

Approved: November 4, 2002.

**Robert C. Bonner,**

*Commissioner of Customs.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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## INTERNATIONAL TRADE COMMISSION

### 19 CFR Part 201

#### Rules of General Application

**AGENCY:** International Trade Commission.

**ACTION:** Notice of final rulemaking.

**SUMMARY:** The United States International Trade Commission (Commission) hereby amends its rules of practice and procedure (rules) to permit persons the option of filing certain documents with the Commission in electronic form instead of in paper form only. The Commission also amends its rules of practice and procedure to allow electronic service of documents in limited circumstances and to require persons to complete and submit a standard cover sheet when filing documents, either in paper form or in electronic form, with the Commission.

**DATES:** The effective date of these amendments is December 9, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202-205-3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 26, 2002, the Commission published a notice of proposed rulemaking (NOPR) in the **Federal Register**, 67 FR 20709, April 26, 2002. In the NOPR, the Commission proposed amending its rules of practice and procedure to (a) permit persons the option of filing certain documents electronically instead of just in paper form; (b) allow electronic service of documents in limited circumstances; and (c) require persons to complete and submit a standard cover sheet, whether filing electronically or in paper form. In its NOPR, the Commission invited

public comment on its proposed rule amendments and the EDIS-II cover sheet (cover sheet) for use in filing documents in the Commission's Electronic Document Information System (EDIS-II). The Commission received a total of three sets of comments from the ITC Trial Lawyers Association (ITCTLA) and two law firms. The Commission carefully considered all comments that it received. The Commission's response to those comments that relate to the rule amendments is provided below in a section-by-section analysis. Since the NOPR was published, the Office of Management and Budget (OMB) has determined that the cover sheet does not require OMB approval because of the minimal paperwork burden on the public; nevertheless, the Commission has summarized below comments to the cover sheet and its response thereto. The Commission appreciates the time and effort the commenters took to present their views, and believes that the comments have improved the amendments and the cover sheet. The Commission is also publishing a notice containing the Handbook on Electronic Filing Procedures (Handbook) referenced in amended § 201.8 of the rules, which includes information regarding registration for electronic filing and the list of documents that may be filed electronically. Please review the Handbook in its entirety prior to registering for electronic filing.

#### Regulatory Analysis

The Commission has determined that these amended rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 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.*) and Executive Order 13272 (67 FR 53461, Aug. 13, 2002) are inapplicable to this rulemaking because it is not one for which a NOPR is required under 5 U.S.C. 553(b) of the APA or any other statute. Although the Commission published a NOPR, these proposed regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b). These amended rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999). No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the amended rules will not result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. The amended rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the 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.

#### Section-by-Section Analysis of the Regulations

##### Section 201.8

The Commission has amended § 201.8 by adding paragraphs 201.8(f) and (g). Section 201.8(f) provides that persons may file certain documents electronically at the Commission's Internet website without violating the relevant provisions of the rules that govern paper filing of documents. The Commission did not receive any specific comments with respect to § 201.8(f). Section 201.8(g) requires that persons filing documents either in paper form or electronically must complete a cover sheet to be submitted to the Commission along with their filings. The law firm of Adduci, Mastriani & Schaumberg, L.L.P. proposed amending § 201.8 to state that filings without a cover sheet will be accepted, and that cover sheets may be submitted the following business day. The Commission has determined to retain the requirement that filers must complete and submit a cover sheet with their filings, whether the filings are in electronic or paper form, because the information in the cover sheet is required for EDIS-II to docket filings. The Commission has revised § 201.8(g) to require parties submitting paper filings to fill-out the cover sheet on-line and print it out for submission to the Office of the Secretary with the paper filing. Persons filing documents electronically are required to complete and submit the cover sheet on-line with the electronic filing. This cover sheet requirement is to ensure accurate processing of filings.

##### Section 201.16

The Commission has amended § 201.16 by adding paragraph (e) to permit persons the option of serving documents on other parties electronically, if the Secretary consents to such electronic service. However, electronic service is not permitted in

proceedings under section 337 of the Tariff Act of 1930 unless parties obtain the prior permission of the presiding administrative law judge. The ITCTLA proposed amending the final sentence of the proposed Rule to require a party who participates in electronic service to notify all parties if it withdraws its consent to electronic service. The Commission has incorporated the comment of the ITCTLA into § 201.16(e). The law firm of Collier Shannon Scott, PLLC, commented that the Commission should not leave all disputes regarding electronic service of documents to be resolved among the parties themselves; rather, the Commission should establish procedures and remedies to address electronic service failures. Because electronic service is on a voluntary basis, the Commission has determined, in the initial phase of electronic filing, to retain the requirement that electronic service disputes should be resolved by the parties themselves, without the Commission's involvement. Collier Shannon Scott, PLLC, commented that § 201.16(e) should be amended to state that, even if a dispute regarding electronic service of a document arises among parties in a Commission proceeding, such a dispute will not affect the Commission's acceptance of the document for filing. Because § 201.16(e) already provides that electronic service disputes must be resolved by the parties themselves, without the Commission's involvement, any such disputes will not affect the Commission's acceptance or rejection of a document for filing. Therefore, the Commission finds that it is not necessary to make any further amendments to § 201.16(e).

#### *EDIS—II Cover Sheet*

The ITCTLA suggested three changes to the cover sheet that appeared in the NOPR. First, the ITCTLA commented that the name of the "Security" field on the cover sheet should be changed to "Confidential or Public." Second, the ITCTLA commented that the name of the "Document Type" field on the cover sheet should be changed to include a list of document types typically received by the Commission. Third, the ITCTLA recommended that the "Add Attachments" field on the cover sheet should include a citation to the "Document" definition in section II(A) of the Handbook to clarify that this field only applies to electronic filings. As to the first comment, the Commission has determined not to make the proposed

change because the "drop-down" list next to the "Security" field also contains a reference to "privileged documents for internal use." As to the second comment, the Commission has adopted the ITCTLA's recommendation by including a list of document types normally filed with the Commission in the "Document Type" field of the cover sheet. The public is advised, however, that the "drop-down" menu of document types may be altered as experience dictates. The Commission also has adopted the ITCTLA's third comment to the cover sheet by adding a reference to the EFP Handbook's "document" definition in the "Add Attachments" field.

#### **List of Subjects in 19 CFR Part 201**

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends 19 CFR part 201 as follows:

#### **PART 201—RULES OF GENERAL APPLICATION**

1. The authority citation for part 201 continues 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. Amend § 201.8 to add paragraphs (f) and (g) to read as follows:

#### **§ 201.8 Filing of documents.**

\* \* \* \* \*

(f) *Electronic filing.* Notwithstanding the relevant provisions of §§ 201.8, 201.12, 201.13, 201.16, 206.8, 207.3, 207.10, 207.15, 207.25, 207.30, 207.62, 207.67, 207.68, 207.93, 210.4, and 210.8 of the Commission's rules of practice and procedure (19 CFR 201.8, 201.12, 201.13, 201.16, 206.8, 207.25, 207.3, 207.10, 207.15, 207.30, 207.62, 207.67, 207.68, 207.93, 210.4, and 210.8) governing the filing of documents in paper form with the Commission, a person may instead or in addition choose to file electronically certain documents at <http://edis.usitc.gov>. A person so choosing shall comply with the procedures set forth in the Commission's Handbook on Electronic Filing Procedures, which is available at the Office of the Secretary and at <http://edis.usitc.gov>. The Commission's Handbook on Electronic Filing Procedures will include a description of documents that are permitted to be filed with the Commission in electronic form.

(g) *Cover Sheet.* When making a paper filing, parties must complete the cover sheet on-line at <http://edis.usitc.gov> and print out the cover sheet for submission to the Office of the Secretary with the paper filing. For documents that are filed electronically, parties must complete the cover sheet for such filing on-line at <http://edis.usitc.gov> at the time of the electronic filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of business proprietary information or confidential information under § 201.6 and §§ 206.8, 206.17, 207.3, and 207.7 of this chapter.

3. Amend § 201.16 to add paragraph (e) to read as follows:

#### **§ 201.16 Service of process and other documents.**

\* \* \* \* \*

(e) *Electronic Service.* With the prior consent of the Secretary, parties may serve documents by electronic means in all matters before the Commission, except for proceedings conducted under section 337 of the Tariff Act of 1930 that are before an administrative law judge. In the case of proceedings under section 337 of the Tariff Act of 1930, parties may serve documents by electronic means with the prior consent of the presiding administrative law judge while the proceeding is before an administrative law judge. Parties may only effect electronic service on recipients who have provided written consent thereto to the Secretary or the presiding administrative law judge. If electronic service is permitted, paragraphs (a), (b) and (d) of this section shall not apply. However, any dispute that arises among parties regarding electronic service must be resolved by the parties themselves, without the Commission's involvement.

A party may, upon notice to all parties, withdraw its consent to electronic service and require service under paragraphs (a) and (b) of this section.

By Order of the Commission.

Issued: November 4, 2002.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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