments are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121). The proposed amendments will not result in an annual effect on the

economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Contract With America Advancement Act of 1996

The proposed rules amendments are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules "of agency organization, procedure, or practice" that do not substantially affect the rights or obligations of non-agency parties. See Contract With America Advancement Act, section 804(3)(c).

Paperwork Reduction Act

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

List of Subjects in 19 CFR Part 201

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons set out in the preamble, the Commission proposes to amend 19 CFR part 201, subparts B, C, and D as follows:

PART 201—RULES OF GENERAL APPLICATION

1. It is proposed that the authority citation for part 201 continue to read as follows:

Authority: Sec. 335 of The Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. It is proposed that § 201.10 be revised to read as follows:

§ 201.10 Public notices.

As required or appropriate, formal notice of the receipt of documents properly filed, of the institution of investigations, of public hearings, and of other formal actions of the Commission will be given by publication in the **Federal Register**. In addition to such publication of notice, a copy of each published notice will be posted at the Office of the Secretary of the Commission in Washington, DC, and, as appropriate, copies will be sent to press associations, to trade and similar organizations of producers and importers, and to others known to the

Commission to have an interest in the subject matter.

3. It is proposed that § 201.17 be revised to read as follows:

§ 201.17 Procedures for requesting access to records.

(a) *Requests for records.* (1) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and shall indicate clearly both on the envelope and in the letter that it is a "Freedom of Information Act Request."

(2) Any request shall reasonably describe the requested record to facilitate location of the record. If the request pertains to a record that is part of the Commission's file in an investigation, the request should identify the investigation by number and name. A clear description of the requested record(s) should reduce the time required by the Commission to locate and disclose releasable responsive record(s) and minimize any applicable search and copying charges.

(3) Except as provided in paragraph (b) of this section, requests will be processed in the order in which they are filed.

(4) Requests for transcripts of hearings should be addressed to the official hearing reporter, the name and address of which can be obtained from the Secretary. A copy of such request shall at the same time be forwarded to the Secretary.

(5) Copies of public Commission reports and other publications can be requested by calling or writing the Publications Office in the Office of the Secretary. Generally, such publications can be obtained more quickly from this office. 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.

(6) A day-to-day, composite record will be kept by the Secretary of each request with the disposition thereof.

(b) *Expedited processing.* (1) Requests for records under paragraph (a)(1) of this section will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within paragraph (b)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within paragraph (b)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the Secretary will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(c) *Public reading room.* The Commission maintains a public reading room in the Office of the Secretary for access to the records that the FOIA requires to be made regularly available for public inspection and copying. Reading room records created by the Commission on or after November 1, 1996, are available electronically. This includes a current subject-matter index of reading room records, which will indicate which records are available electronically.

4. It is proposed that paragraphs (b) and (c) of § 201.18 be 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 sixty 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 clearly indicate both on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

(c) Except when expedited treatment is requested and granted, appeals will be decided in the order in which they are filed, but in any case within twenty days (excepting Saturdays, Sundays, and legal holidays) unless an extension, noticed in writing with the reasons therefor, has been provided to the person making the request. Notice of the decision on appeal and the reasons therefor will be made promptly after a decision. Requests for expedited treatment should conform with the requirements in § 201.17(c) of this part.

5. It is proposed that paragraphs (b)(1)(ii) and (iii) and (b)(3)(i) of § 201.20 be revised to read as follows:

§ 201.20 Fees.

* * * * *

(b) *Charges.* * * *

(1) *Search.* * * *

(ii) For each quarter hour spent by agency personnel in salary grades GS-2 through GS-10 in searching for and retrieving a requested record, the fee shall be \$4.00. When the time of agency personnel in salary grades GS-11 and above is required, the fee shall be \$6.50 for each quarter hour of search and retrieval time spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requester shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than \$6.50 per quarter hour of time so spent).

* * * * *

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be \$6.50.

* * * * *

6. It is proposed that the authority citation for subpart D of part 201 read as follows:

Authority: 5 U.S.C. 552a.

7. It is proposed that subpart D of part 201 be revised to read as follows:

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

Sec.

201.22 Purpose and scope.

201.23 Definitions.

201.24 Procedures for requests pertaining to individual records in a records system.

201.25 Times, places, and requirements for identification of individuals making requests.

201.26 Disclosure of requested information to individuals.

201.27 Special procedures: Medical records.

201.28 Requests for correction or amendment of records.

201.29 Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures.

201.30 Commission review of requests for access to records, for correction or amendment to records, and for accounting of record disclosures.

201.31 Fees.

201.32 Specific exemptions.

201.33 Employee conduct.

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

§ 201.22 Purpose and scope.

This subpart contains the rules that the Commission follows under the Privacy Act of 1974, 5 U.S.C. 552a. The rules in this subpart apply to all records in systems of records maintained by the Commission that are retrieved by an individual's name or other personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Commission.

§ 201.23 Definitions.

For the purpose of these regulations,

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use, or disseminate;

(c) The term *record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other

identifying particular assigned to the individual;

(d) The term *system of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual;

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

§ 201.24 Procedures for requests pertaining to individual records in a records system.

(a) A request by an individual to gain access to his or her record(s) or to any information pertaining to him or her which is contained in a system of records maintained by the Commission shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly both on the envelope and in the letter that it is a Privacy Act request.

(b) In order to facilitate location of requested records, whenever possible, the request of the individual shall name the system(s) of records maintained by the Commission which he or she believes contain records pertaining to him or her, shall reasonably describe the requested records, and identify the time period in which the records were compiled.

(c) The Privacy Act Officer shall acknowledge receipt of a request within ten days (excluding Saturdays, Sundays, and legal public holidays), and wherever practicable, indicate whether or not access can be granted. If access is not to be granted, the requestor shall be notified of the reason in writing.

(d) The Privacy Act Officer, or, the Inspector General, if such records are maintained by the Inspector General, shall ascertain whether the systems of records maintained by the Commission contain records pertaining to the individual, and whether access will be granted. Thereupon the Privacy Act Officer shall:

(1) Notify the individual whether or not the requested record is contained in any system of records maintained by the Commission; and

(2) Notify the individual of the procedures as prescribed in §§ 201.25 and 201.26 of this part by which the individual may gain access to those records maintained by the Commission which pertain to him or her. Access to the records will be provided within 30

days (excluding Saturdays, Sundays, and legal public holidays).

§ 201.25 Times, places, and requirements for identification of individuals making requests.

(a) If an individual wishes to examine his or her records in person, it shall be the responsibility of the individual requester to arrange an appointment with the Privacy Act Officer for the purpose of inspecting individual records. The time of inspection shall be during the regular office hours of the Commission, 8:45 a.m. to 5:15 p.m., Monday through Friday. The time arranged should be mutually convenient to the requester and to the Commission.

(b) The place where an individual may gain access to records maintained by the Commission which pertain to him or her shall be at the United States International Trade Commission Building, 500 E Street SW., Washington, DC 20436. The Privacy Act Officer shall inform the individual requester of the specific room wherein inspection will take place.

(c) An individual may also request the Privacy Act Officer to provide the individual with a copy of his or her records by certified mail.

(d) An individual who requests to gain access to those records maintained by the Commission which pertain to him or her shall not be granted access to those records without first presenting adequate identification to the Privacy Act Officer. Adequate identification may include, but is not limited to, a government identification card, a driver's license, Medicare card, a birth certificate, or a passport. If requesting records by mail, an individual must provide full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, a requestor may also, at his or her option, include the individual's social security number.

§ 201.26 Disclosure of requested information to individuals.

(a) Once the Privacy Act Officer has made a determination to grant a request for access to individual records, in whole or in part, the Privacy Act Officer shall inform the requesting individual in writing and permit the individual to review the pertinent records and to have a copy made of all or any portion of them. Where redactions due to exemptions pursuant to § 201.32 would render such records or portions thereof

incomprehensible, the Privacy Act Officer shall furnish an abstract in addition to an actual copy.

(b) An individual has the right to have a person of his or her own choosing accompany him or her to review his or her records. The Privacy Act Officer shall permit a person of the individual requester's choosing to accompany the individual during inspection.

(c) When the individual requests the Privacy Act Officer to permit a person of the individual's choosing to accompany him or her during the inspection of his or her records, the Privacy Act Officer shall require the individual requester to furnish a written statement authorizing discussion of the records in the accompanying person's presence.

(d) The Privacy Act Officer shall take all necessary steps to insure that individual privacy is protected while the individual requester is inspecting his or her records or while those records are being discussed. Only the Privacy Act Officer shall accompany the individual as representative of the Commission during the inspection of the individual's records. The Privacy Act Officer shall be authorized to discuss the pertinent records with the individual.

§ 201.27 Special procedures: Medical records.

(a) While an individual has an unqualified right of access to the records in systems of records maintained by the Commission which pertain to him or her, medical and psychological records merit special treatment because of the possibility that disclosure will have an adverse physical or psychological effect upon the requesting individual. Accordingly, in those instances where an individual is requesting the medical and/or psychological records which pertain to him or her, he or she shall, in his or her Privacy Act request to the Privacy Act Officer as called for in § 201.24(a) of this part, specify a physician to whom the medical and/or psychological records may be released.

(b) It shall be the responsibility of the individual requesting medical or psychological records to specify a physician to whom the requested records may be released. If an individual refuses to name a physician and insists on inspecting his or her medical or psychological records in the absence of a doctor's discussion and advice, the individual shall so state in his or her Privacy Act request to the Privacy Act Officer as called for in § 201.24(a) of this part and the Privacy Act Officer shall provide access to or

transmit such records directly to the individual.

§ 201.28 Requests for correction or amendment of records.

(a) If, upon viewing his or her records, an individual disagrees with a portion thereof or feels sections thereof to be erroneous, the individual may request amendment[s] of the records pertaining to him or her. The individual should request such an amendment in writing and should identify each particular record in question, the system[s] of records wherein the records are located, specify the amendment requested, and specify the reasons why the records are not correct, relevant timely or complete. The individual may submit any documentation that would be helpful. The request for amendment of records shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act request for amendment of records.

(b) Not later than 10 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of a Privacy Act request for amendment of records, the Privacy Act Officer shall acknowledge such receipt in writing. Such a request for amendment will be granted or denied by the Privacy Act Officer or, for records maintained by the Inspector General. If the request is granted, the Privacy Act Officer, or the Inspector General for records maintained by the Inspector General, shall promptly make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete. If, however, the request is denied, the Privacy Act Officer shall inform the individual of the refusal to amend the record in accordance with the individual's request and give the reason(s) for the refusal. In cases where the Privacy Act Officer or the Inspector General has refused to amend in accordance with an individual's request, he or she also shall advise the individual of the procedures under § 201.30 of this part for the individual to request a review of that refusal by the full Commission or by an officer designated by the Commission.

§ 201.29 Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures.

(a) It is the policy of the Commission not to disclose, except as permitted under 5 U.S.C. 552a(b), any record which is contained in any system of

records maintained by the Commission to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) Except for disclosures either to officers and employees of the Commission, or to contractor employees who, in the Inspector General's or the Privacy Act Officer's judgment, as appropriate, are acting as federal employees, who have a need for the record in the performance of their duties, and any disclosure required by 5 U.S.C. 552, the Privacy Act Officer shall keep an accurate accounting of:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency under paragraph (a) of this section; and

(2) The name or address of the person or agency to whom the disclosure is made.

(c) The Privacy Act Officer shall retain the accounting required by paragraph (b) of this section for at least five years or the life of the record, whichever is longer, after such disclosure.

(d) Except for disclosures made to other agencies for civil or criminal law enforcement purposes pursuant to 5 U.S.C. 552a(b)(7), the Privacy Act Officer shall make any accounting made under paragraph (b) of this section available to the individual named in the record at the individual's request.

(e) An individual requesting an accounting of disclosure of his or her records should make the request in writing to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The request should identify each particular record in question and, whenever possible, the system[s] of records wherein the requested records are located, and clearly indicate both on the envelope and in the letter that it is a Privacy Act request for an accounting of disclosure of records.

(f) Where the Commission has provided any person or other agency with an individual record and such accounting as required by paragraph (b) of this section has been made, the Privacy Act Officer shall inform all such persons or other agencies of any correction, amendment, or notation of dispute concerning said record.

§ 201.30 Commission review of requests for access to records, for correction or amendment to records, and for accounting of record disclosures.

(a) The individual who disagrees with the refusal of the Privacy Act Officer or the Inspector General for access to a

record, to amend a record, or to obtain an accounting of any record disclosure, may request a review of such refusal by the Commission within 60 days of receipt of the denial of his or her request. A request for review of such a refusal should be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act review request.

(b) Not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the Commission receives a request for review of the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, the Commission shall complete such a review and make a final determination thereof unless, for good cause shown, the Commission extends the 30-day period.

(c) After the individual's request has been reviewed by the Commission, if the Commission agrees with the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, in accordance with the individual's request, the Commission shall:

(1) Notify the individual in writing of the Commission's decision;

(2) For requests to amend or correct records, advise the individual that he or she has the right to file a concise statement of disagreement with the Commission which sets forth his or her reasons for disagreement with the refusal of the Commission to grant the individual's request; and

(3) Notify the individual of his or her legal right, if any, to judicial review of the Commission's final determination.

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement regarding an amendment of an individual's record, the Privacy Act Officer, or, for records maintained by the Inspector General, the Inspector General, shall clearly note any portion of the record which is disputed and shall provide copies of the statement and, if the Commission deems it appropriate, copies of a concise statement of the reasons of the Commission for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 201.31 Fees.

(a) The Commission shall not charge any fee for the cost of searching for and reviewing an individual's records.

(b) Reproduction, duplication or copying of records by the Commission shall be at the rate of \$0.10 per page. There shall be no charge, however, when the total amount does not exceed \$25.00.

§ 201.32 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k)(2), and in order to protect the effectiveness of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records contained in the system titled Office of Inspector General Investigative Files (General), insofar as they include investigatory material compiled for law enforcement purposes, shall be exempt from this subpart and from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act. However, if any individual is denied any right, privilege, or benefit to which he is otherwise entitled to under Federal law due to the maintenance of this material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to government investigators under an express promise that the identity of the source would be held in confidence.

(b) Pursuant to 5 U.S.C. 552a(j)(2), and in order to protect the confidentiality and integrity of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records maintained in the Office of Inspector General Investigative Files (Criminal), insofar as they contain information pertaining to the enforcement of criminal laws, shall be exempt from this subpart and from the Privacy Act, except that subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) shall still apply to these records.

(c) Pursuant to 5 U.S.C. 552a(k)(1), (5) and (6), records contained in the system entitled "Personnel Security Investigative Files" have been exempted from subsections (c)(3), (d), (e)(1), (e)(1)(G)-(I) and (f) of the Privacy Act. Pursuant to section 552a(k)(1) of the Privacy Act, the Commission exempts records that contain properly classified

information that pertains to national defense or foreign policy and is obtained from other systems of records or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d). All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is also exempted because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, Federal contracts or access to classified information. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should an individual request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source. All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is also exempt because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

§ 201.33 Employee conduct.

The Privacy Act Officer shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and periodically instruct each such person with respect to such rules and the requirements of the Privacy Act including the penalties for noncompliance.

Issued: November 7, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97-29865 Filed 11-14-97; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY**44 CFR Part 67**

[Docket No. FEMA-7235]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management