

§ 201-1.302

41 CFR Ch. 201 (7-1-23 Edition)

§ 201-1.302 Notice of recommendation to source and opportunity to respond.

(a) *Notice to source.* The FASC shall provide a notice of its recommendation to any source named in the recommendation.

(b) *Content of notice.* The notice under paragraph (a) of this section shall advise the source:

(1) That a recommendation has been made;

(2) Of the criteria the FASC relied upon and, to the extent consistent with national security and law enforcement interests, the information that forms the basis for the recommendation;

(3) That, within 30 days after receipt of the notice, the source may submit information and argument in opposition to the recommendation;

(4) Of the procedures governing the review and possible issuance of an exclusion or removal order; and

(5) Where practicable, in the FASC's sole and unreviewable discretion, a description of the mitigation steps that could be taken by the source that may result in the FASC rescinding the recommendation.

(c) *Submission of response by source and potential rescission of recommendation.* Subject to any applicable procedures or processes developed by the FASC, and in accordance with any instructions provided to the source pursuant to paragraph (b) of this section, a source may submit to the ISA information or argument in opposition to a FASC recommendation. If a source submits information or argument in opposition:

(1) The ISA will convey the source's submission to the FASC and any appropriate constituent bodies and to the Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence.

(2) Upon receipt of such information or argument in opposition, the FASC may rescind the recommendation if the FASC, consistent with the sole and unreviewable discretion provided in paragraph (b)(5) of this section:

(i) Determines that the source has undertaken sufficient mitigation to reduce supply chain risk to an acceptable level; or

(ii) Decides that other grounds justify rescission.

(3) In the event that the FASC rescinds its recommendation, the ISA will communicate that decision to the source. The ISA will notify Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence of the rescission, and provide those officials with a summary of the FASC's reasoning.

(d) *Confidentiality of notice issued to source.* U.S. Government personnel shall:

(1) Keep confidential and not make available outside of the executive branch, except to the extent required by law, any notice issued to a source under paragraph (a) of this section until an exclusion order or removal order is issued and the source has been notified; and

(2) Keep confidential and not make available outside of the executive branch, except to the extent required by law, any notice issued to a source under paragraph (a) of this section if the FASC rescinds the associated recommendation or the Secretary of Homeland Security, Secretary of Defense, and Director of National Intelligence, as applicable, decide not to issue the recommended order.

(e) *Confidentiality of information submitted by source.* Information not otherwise publicly or commercially available that is submitted to the FASC by a source pursuant to paragraph (c) of this section and marked "Confidential and Not to Be Publicly Disclosed" will not be released to the public, including pursuant to a request under 5 U.S.C. 552, except to the extent required by law. That general rule notwithstanding, such information may be released as provided in § 201-1.201(d)(2).

§ 201-1.303 Issuance of orders and related activities.

(a) *Consideration of recommendation and issuance of orders.* The Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence shall each review the FASC's recommendation, any accompanying information and materials provided pursuant to § 201-1.301, and any information submitted by a source pursuant to § 201-1.302, and determine