

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. In § 375.309, paragraph (h) is added and reserved, and paragraph (i) is added to read as follows

§ 375.309 Delegations to the General Counsel.

* * * * *

(h) [Reserved]

(i) Deny or grant, in whole or in part, an appeal of a Freedom of Information Act determination by the Director of the Office of External Affairs.

PART 388—INFORMATION AND REQUESTS

■ 3. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 4. Amend § 388.106 by adding paragraph (b)(24) to read as follows

§ 388.106 Requests for Commission records available in the Public Reference Room and from the Commission's Web site, <http://www.ferc.gov>.

* * * * *

(b) * * *

(24) Records that have been requested three or more times and determined eligible for public disclosure will be made publicly available on the Commission's Web site or through other electronic means.

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■ 5. Amend § 388.107 by revising paragraph (e) to read as follows

§ 388.107 Commission records exempt from public disclosure.

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(e) Interagency or intraagency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency, except that the deliberative process privilege shall not exempt any record 25 years or older.

* * * * *

■ 6. Amend § 388.108 by revising paragraph (c)(4) and adding paragraph (c)(5) to read as follows:

§ 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

* * * * *

(c) * * *

(4) The Director will consider whether partial disclosure of information is possible whenever it is determined that

a document is exempt and will take reasonable steps to segregate and release nonexempt information.

(5) The Director will only withhold information where it is reasonably foreseeable that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law or otherwise exempted from disclosure under FOIA Exemption 3.

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■ 7. Amend § 388.109 by adding paragraph (f) to read as follows

§ 388.109 Fees for record requests.

* * * * *

(f) The Commission will not charge search fees (or duplication fees for requesters with preferred fee status) where, after extending the time limit for unusual circumstances, as described in § 388.110, the Director does not provide a timely determination.

(1) If there are unusual circumstances, as described in § 388.110, and there are more than 5,000 responsive pages to the request, the Commission may charge search fees (or, for requesters in preferred fee status, may charge duplication fees) where the requester received timely written notice and the Commission has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request; or

(2) If a court determines that exceptional circumstances exist, the Commission's failure to comply with a time limit will be excused for the length of time provided by the court order.

■ 8. Amend § 388.110 by revising paragraph (a) and adding paragraph (b)(5) to read as follows:

§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of . . . fee waiver or reduction, and denial of requests for expedited processing.

* * * * *

(a)(1) Determination letters shall indicate that a requester may seek assistance from the FOIA Public Liaison. A person whose request for records, request for fee waiver, or request for expedited processing is denied in whole or in part may seek dispute resolution services from the Office of Government Information Services, or may appeal the determination to the General Counsel or General Counsel's designee within 90 days of the determination.

(2) Appeals filed pursuant to this section must be in writing, addressed to the General Counsel of the Commission,

and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Commission not addressed and marked as indicated in this paragraph will be so addressed and marked by Commission personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(3) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. An appeal of the denial of expedited processing will be considered as expeditiously as possible within the 20 working day period. If, on appeal, the denial of the request for records, fee reduction, or expedited processing is upheld in whole or in part, the General Counsel or the General Counsel's designee will notify the person making the appeal of the provisions for judicial review of that determination.

(b) * * *

(5) Whenever the Commission extends the time limit, pursuant to paragraph (b)(1) of this section, by more than ten additional working days, the written notice will notify the requester of the right to seek dispute resolution services from the Office of Government Information Services.

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INTERNATIONAL TRADE COMMISSION**19 CFR Part 201****FOIA Improvement Act; Rules of General Application**

AGENCY: United States International Trade Commission.

ACTION: Final rule.

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

way the Commission charges fees for FOIA requests.

DATES: This regulation is effective January 3, 2017.

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

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

Background

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

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

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

- By amending § 201.18:
 - To change the appeals deadline from sixty days to ninety days;
 - To indicate that the Commission's FOIA Public Liaison is available to offer dispute resolution services and to provide contact information for the Commission's FOIA Public Liaison and the Office of Government Information Services.

- By amending § 201.20, to add new paragraphs (c)(5), (c)(6), and (c)(7) to provide additional limitations on the fees charged by the Commission.

Good Cause for Final Adoption

The Commission ordinarily promulgates amendments to the Code of Federal Regulations in accordance with the notice-and-comment rulemaking procedure in section 553 of the

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

In this instance, however, the Commission has determined that the notice and public comment procedure is unnecessary. Section 553(b)(3)(B) of the APA authorizes agencies to dispense with notice and comment procedures for rules when the agency finds that there is "good cause" in concluding that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. The proposed amendments are required by statute, do not involve Commission discretion, and provide additional protections to the public. Given these factors, the Commission finds good cause to conclude that the notice and public comment procedure are unnecessary.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

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

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

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

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

These rules are not "major rules" as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from

the reporting requirements of that Act because they contain rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

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

List of Subjects in 19 CFR Part 201

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

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

PART 201—RULES OF GENERAL APPLICATION

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

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

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

§ 201.18 Denial of requests, appeals from denial.

* * * * *

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

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

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

§ 201.20 Fees.

* * * * *

(c) * * *

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

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

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

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By order of the Commission.

Issued: November 25, 2016.

Katherine M. Hiner,

Acting Supervisory Attorney.

[FR Doc. 2016-28819 Filed 11-30-16; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB27

Supplemental Information Regarding the Final Rule Imposing the Fifth Special Measure Against FBME Bank, Ltd.

AGENCY: Financial Crimes Enforcement Network (“FinCEN”).

ACTION: Supplement to final rule.

SUMMARY: In its September 20, 2016 order, the U.S. District Court for the District of Columbia remanded to FinCEN the final rule imposing a prohibition on covered financial institutions from opening or maintaining correspondent accounts for, or on behalf of, FBME Bank, Ltd. In its memorandum opinion accompanying

that order, the Court stated that the agency had not responded meaningfully to FBME’s comments regarding the agency’s treatment of aggregate Suspicious Activity Report (SAR) data. The Court found that those comments challenged FinCEN’s interpretation of SAR data on at least four distinct grounds. In this supplement to the final rule, FinCEN provides further explanation addressing FBME’s comments.

DATES: December 1, 2016.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767-2825 or regcomments@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In its September 20, 2016 order, the U.S. District Court for the District of Columbia remanded to FinCEN the final rule imposing a prohibition on covered financial institutions from opening or maintaining correspondent accounts for, or on behalf of, FBME Bank, Ltd. (FBME). In its memorandum opinion accompanying that order, the Court stated that the agency had not responded meaningfully to FBME’s comments regarding the agency’s treatment of aggregate SAR data. In this supplement to the final rule, FinCEN notes that FBME’s comments regarding FinCEN’s use of SARs in the rulemaking process reflect a misunderstanding of SARs generally and how FinCEN analyzed and used SARs in this rulemaking.

As an initial matter, FBME overstates the centrality of the use of SARs in FinCEN’s determination that FBME is of primary money laundering concern. As reflected in the agency’s Notice of Finding (NOF), Final Rule, and Administrative Record, far from being the only evidence that informed FinCEN’s determination that FBME is of primary money laundering concern, the agency’s analysis of SARs simply affirmed FinCEN’s concern surrounding FBME’s involvement in money laundering that was informed by other information in the Administrative Record. For instance, as detailed in the NOF, this information included: (1) An FBME customer’s receipt of a deposit of hundreds of thousands of dollars from a financier for Lebanese Hezbollah; (2) providing financial services to a financial advisor for a major transnational organized crime figure; (3) FBME’s facilitation of funds transfers to an FBME account involved in fraud against a U.S. person, with the FBME customer operating the alleged fraud scheme later being indicted in the United States District Court for the

Northern District of Ohio; and (4) FBME’s facilitation of U.S. sanctions evasion through its extensive customer base of shell companies, including at least one FBME customer that was a front company for a U.S.-sanctioned Syrian entity, the Scientific Studies and Research Center, which used its FBME account to process transactions through the U.S. financial system.

Set forth below are summaries of FBME’s four arguments in its comments surrounding FinCEN’s interpretation of SARs and the agency’s responses.

1. FBME argues that SARs are so over-inclusive—“sweeping in [so many] transactions that are perfectly legitimate”—that “categorically” viewing SARs as indicative of illicit transactions is “invalid and improper.”

In its January 26, 2016 comments, FBME asserted that:

To paint FBME as posing a significant threat to U.S. and other financial institutions, FinCEN relies on limited and misleading statistical data regarding “suspicious wire transfers” as well as biased reports from financial institutions seeking to offload responsibility for their own actions. During the hearing before Judge Cooper, FinCEN revealed that the statistical data relied upon in the NOF was based on SARs. But such reliance is categorically invalid and improper. To begin, we know of no instance, prior to this proceeding, in which FinCEN has equated any particular SARs data or rate as indicative of a problem under Section 311 [of the USA PATRIOT Act]. Nor is such use valid. To the contrary, it ignores the purpose of a SAR, which involves a designedly low threshold for the sake of erring on the side of over-inclusion—sweeping in transactions that are perfectly legitimate, simply to ensure there is scrutiny of them to ensure against any issue. It is spurious in this light to take a SAR or any number of them as evidencing the illegitimacy of any transaction or set thereof—not to mention as evidence that a particular bank is one of “primary money laundering concern” under Section 311.¹

Contrary to FBME’s assumptions, FinCEN analyzed the SARs as qualitative evidence of activity conducted by FBME that reflected one of FinCEN’s primary concerns about FBME—specifically, a “[s]ignificant [v]olume” of “[o]bscured [t]ransactions” as indicated in part by the size and number of “[w]ire transfers related to suspected shell company activities.” NOF, 79 FR at 42640. While FinCEN recognizes that actual wrongdoing does not necessarily underlie the suspicious activity described in any particular SAR, many of the SARs relating to FBME described typical indicators of shell company activity. As FinCEN has explained, it is particularly concerned, among other things, by the lack of

¹ FBME’s January 26, 2016 Comments, pp. 50–51.