

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.

Subpart E—Opening Commission Meetings to Public Observation Pursuant to 5 U.S.C. 552b

AUTHORITY: 5 U.S.C. 552b; 19 U.S.C. 1335.

SOURCE: 42 FR 11243, Feb. 28, 1977, unless otherwise noted.

§ 201.33 Purpose and scope.

(a) Consistent with the principle that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government, it is the purpose of this subpart to open the meetings of the United States International Trade Commission to public observation while protecting the rights of individuals and the ability of the Commission to carry out its statutory functions and responsibilities. These regulations are promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act (5 U.S.C. 552b(g)), and specifically implement sections (b) through (f) of said act (5 U.S.C. 552(b) through (f)).

(b) Public access to documents being considered at Commission meetings may be obtained by access to the public files of the Commission or, where documents are not in said public files, shall be obtained in the manner set forth in subpart C of this part (§§ 201.17 through 201.21).

(c) Unless otherwise provided by the public notices as described in § 201.35 of this subpart, public observation of Commission meetings does not encompass public participation in the deliberations at such meetings.

§ 201.34 Definitions.

For the purpose of this subpart:

(a)(1) Except as hereinafter provided, the term *meeting* means the deliberations of at least the number of individual Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(2) The consideration by individual Commissioners of business which is circulated sequentially in writing (circulation by "action jacket") is not considered a meeting under paragraph (a)(1) of this section because circulation by action jacket does not determine or result in the joint conduct or disposition of Commission business until ratification thereof by formal vote of the Commissioners in a meeting as defined by paragraph (a)(1) of this section, although action proposed by action jacket may be taken before or after formal ratification thereof by vote at a Commission meeting.

(3) Conference telephone calls among the Commissioners are considered meetings as defined by paragraph (a)(1) of this section if they involve the number of Commissioners requisite for Commission action.

(4) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to call a meeting at a date earlier than the requisite public notice period as specified in § 201.35 of this subpart are not considered to constitute a meeting or portion of a meeting as defined by paragraph (a)(1) of this section.

(5) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to close a portion or portions of a meeting or series of meetings pursuant to § 201.36 of this subpart are not considered to constitute a meeting or portion of a meeting within the meaning of paragraph (a)(1) of this section.

(6) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to change the subject matter of a publicly announced meeting, or to change the determination of the Commission to open or close a

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meeting, or portion thereof, to the public, following a public notice, as permitted under § 201.37(b) of this subpart, are not considered to constitute a meeting or portion of a meeting under paragraph (a)(1) of this section.

(b) The terms *Secretary* and *General Counsel* mean the Secretary and General Counsel of the Commission and their respective designees within their respective offices.

§ 201.35 Notices to the public.

(a) At least seven (7) days before each Commission meeting the Commission shall issue a public notice which:

(1) States the time and place of the meeting;

(2) Lists the subjects or agenda items to be discussed at the meeting;

(3) States whether the meeting or portion thereof is to be open or closed to public observation; and

(4) Gives the name and business phone number of the Secretary to the Commission.

(b) When the Commission has voted to close any portion of any meeting in accordance with § 201.36 of this subpart, the notice referred to in paragraph (a) of this section shall also include, or be amended to include, if already issued, (1) A list of the persons reasonably expected to be present at such closed portion or portions of the meeting, (2) A corresponding list of the affiliations of those persons reasonably expected to be present, (3) A written copy of the vote of each Commissioner on whether or not the portion or portions of the meeting or series of meetings should be closed to public observation, (4) A full, written explanation of the Commission's action in closing the portion or portions of the meeting or series of meetings, and (5) A copy of the certification of the General Counsel, called for by § 201.39 of this subpart, that such portion or portions of the meeting or series of meetings were properly closed to the public by the Commission. When a vote to close a portion or portions of a meeting in accordance with § 201.36 of this subpart or a vote to change the subject matter of a meeting or to change a determination to open or close a meeting, or portion thereof, to the public in accordance with § 201.37(b) of this subpart fails for lack of a major-

ity of the entire membership of the Commission, the vote shall also be published as part of the notice required by paragraph (a) of this section.

(c)(1) The 7-day period for public notice provided for in paragraph (a) of this section shall not apply when a majority of the entire membership of the Commission determines by recorded vote that Commission business requires that a particular meeting be called with less than 7 days' notice and that no earlier announcement of such meeting was possible.

(2) When the Commission has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for by paragraph (a) of this section with respect to a particular meeting, the Commission shall issue the public notice required by paragraph (a) of this section at the earliest practicable time.

(3) When the Commission not only has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for in paragraph (a) of this section with respect to a particular meeting, but also has voted to close a portion or portions of such meeting in accordance with § 201.36 of this subpart, the public notice required by paragraph (c)(2) of this section shall also include, or be amended to include, if already issued, those items specified in paragraph (b) of this section.

(d)(1) When the Commission has changed the time or place of a publicly announced meeting by acting under § 201.37(a) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to reflect such changed time or place.

(2) When the Commission has changed the subject matter of a meeting or its determination to open or close a meeting, or portion thereof, to the public following a public notice by acting under § 201.37(b) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to (i) Include a statement affirming that Commission business required the change in subject matter and that no earlier announcement of such change was possible and (ii) Indicate the change in subject matter and