PART 375—THE COMMISSION

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


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:


4. Amend § 388.106 by revising paragraph (b)(24) to read as follows:


(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.

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

§ 388.107 Commission records exempt from public disclosure.

(e) Interagency or intragency 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.

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.

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.

(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


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:

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 at
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 Office of Government Information Services at http://www.usitc.gov/foia.htm. * * * * * *(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@usitc.gov) or the Office of Government Information Services at National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland 20740–6001.
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.

By order of the Commission.
Issued: November 25, 2016.
Katherine M. Hiner,
Acting Supervisory Attorney.

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 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.

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 “significant [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.