

**DEPARTMENT OF COMMERCE****International Trade Administration****19 CFR Parts 351 and 354**

[Docket No. 960123011-8040-02]

RIN 0625-AA43

**Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order**

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

**SUMMARY:** The Department of Commerce ("the Department") is amending its regulations on administrative protective order ("APO") procedures in antidumping and countervailing duty proceedings to simplify and streamline the APO administrative process and reduce the administrative burdens on the Department and trade practitioners. The Department is also amending the regulations to simplify the procedures for investigating alleged violations of APOs and the imposition of sanctions. These changes are made in response to and in cooperation with the trade practitioners that are subject to these rules.

**EFFECTIVE DATE:** The effective date of this final rule is June 3, 1998. This final rule will apply to all investigations initiated on the basis of petitions filed on or after June 3, 1998, and other segments of proceedings initiated after this date.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Joan L. MacKenzie or Mark A. Barnett, Office of Chief Counsel for Import Administration, (202) 482-1310 or (202) 482-2866, respectively.

**SUPPLEMENTARY INFORMATION:****General Background***APO Procedures*

On February 8, 1996, the Department published proposed rules governing procedures for providing access to business proprietary information submitted to the Department by other parties in U.S. antidumping ("AD") and countervailing duty ("CVD") proceedings. Proposed Rule and Request for Comment (Antidumping and Countervailing Duty Proceedings; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violations of a Protective Order), 61 FR 4826 ("February Notice"). See also, Proposed Changes to

Administrative Protective Order Procedures in Antidumping and Countervailing Duty Proceedings, APO Application Form and Standard APO, 59 FR 51559 (October 12, 1994) ("October Notice").

The Department proposed these changes in APO procedures in consultation with trade practitioners, who are the ones most directly affected by these procedures. Specifically, Department staff consulted with representatives of the International Law Section of the District of Columbia Bar, the International Trade Committee of the Section of International Law and Practice of the American Bar Association, the ITC Trial Lawyers Association, and the Customs and International Trade Bar Association. As a result of the consultations, the Department proposed changes in the APO process to improve the process, to simplify and streamline the process for all concerned, including the Department, and at the same time to continue to ensure protection of business proprietary information from unauthorized disclosure.

After analyzing and carefully considering all of the comments that the Department received in response to the February Notice and after further review of the provisions of the proposed rule, the Department is publishing final regulations. These regulations improve, simplify, and streamline the APO process significantly and, at the same time, protect business proprietary information from unauthorized disclosure.

*Effective Date*

The new APO procedures, including the use of the revised application for APO, form ITA-367 (5.98), will become effective June 3, 1998. They will apply to all investigations initiated on the basis of petitions filed on or after June 3, 1998, and other segments of proceedings initiated after this date. Segments of proceedings to which these regulations do not apply will continue to be governed by the regulations in effect on the date the petitions were filed or other segments were initiated, to the extent that those regulations were not invalidated by the URAA or replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)) and § 351.105 of the AD/CVD procedural regulations that the Department published separately on May 19, 1997 (62 FR 27296), (hereinafter referred to as the May 19 Regulations). In these segments of proceedings, the Department will require that parties use the old APO application form ITA-367 (3.89) for all

requests to amend their existing APOs. If all parties in these segments of proceedings mutually agree to be bound by the new APO regulations and procedures, the parties must file a joint agreement and new applications for APO.

*APO Sanctions*

The Department is also amending its regulations concerning sanctions for violations of APOs. The regulations governing the imposition of sanctions for APO violations are set forth at 19 CFR Part 354. In the nine years since Part 354 was introduced, the Department has investigated and resolved numerous allegations of violations of APOs. Most charges have been settled, and none has resulted in a hearing before a presiding official or a decision by the APO Sanctions Board. Experience also has proven that, even if an individual has technically violated the terms of an APO, it is not always appropriate to impose a sanction. Rather, a warning may be appropriate in many instances. The Department also has found that situations arise in which the investigation can be shortened without limiting procedural rights. Additionally, under current regulations, it is unduly cumbersome to withdraw charges when the Department determines that they are not warranted. Finally, the Department recognizes that an individual with prior violations deserves to have his or her record cleared after a period of time without further violations. Therefore, the Department is amending Part 354 of its regulations to articulate a standard for issuance of a warning of an APO violation and to address the other situations described above.

The Department is amending the regulations to simplify the procedures for investigating alleged violations and the imposition of sanctions, establish criteria for abbreviating the investigation of an alleged violation, include private letters of reprimand among the sanctions available, and set a policy for determining when the Department issues warnings instead of sanctions. Further, the Department is revising the provisions dealing with settlement to make them consistent with practice. The Department also is simplifying the procedures for withdrawing charging letters. Finally, the amendments add a sunset provision that codifies existing practice regarding the rescission of charging letters.

## Explanation of Particular Provisions

### APO Procedures

The Department's AD regulations were contained in 19 CFR Part 353 and its CVD regulations were contained in 19 CFR Part 355. Parts 353 and 355 each contained separate provisions dealing with the treatment of business proprietary information and APO procedures. The Department consolidated the AD and CVD regulations and repealed existing Parts 353 and 355. See *Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27295 (May 19, 1997)*. We have drafted the regulations dealing with APO procedures in light of this consolidation. Accordingly, these regulations will be contained in 19 CFR Part 351, subpart C. More specifically, with the exception of the definitional provisions of § 351.102, the APO procedures will be contained in 19 CFR 351.304, 305, and 306. The procedures for imposing sanctions for violation of a protective order are contained in 19 CFR 354.

### Definitions

Section 351.102 is a definitional section, based on previous 19 CFR 353.2 and 355.2. It was published separately with the May 19 regulations. Insofar as APO procedures are concerned, we added definitions of two new terms, now contained in the administrative protective order. Because these definitions apply to APO procedures, we are discussing them here.

The first term, *applicant*, is defined as an individual representative of an interested party that has applied for access to business proprietary information under an APO. The second term, "authorized applicant," is defined as an applicant that the Secretary has authorized to receive business proprietary information under an APO, and is a term borrowed from the practice of the U.S. International Trade Commission ("ITC").

One commenter noted that the definition of "applicant" contained in the Proposed AD/CVD Procedural Regulations was inconsistent with the description of that definition in the preamble to the February Notice. This commenter also suggested that a definition of "representative" be added to the regulations.

We revised the definition of "applicant" to make it consistent with the description of that term provided above. The term "representative" was defined in the model APO published with the February Notice. We have revised that definition to refer to an

individual, enterprise or entity acting on behalf of an interested party.

### Administrative Protective Order Unit and Central Records Unit

Section 351.103 defines the responsibilities of the Central Records Unit and the Administrative Protective Order Unit, both of which play a role protecting business proprietary information. The APO Unit was established with the reorganization of the Department that became effective July 1, 1996. Under the reorganization, the APO function is consolidated under the Director for Policy and Analysis, and is managed by a Senior APO Specialist who leads the APO Unit. The Senior APO Specialist is responsible for directing the Department's handling of business proprietary information.

The Administrative Protective Order Unit and the Dockets Center of the Central Records Unit have recently been relocated to shared space in room 1870. Because of the proximity of the two offices, business proprietary information released by the APO Unit to authorized representatives is conducted through the Dockets Center. Because the relocation of the Dockets Center occurred after the publication of the AD/CVD procedural regulations, we are taking this opportunity to amend § 351.103 to reflect these changes. Pursuant to Presidential order, security has been increased in Federal office buildings and delivery couriers are no longer permitted access to the Herbert C. Hoover Building (HCHB). Consequently, Import Administration has created the Dockets Center in Room 1870. The Dockets Center is accessible directly from the 15th Street courier's entrance to HCHB. Prior to being allowed in the building at this entrance all packages are scanned by Departmental security personnel. APO materials are picked up at this entrance from the APO Unit.

### Section 351.304 Establishing Business Proprietary Treatment of Information.

Section 351.304 sets forth rules concerning the treatment of business proprietary information in general, and provides persons with the right to request that certain information be considered business proprietary or be exempt from disclosure under APO.

### Customer Names

One commenter noted that section 777(c)(1)(A) of the Tariff Act of 1930, as amended, ("Act") protects customer names from disclosure under APO in an investigation only until an order is published or the investigation is suspended or terminated, and suggested that the regulation should be revised to

reflect this. We have not revised the regulation. The statute does not require the Department to disclose customer names under APO following publication of an order or following suspension or termination of the investigation. If the Department's final determination is challenged, parties may obtain access to customer names under the terms of a judicial protective order. Absent such litigation, we do not believe it necessary or appropriate to require parties to disclose additional information under protective order after an investigation has been completed, suspended or terminated.

### Identification of Business Proprietary Information

Paragraph (b) of § 351.304 addresses the identification and marking of business proprietary information in submissions to the Department.

One commenter argued that the Department should clarify how the requirement to mark business proprietary information applies to materials in exhibits such as printouts, drawings, photographs, excerpts from brochures and other similar materials. The commenter pointed out that such materials are not always clearly identified as business proprietary, leaving the recipient to refer to the public version to determine whether any particular data are in fact claimed to be confidential.

The Department agrees that all business proprietary information should be marked in accordance with the regulations. This includes all verification exhibits. It is in the interest of all parties to prevent inadvertent APO violations that can occur when marking is incomplete or inaccurate. We recognize that marking printouts and voluminous exhibits presents challenges. Printouts may consist almost entirely of business proprietary information, with public information limited to certain headings or fields. In such cases, it may be easier for an authorized applicant to distinguish between public and proprietary information by reviewing the public version rather than searching for brackets in a document that contains nearly all business proprietary information. Moreover, because bracketing may be revised by a party within one day of the date of filing (see below), authorized applicants are encouraged to confirm their identification of public information by comparison to the public version source in order to avoid an inadvertent release of business proprietary information.

If a party objects to the submitting person's claim for business proprietary

treatment, the objection must be submitted in writing. The APO Unit is the point of contact for examining and resolving the issue whether information that is claimed as proprietary meets the standards in § 351.105 of the AD/CVD procedural regulations that the Department published separately on May 19, 1997.

#### Public Versions

Paragraph (c) of § 351.304 concerns the public version of a business proprietary submission, provides for a one-day lag rule (see also § 351.303(c)(2)), and addresses corrections to errors in bracketing business proprietary information. We reiterate that the Secretary will enforce vigorously the requirement for public summaries, and will grant claims that summarization is impossible only in exceptional circumstances. To assist in ensuring consistent enforcement of the Department's requirements for public summarization of numerical data and narrative portions of submissions, the APO Unit is the point of contact for examining and resolving complaints about inadequate public summaries.

#### One-Day Lag Rule

The one-day lag rule follows existing practice by permitting parties to file a public version of a document containing business proprietary information one business day after the due date of the business proprietary version of the document. This practice is known as the "one-day lag" rule. Under current practice, submitting persons may correct the bracketing of information in the business proprietary version up to the deadline for submission of the public version (i.e., they have one day in which to correct bracketing). The Department proposed to slightly modify the one-day lag rule to require a party to file the final business proprietary version of the document at the same time as the submitting party files the public version of the document. The specific filing requirements are contained in § 351.303 of the AD/CVD Procedural Regulations that the Department published separately on May 19, 1997. Comments on this provision were addressed in those regulations.

One commenter expressed concern regarding improper disclosure of APO protected information and the Department's statement that non-bracketed information will be treated as public information once bracketing has become final. We believe, however, that the commenter misunderstood the Department's statement. The statement only pertains to a party's own business proprietary information contained in a

document it has submitted. The Department will always take and require immediate corrective action when information subject to an APO has been improperly disclosed and discovered in a reasonable amount of time.

#### Summarization of Numerical Data

One commenter argued that public summarization of numerical data should not be required, because the ITC does not require it. Other commenters requested that specific guidelines for summarization of numerical data be included in the regulation. Some commenters requested greater flexibility in ranging numbers that are very large or very small.

As one commenter recognized, a public summary, which is addressed in paragraph (c)(1), is required by section 777(b)(1)(B) of the Act and Article 6.5.1 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement"). Public summarization of numerical data is crucial to the ability of parties to participate in the Department's proceedings. Without adequate public summarization, interested parties without APO access will not be able to participate meaningfully in the Department's proceedings. The Department, therefore, will continue to require summarization of numerical data.

While there may be some benefits to consistent treatment of business proprietary information between the Department and the ITC, there are differences in each agency's mission that justify individual practices. Summarization of company-specific numerical information at the ITC is more difficult because the information concerns a company's performance using "macro" numbers and projected data. Moreover, in most cases, the ITC provides aggregate data where such information would not reveal an individual company's business proprietary information. It is this aggregate data, which is often available to the public, which is most relevant to the ITC's analysis and determinations. Information in the Department's proceedings, on the other hand, is often transaction-specific, "micro" information. Such information would be difficult to aggregate across companies and such aggregate data would be of almost no relevance to the Department's analysis and the public's understanding of that analysis. Therefore, it is preferable to continue to require that such information be ranged or indexed.

Omission of specific criteria for public summarization of numerical data previously contained in §§ 353.32(b)(1)

and 355.32(b)(1) was an oversight. We are including the criteria for adequate summarization in § 351.304(c)(1) of these regulations. The Department has always allowed an exception to the public summarization requirement when it does not protect business proprietary information from disclosure, such as with very small or very large numbers. We will continue to permit such exceptions on a case-by-case basis in accordance with the requirements of § 351.304(c)(1).

#### Summarization of Narrative Portions of Submissions

One commenter argued that requiring a public summary of the narrative portion of a submission is a change in policy not required by the Uruguay Round Agreements Act (URAA) and is too burdensome. The commenter asserted that the proposed regulation will add hundreds of hours and thousands of dollars to the costs of participating in these cases. Finally, the commenter stated that the proposed regulation appears to create a presumption that all business proprietary information is public unless proven otherwise, which reverses agency practice designed to protect business proprietary information against disclosure.

The commenter is mistaken that the Department's regulation constitutes a change in practice. The Department has consistently required a public summary of the narrative portion of a submission containing business proprietary information.

Laws affecting disclosure of information by the federal government generally are pro-disclosure. The United States has the most transparent antidumping and countervailing duty procedures in the world. Protection of business proprietary information is a narrow exception to the requirement for disclosure and the preference for transparency. For these reasons, the regulations require parties to demonstrate that business proprietary information should be withheld from disclosure, rather than the reverse. There is a presumption that business proprietary information can be publicly summarized to permit meaningful participation by a party that does not have access to business proprietary information under APO.

#### Summarization of Business Proprietary Information of Other Parties

Three commenters raised concerns whether § 351.304(c)(1) requires authorized applicants to create public summaries of business proprietary information submitted by other parties.

It does not. The Department has never required authorized applicants to publicly summarize the business proprietary information of another party and the Department does not intend to change that practice. In fact, § 351.304 (c)(1) states that a submitter should not create a public summary of business proprietary information of another person.

#### Nonconforming Submissions

Paragraph (d) of § 351.304 deals with nonconforming submissions, *i.e.*, submissions that do not conform to the requirements of section 777(b) of the Act and paragraphs (a), (b), and (c) of § 351.304.

One commenter expressed concern that this provision might be abused by parties making unwarranted claims of a clear and compelling need to withhold business proprietary information from disclosure under APO merely to delay release of that information and thereby imperil the ability of other parties to participate in the proceeding in a timely fashion. Although we appreciate the concerns of the commenter, we do not believe that revision of the regulation is necessary. In most cases, the Department has been able to make determinations as to the status of information in much less than 30 days, and we expect that to continue to be the case. As written, the regulation provides greater flexibility for those determinations which may require more time for decision.

The Department does not believe that the regulation, as drafted, will lead to significant abuse. The Department's current experience has involved few situations of abuse. To the extent that baseless claims for non-release of information do occur, the Department retains the authority to deal with them expeditiously.

Another commenter proposed that the Department amend this regulation to permit the Secretary to return any part of a submission that does not meet the requirements of the regulations. We do not agree. For the same reasons the Department revised the one-day lag rule to require a new complete submission of a document that required correction, we also will require a complete new submission of any document returned because parts of it are defective.

#### Section 351.305 Access to Business Proprietary Information

Section 351.305 establishes procedures for obtaining business proprietary information under APO, including a new procedure based on the use of a single APO for each segment of a proceeding.

#### The Revised APO

Paragraph (a) of § 351.305 sets forth a new procedure in which the Secretary will place a single APO on the record for each segment of an AD or CVD proceeding, within two days after a petition is filed, or an investigation is self-initiated, or five days after the initiation of any other segment. ("Segment of the proceeding" is defined in § 351.102 as a portion of the proceeding that is reviewable under section 516A of the Act.) All authorized applicants will be subject to the terms of this single APO. This new procedure will streamline the APO process dramatically, and will expedite the issuance of APOs and the disclosure of information to authorized applicants. Commenters strongly endorsed this new procedure, and agree it will streamline the APO process and expedite the issuance of APOs and the disclosure of information to authorized applicants.

#### APO Requirements

Paragraph (a) of § 351.305 also sets forth the requirements that are to be included in the APO and to which all authorized applicants must adhere. The Department proposed to eliminate from the APO detailed internal procedures that firms were required to follow to protect APO information from unauthorized disclosure. In paragraph (a)(1), the Department proposed to permit each applicant to establish its own internal procedures. All commenters agreed with this proposal, and we have adopted it in these final regulations.

#### Notification of Change of Facts

Paragraph (a)(2) of § 351.305 requires an authorized applicant to notify the Secretary of any changes in the facts asserted by the authorized applicant in its APO application. Paragraph (a)(2) does not require certification of these facts. Paragraph 6 of the proposed APO, however, would have required the authorized applicant to provide, at the conclusion of a segment of the proceeding, upon the departure of an authorized applicant from a firm, or when an individual no longer will have access to APO information, a certification that attests to the individual's compliance with the terms under which such access is granted. Two commenters questioned the necessity for such individual certifications. They argued that the thrust of the Department's new rules is to permit firms to develop their own internal procedures to protect business proprietary information, rather than for the Department to "micro-manage" APO

issues. Thus, they asserted, firms will have internal procedures to ensure that persons leaving a firm, for example, destroy or return any documents containing business proprietary information. They point out that under the procedure proposed by the Department, applicants already sign an APO application individually, and the additional certification is therefore superfluous. Moreover, commenters argued, the Court of International Trade's (CIT) judicial protective orders permit a single certification, and there is no reason to follow two different procedures for appellate and administrative proceedings.

The Department agrees. Paragraph (a)(2) continues to require a party to notify the Department of any changes in the facts asserted by an authorized applicant in its application, but we have deleted the requirement for certification at the end of the proceeding segment in paragraph 6 of the APO. Authorized applicants are required to notify the Department of any possible violation of the APO; the additional certification is redundant. The Department presumes all authorized applicants are complying with the terms of the APO until we determine through an investigation under Part 354 that a violation of an APO has occurred. Thus we have retained the requirement that parties notify the Department and other parties of changes, but have removed from paragraph 6 of the APO the requirement that every individual certify its compliance with the regulations at the close of the person's participation under the APO.

#### Notification of Destruction of Business Proprietary Information

Paragraph (a)(4), now renumbered as paragraph (a)(3), of § 351.305 requires the destruction of business proprietary information when a party is no longer entitled to it, normally at the close of a segment of a proceeding. Paragraph 7 of the APO also required an individual certification from each authorized applicant that it complied with the terms of the APO. For the reasons stated above, we agree this certification is unnecessary. We presume that an authorized applicant will comply with the terms of the APO requiring destruction of business proprietary information at a designated time.

We will continue to require, however, notification to the Department of destruction of business proprietary information. Parties will be able to keep certain business proprietary information for more than one segment of a proceeding, and discipline in tracking and destroying information is more

important than ever. Therefore the Department will continue to hold parties accountable for timely destruction of material when no longer authorized by the APO to have it.

One commenter suggested that the failure to return or destroy APO material is a procedural issue and should not be viewed as constituting a violation of the APO if not satisfied. We disagree. Until business proprietary information is destroyed, there is a risk of disclosure. The destruction of business proprietary information material is important to prevent unauthorized disclosure. It is one of the few specific requirements in the regulations. While the failure to return or destroy may not result in actual disclosure of business proprietary information, and in certain circumstances may only result in a warning, it is clearly a violation of the regulations and the APO.

The Department proposed that an authorized applicant be required to destroy business proprietary information that the applicant is not authorized to retain within a thirty-day time period after the expiration of the time for filing for a judicial or binational panel review of the last segment for which the authorized applicant may retain the information. Thirty days should cover most contingencies, but the Department will be willing to grant extensions for good cause shown. Commenters supported this proposal and we will incorporate it into each APO, which will set specific deadlines on a case-by-case basis.

#### Electronic Data

Paragraph 3 of the APO places one restriction on the use of business proprietary information contained in electronic form; the information can not be accessible by a modem. We are restricting access to electronic information by modem, but not requiring any specific technical restrictions, instead leaving the method to be used to the individual authorized applicant. This proposal was supported by commenters. Commenters suggested a revision of the language of the paragraph to clarify this requirement, which we have incorporated into paragraph 3 of the APO.

#### Independent Contractors

The definition of "support staff" contained in the APO permits the use of independent contractors to perform photocopying and other production tasks involving APO information, provided that the independent contractors perform their work on the premises of the authorized applicant (e.g., at the firm), and the independent

contractors work under the supervision of an authorized applicant.

Commenters requested a clarification that the Department also will allow parties to use employees or subcontracted individuals (e.g., courier services) to pick up or deliver APO information released by the Department, and to deliver APO information to other parties. One commenter also requested a clarification that "independent contractors" includes part-time employees. We agree that support staff and independent contractors can be used for all delivery functions and that "independent contractors" includes part-time employees.

In order to guard against unauthorized disclosure, however, the Department will continue its current practice of releasing APO information only if the employee or independent contractor presents a picture ID and a letter of identification from the firm of the authorized applicant that authorizes the Department to release the APO information to that particular individual.

#### Remand Proceedings

The Department proposed that the APO permit access to new business proprietary information submitted in the course of a remand during litigation involving the segment of the proceeding in which the initial APO was issued. Parties no longer will have to apply separately for access under an APO during a remand proceeding. Commenters supported this proposal. The APO issued in each proceeding will reflect this practice.

#### APO Applications

Paragraph (b) of § 351.305 deals with the APO application process itself, including permitting parties to use two independent representatives.

#### Multiple Authorized Applicants

Under current practice, the Department generally allows only one representative of a party to have access to business proprietary information under an APO. In response to requests from parties to proceedings, the Department proposed that two independent representatives of a party be allowed APO access, with one representative being designated as the lead representative. We also proposed granting APOs separately to non-legal representatives, who otherwise qualify to receive an APO, only if they had a significant practice before the Department. The purpose of this proposal was to ensure that effective sanctions could be imposed to deter APO violations. The Department will

consider requests that more than two independent representatives be designated as authorized applicants on a case-by-case basis.

Commenters agreed with this proposal, and requested that the Department clarify that the lead authorized applicant will not be liable for APO infractions committed by a separately authorized applicant. We agree. Authorized applicants are responsible for violations committed by any person in the same firm, but not for violations committed by an individual at another entity that applied for APO access separately. The lead representative would not be responsible for APO violations committed by the separately authorized applicant.

#### Application for an APO

Paragraph (b)(2) of § 351.305 establishes a "short form" application that applicants can generate from their own word-processing equipment. An applicant must acknowledge that any discrepancies between the application and the Department's APO placed on the record will be interpreted in a manner consistent with the Department's APO. Parties agreed with this proposal and we have adopted it in paragraph (b)(2).

#### APO Application Coverage

Paragraph (b)(2) of § 351.305 also provides that an applicant must apply to receive all business proprietary information on the record of the particular segment of the proceeding in question. A party no longer may apply to receive only selected parties' business proprietary information. The purpose of this requirement is to eliminate the need for parties to prepare separate APO versions of submissions for each of the different parties involved in a proceeding and to reduce the number of APO violations that occur through the inadvertent service of a document containing business proprietary information to parties not authorized to receive it. In order to avoid forcing parties to receive submissions in which they have no interest, however, a party may waive service of business proprietary information it does not wish to have served on it by another party. Thus, for example, Respondent A may waive its right to be served with a copy of the business proprietary version of Respondent B's questionnaire response. Nonetheless, if Respondent A receives any of respondent B's proprietary information from any party by mistake, no APO violation will have occurred. Commenters generally supported the proposal, because it eases the burden on

submitters and reduces the likelihood of inadvertent APO violations.

One commenter strongly objected to the proposal as inconsistent with section 777 of the Act and burdensome on respondents. The commenter asserted that substitution of a waiver procedure for party-specific submissions is inadequate because respondents are nonetheless required to accept submissions by petitioners that contain the business proprietary information of several parties, including business proprietary information that the respondents may have had no reason to request. It asserted that by requiring respondents' representatives to accept from petitioners' representatives documents containing multi-party business proprietary information, the Department is unnecessarily shifting the burden and responsibility of complying with APO procedures from petitioners to respondents. Furthermore, where counsel is served a business proprietary document and then redacts only certain portions designated confidential by the filing party before transmitting the document to his client, there is no check on whether a proper redaction has been made. Neither the Department nor other parties have access to, or even knowledge of, the specially redacted version, and this procedure will heighten the risk of inadvertent disclosure of business proprietary information. Instead, the commenter argues, if the public summaries prepared by parties meet Commerce guidelines, the information contained in any public version of a filed document should be sufficient to inform a party already knowledgeable of the proprietary data represented by the public summary.

The Department recognizes that these rules place a new burden on a representative to ensure that when it receives a submission with business proprietary information from multiple parties, it takes steps to ensure no business proprietary information of another party is disclosed to its client. Each authorized applicant has pledged to do this when he or she signs the application for access to business proprietary information under an APO. The rules mitigate this additional burden by requiring parties to clearly identify the person to whom each item of business proprietary information pertains. Although adequate public summaries are helpful, they are not a substitute for a full discussion of a party's own business proprietary information. Public summaries serve to assist a party's participation where other

parties' business proprietary information is involved.

Nothing in the statute prohibits these procedures. Section 777 of the Act requires the Department to "make all business proprietary information presented to, or obtained by it, during a proceeding \* \* \* available to interested parties who are parties to the proceeding under a protective order \* \* \*." On balance, we believe the procedures adopted will spread the burden for protecting business proprietary information and reduce inadvertent disclosure of business proprietary information.

#### Deadline for Application for APO Access

Paragraph (b)(3) of § 351.305 concerns the deadline for applying for access to business proprietary information under APO. In deciding the question of APO application deadlines, the Department balances the need to provide maximum access by parties to APO information with the need to minimize the burden on the Department in processing APO applications, as well as the burden on parties and the Department that have to serve late applicants with APO information placed on the record before a late APO is granted. We proposed in paragraph (b)(3) to encourage parties to submit APO applications before the first questionnaire response is filed, but to permit parties to submit applications up to the date on which case briefs are due.

Two commenters requested that the Department have no deadline for APO applications. They did not provide any reason why a representative would need to have access to the entire record after the time case briefs are filed. Under § 351.309(b), which was published separately with the May 19 regulations, written argument will not be accepted after case or rebuttal briefs are filed unless requested by the Secretary. A party can always provide a representative with the party's own data, and represent the party before the Department during disclosure of that party's calculations. Providing a new representative with a record after the close of comments would be unduly burdensome for the Department staff which has extremely tight deadlines for issuing the final determination. A representative can obtain the entire record under judicial protective order during litigation if necessary. Therefore, we have incorporated the proposed deadline, the day case briefs are due, into the regulations.

We also have taken into account the burden imposed on parties by APO applications that are filed after major submissions have been made by other

parties to the proceeding. Under current rules, parties have only two days in which to serve an authorized applicant that obtained its APO late in the proceeding with APO information that already has been placed on the record. Under the deadline set forth in paragraph (b)(3), the burden on parties may increase. We therefore proposed that parties have five days in which to serve late APO applicants. In addition, we required that late applicants be required to pay the costs associated with the additional production and service of business proprietary submissions that were served on other parties earlier in the proceeding. Commenters supported these proposals and they are incorporated into § 351.301, which was published separately.

The Department reemphasizes that it will not allow an APO application filed later in the proceeding to serve as the basis for extending any administrative deadline, such as a briefing or hearing schedule.

#### Approval of the APO Application and the APO Service List

Paragraph (c) of § 351.305 deals with the approval of an APO application. The Department proposed to approve an application within two days of its receipt in an investigation and within five days in other AD and CVD proceedings, unless there is a question concerning the eligibility of an applicant to receive access under APO. In that case, the Secretary will decide whether to approve the application within 30 days of receipt of the application. We amended the regulation to provide for a single five-day deadline to provide parties a reasonable time to comment on applications in all instances.

Commenters generally supported the Department's proposal because it will facilitate the timely completion of investigations and administrative reviews by providing expedited access to business proprietary information to all parties to a proceeding. They suggested that the Department's regulations also indicate that similarly expedited treatment will be provided to applications for amendments to APOs. The Department considers an application for an amendment to be subject to the same procedures as the original application.

Some commenters expressed concern that approving APO applications so quickly may create problems. In many cases, the APO application will be served by mail on other interested parties, and commenters were concerned that the Department could approve the application before the

parties have an opportunity to comment on it. When the APO material is already in the hands of an approved applicant who has filed for access for additional individuals, commenters asserted it is imperative that parties be informed of the existence of the amended application, and be given time to react, before APO material is released to any additional individuals. The problem is of special concern to commenters if the application seeks to add in-house counsel to the APO.

Although the Department agrees that the concerns raised by these commenters have merit, we must balance these concerns with the need of applicants to receive APO material expeditiously. We note that the Department rarely receives objections to applications to amend APOs. However, in recognition of the concerns raised, we intend to approve applications to amend the Department's APO service list to include an additional authorized applicant at the end of the five-day period. If a representative wishes to have its amendment approved before the five-day deadline, it should submit its application with a statement that all other parties to the proceeding have consented to the application.

Commenters proposed that if the APO applicant needs immediate access, service on the other parties could be made by hand delivery or overnight mail, by facsimile, or by E-mail. Alternatively, the applicant could file the application as a "consent motion". If there is no need for immediate access, commenters proposed that parties be permitted to serve by mail and that Department approval be held for five days to ensure that the other parties have had an opportunity to respond. Commenters also proposed that the regulations also should state that objections to applications must be filed within two days of receipt of the application and served by hand on the applicant.

One commenter, on the other hand, was concerned that parties to a case should not be able to delay release of proprietary documents merely by the objection, on whatever grounds, to the eligibility of an applicant to obtain information. Rather, the commenter proposed that the Department enunciate certain grounds that might serve as the proper basis for an objection, such as affiliation with the party in question, prior violations of protective orders or other ethical rules, or a potential conflict of interest that exists based on work done either within the government or at another firm involving the same or a similar matter. Commenters did not want parties to have the opportunity to

delay approval of applications by minor objections, such as an objection to the number of applicants.

The Department recognizes that the current regulations permit a party to hand-serve an APO application (or an application for an amendment to the APO service list) on the Department, while serving the parties by mail. The Department could approve an application before parties even received notice that the application had been filed. We are therefore revising § 351.305(b)(2) to require parties to serve an APO application (including applications for amendments) on the Department and on the parties in the same manner, whether by hand or by mail. We are also extending the deadline in § 351.305(c) for approving an APO application (including an application to amend the APO service list) to five days from two for all segments of proceedings. These procedures should provide expedited approval of APO access while preserving the rights of parties to comment on APO applications. Although the Department may approve an APO application on or before the five-day deadline, a party objecting to an APO application may elect not to serve its business proprietary information on the applicant to which it is objecting until the Department has addressed the objection and has made a decision whether to grant the applicant access to the objecting party's proprietary information.

There are few bases on which a party can legitimately object to granting an APO so long as the applicant meets the conditions established in the APO application and APO. An objection based on the number of applicants would generally be considered frivolous; the Department does not interfere with a party's choice of representation or staffing. The only area where Import Administration has the authority to deny an individual the right to practice before it involves a finding, pursuant to our very detailed APO violation regulations, that a party has violated a protective order and that the violation warrants the extreme sanction of a ban from practice before Import Administration. An allegation in this area would require a detailed investigation. The restriction on practice before the Department because of an APO violation would be imposed through the APO violation proceeding, not through an objection to an APO application.

Import Administration does not have authority to address the post-employment restrictions contained in 18 U.S.C. 207. The authority to interpret

post-employment restriction resides with the Assistant General Counsel for Administration at the Department of Commerce. Nor does the Department have the authority to advise on the application of state professional conduct rules to a party's practice before the Department. Any allegations of violations of the rules of a particular bar association must be raised with that organization.

#### Alternative Methods of APO Approval

In the October Notice, several commenters suggested alternative methods of approving APOs, such as the creation of a pre-approved roster of members of a representative's firm, or permitting a lead signatory in a firm to grant access to the other professionals within the firm. The Department did not adopt either alternative because there may be facts peculiar to a particular AD or CVD proceeding or a segment of a proceeding that render an otherwise eligible applicant ineligible, and the roster approach would preclude a party from raising legitimate objections to the approval of an APO application. Likewise, the lead signatory approach would preclude parties from exercising their right to object, for good cause, to the disclosure of APO information to a particular individual.

Two commenters continued to support the roster system. One pointed out that such a procedure would still allow Commerce to review the individual eligibility of each applicant and would allow far greater flexibility on the part of the participating firm. These commenters did not address the points raised by the Department in opposing the proposal, such as notice and certainty. As noted above, commenters expressed concern that they have an advance opportunity to comment on an APO application before access is granted. They were concerned that the Department might approve an APO application before parties had had a chance to review it because of the short two-day deadline the Department proposed for approving an application. We are therefore not adopting either alternative method of approving APO applications. The maximum five-day deadline for approving an application should enable parties to add representatives without undue delay.

#### Department Notification of APO Service List

If an application is approved, the Secretary will include the name of the authorized applicant on an APO service list that the Department will maintain for each segment of a proceeding. Paragraph (c) of § 351.305 provides that

the Secretary will use the most expeditious means available to provide parties with the APO service list on the day the list is issued or amended.

Commenters generally supported the proposal. While they supported a flexible approach with respect to promulgating and updating the APO service list, they also expressed concern with the lack of specificity as to the form of notice to anticipate.

Commenters were particularly concerned with the use of the Internet to the extent the Department is contemplating reliance on electronic mail, based on the uncertainty of the timely receipt of information (particularly where the parties are out of the office) or even whether the information would be received at all. To the extent the Department elects to rely on any Internet or e-mail notification, commenters urged the Department to also send a copy of the notification by mail to the parties to ensure that actual notification was received.

Other commenters stated that the preferred method is by facsimile. They stated that most businesses, including law firms practicing before the Department, have procedures to ensure that incoming facsimiles rapidly come to the attention of the indicated recipient. Commenters noted that these procedures are not necessarily in place with respect to the Internet and transmission by mail involves at least two days of delay.

At this time, the Department will fax every change in the APO service list directly to each party on the service list for each proceeding. In addition, until the Department is assured that parties are routinely receiving notification of the APO service list by fax, the Department will mail hard copies of the service to the lead applicant. This will provide certainty and consistency necessary to effectively monitor APO service lists. APO service lists will be available to the public on Import Administration's home page on the Internet as a public service. The Department will adapt these procedures to advances in technology adopted by the trade bar in the future to ensure it provides notice as efficiently as possible.

#### Section 351.306 Use of Business Proprietary Information.

Section 351.306 sets forth rules concerning the use of business proprietary information.

#### Use of Business Proprietary Information by the Secretary

Paragraph (a) is based on existing §§ 353.32(f) and 355.32(f). One change is

the reference in paragraph (a)(4) to the disclosure of information to the U.S. Trade Representative under 19 U.S.C. 3571(i). Section 3571(i) (section 281(i) of the URAA) deals with the enforcement of U.S. rights under the World Trade Organization Agreement on Subsidies and Countervailing Measures. Also, although the regulation itself is little changed, we note that the URAA amended section 777(b)(1)(A)(i) of the Act to clarify that the Department may use business proprietary information for the duration of an entire proceeding (from initiation to termination or revocation), as opposed to merely the particular segment of a proceeding for which information was submitted.

#### Use of Business Proprietary Information by Parties

Section 777 of the Act permits the Department to use business proprietary information for the duration of an entire proceeding, from initiation to termination or revocation. Under the current regulations, the Department limits the record of a segment of a proceeding to information submitted during that particular segment of the proceeding. 19 CFR 353.34(a). The Department limits the use of business proprietary information by representatives of parties to the segment of the proceeding in which the information was submitted. 19 CFR 353.34(b)(3)(ii). Although the Department may have access to business proprietary information from another segment of the proceeding, the Department may not base a decision on business proprietary information that is not on the record of the particular segment of the proceeding.

The URAA identifies three specific instances in which the Department would be expected to use information from different segments of proceedings or different proceedings: (1) Information from prior segments may be used in a sunset or changed circumstances review of the same proceeding (section 777(b)(1) of the Act); (2) business proprietary information from a sunset or changed circumstances review resulting in revocation may be used in an investigation on the same merchandise from the same country initiated within two years of revocation (section 777(b)(3) of the Act); and (3) information from a terminated investigation may be used in a new investigation on the subject merchandise from the same and another country within three months of termination of the prior investigation (sections 704 and 734 of the Act).

Paragraph (b) of § 351.306 deals with the use of business proprietary information by parties from one segment of a proceeding to another. In the February notice, the Department proposed to permit parties to retain business proprietary information released under APO for two segments of the proceeding subsequent to that in which the information was placed on the record. Paragraph (b) provided that normally an authorized applicant may use such information only in the particular segment of the proceeding in which the information was obtained. An authorized applicant could, we proposed, place business proprietary information received in one segment of a proceeding on the record of either of two subsequent consecutive segments (generally administrative reviews under section 751(a)) if the information is relevant to an issue in the subsequent segments.

We have modified this paragraph to give the Department greater flexibility in determining how business proprietary information may be used. Our intention at this time is to allow an authorized applicant to retain business proprietary information obtained in one segment of a proceeding for two subsequent consecutive administrative reviews and to use such business proprietary information in those administrative reviews or other segments of the proceeding initiated during that time. This use of business proprietary information will be authorized by the terms of the APOs.

Four commenters wanted to expand the policy by having essentially unlimited access to proprietary information for the entire duration of the proceeding and, in some cases, even across proceedings. These commenters suggested that any changes should be applied to current APOs, as well as future APOs. They argued that such broad ability to use business proprietary information was consistent with the statute and would best enable them to identify inconsistencies in submissions from one segment of a proceeding to another.

Four commenters supported the proposed policy with certain restrictions. These commenters urged the Department to prohibit wholesale incorporation of business proprietary information from another segment of the proceeding and, instead, require that any business proprietary information submitted from another segment of the proceeding be relevant to the segment in which it is submitted. Additionally, some of these commenters indicated that a shorter period of time (one

segment) would be sufficient to achieve the Department's goals.

Four commenters strongly opposed any change to current policy. They argued that the limited changes to the statute cannot justify the significant changes proposed in the regulations. This group argued that statutory requirements and prior CIT decisions regarding the record for review effectively prohibit the changes proposed by the Department. This group also cited concerns that the broader ability to retain and use business proprietary information would increase the likelihood of disclosure of that information and thereby discourage parties from participating in proceedings before the Department. The group contended that these changes will also impose additional burdens on parties (to monitor the use of their business proprietary information in subsequent segments and to whom their business proprietary information is released, and to maintain the ability to justify all differences in their reported information from one segment to the next). The group contended that this practice would also increase burdens on the Department to document and verify the bases for any differences across segments of proceedings.

We have not broadened the proposal to permit unlimited use of business proprietary information across all segments of a proceeding, or across all proceedings other than those specified in the statute. There is no legal support for the request to utilize business proprietary information across proceedings.

Nor do we agree with commenters totally opposing use of business proprietary information in more than one segment. The statute and CIT precedent do not prohibit the proposed changes. The proposed changes would provide for inclusion of the information from another segment on the record of the segment in question. The proposed changes were not based on statutory changes made by the URAA, but, rather, rely on authority which the Department has always possessed. We agree that these changes will create some additional burdens on all parties to monitor subsequent segments of proceedings to avoid release of their business proprietary information to a party to whom they object. These are rare occurrences, and we have attempted to minimize this burden and, thereby, minimize the likelihood that these changes will cause respondents to refuse to participate in the Department's proceedings due to concerns about their business proprietary information. Any additional burden on the Department

will be minimized by the Department's ability to reject submissions of irrelevant business proprietary information from other segments.

We agree that wholesale incorporation of business proprietary information from prior segments should be rejected unless absolutely necessary. We also agree that the Department should reject business proprietary information from another segment which is not relevant to the ongoing segment. Such decisions, however, may be difficult to make and may present additional bases for appeal to the CIT. Therefore, the Department does not intend to make a decision on relevancy every time a party submits information from a prior segment into the current segment, but it reserves the right to do so in appropriate circumstances. At the same time, in order to avoid imposing undue burdens on the Department, we intend to consider such information only to the extent that is relevant to issues raised by interested parties or that the Department otherwise deems appropriate.

The Department expects that there will be a multitude of practical problems that will have to be worked out over time and with experience under these new procedures. Initially we will permit parties to retain business proprietary information for two additional segments (generally administrative reviews) after the segment in which the business proprietary information was submitted. This is a reasonable compromise between the long-held desires of petitioners to be able to address perceived inconsistencies between segments, and respondents' concerns that their business proprietary information not be distributed among representatives and across segments for indeterminate periods. Once business proprietary information is placed on the record of a subsequent segment of the proceeding, it remains a permanent addition to the later record, unless the Department rejects the information.

The Department believes that this new practice normally will be used to move business proprietary information from an investigation or administrative review to two subsequent consecutive administrative reviews. The Department also intends to authorize the use of business proprietary information submitted in an investigation or administrative review in other segments, such as scope proceedings or changed circumstances reviews, initiated during those two administrative reviews. If the Department determines, as it gains experience, that it is appropriate to

modify this practice, it will do so by changing the terms of the APOs.

#### Identifying Parties Submitting Business Proprietary Information

Paragraph (c) of § 351.306 addresses identification of submitters of business proprietary information in submissions containing business proprietary information from multiple persons. The Department is requiring that APO applicants be required to request access to all business proprietary information submitted in a particular segment of a proceeding. In addition, we proposed that in the case of submissions, such as briefs, that include business proprietary information of different parties, the submission must identify each piece of business proprietary information included and the party to which the information pertains. (For example, Information Item #1 came from Respondent A, Information Item #2 came from Respondent B, etc.) The purpose of this proposal is to enable parties to submit a single business proprietary version of a submission that may be served on all parties represented by authorized applicants, instead of forcing parties to submit and serve different APO versions for each of the parties involved in a proceeding. In the case of a submission served on a party not represented by an authorized applicant (a relatively rare event), the submitter still would have to prepare and serve a separate submission containing only that party's business proprietary information.

Three commenters supported this proposal. They agree it will reduce the possibility of APO violations when documents contain business proprietary information provided by more than one party. Commenters further suggested that, when all business proprietary information in a submission is obtained from a single party, the Department's regulations permit the submitting party to identify the original submitter of the business proprietary information only once, on the title page of the submission. We agree and have incorporated this into § 351.306(c).

Commenters also suggested that the Department should clarify the proposed rule by stating that only business proprietary information of another party needs to be specifically identified by source. The commenter proposed that any business proprietary information that is bracketed in the submission should be assumed to be business proprietary information belonging to the party submitting the document unless otherwise identified as business proprietary information of another party. The commenter pointed out that

without this clarification, submissions to the Department would become cluttered with notations as to the original submitter of the business proprietary information and it may become very difficult to read the submission. We agree, and have incorporated this suggestion into § 351.306(c) of the regulations.

One commenter urged the Department to clarify what is meant by the term "identify contiguously with each item" so that parties can adapt their procedures accordingly. The commenter noted that particularly troublesome would be documents containing multi-party information on a single line. The commenter requested that the Department should clarify whether the identifying markings are also required in public versions.

The term "contiguous" was used to require identification closely enough with the item of business proprietary information so a party could clearly and quickly identify the original submitter of the business proprietary information. We do not want to be so specific that parties lose flexibility to respond to different situations. Documents can vary, and readability must not be sacrificed. In some situations, a notation next to the item of business proprietary will best serve everyone's interests. In a more complicated document, footnotes might be better. Since the public version of a submission should be identical with the business proprietary version except for the deletion of the proprietary information, the public submission will contain the identity of the original submitter of the proprietary information.

Some commenters objected to the Department's proposed exception (§ 351.306(c)(2)) to the single-version business proprietary information document rule where a party does not have a representative. They argued that it undermined the benefits gained from not having to file respondent-specific submissions and that adequate public summaries would be adequate.

The Department believes that this requirement is necessary. A party needs disclosure of another party's arguments against it to adequately defend itself. To fail to do so would not provide sufficient transparency to the proceeding.

Concern was expressed regarding the potential mismarking of business proprietary information in a document, and the reliance thereafter on the information mismarked by another party. The commenter urged that the latter party's reliance on the mismarked information should not constitute a breach of the protective order. Another

commenter took the opposite view. It suggested that if a party mistakenly indicates the wrong original submitter of business proprietary information in a submission, the party should only be required to correct the mistake, and the mistake should not constitute an APO violation in and of itself. The commenter further argued, however, that if, as a result of a mistake, a party were to disclose business proprietary information to another party not authorized to receive it, that disclosure would constitute an APO violation under the existing APO rules.

Only the party creating the submission from multiple parties' business proprietary information knows with certainty the person that originally submitted the business proprietary information. Therefore the submitter must be responsible for the accuracy of the labeling. This is the purpose of the proposal. Unless an authorized applicant knows that an identification is incorrect, he or she should be entitled to rely on the identification. Otherwise the requirement serves no purpose. An unauthorized disclosure resulting from inaccurate labeling that leads to an APO violation will be attributed to the person labeling the original submitter of the business proprietary information.

Another commenter opposed the proposal altogether, arguing that the proposal is an attempt to shift costs and responsibility from petitioner to respondent, causing respondent to lose time reviewing petitioner's case brief in the five days that they have to prepare rebuttal briefs under proposed § 351.309(d). The commenter argued that while the number of inadvertent APO violations will decrease for petitioner's counsel, they will increase for respondent's counsel, because respondent's counsel must now make sure petitioner's documents do not include APO material that should not be released.

These proposed procedures formalize what has been the Department's practice since 1992. Moreover, we believe that these proposals balance the different interests of petitioners and respondents. Although there are risks of inadvertent APO violations associated with any option, we believe that the fact that all authorized applicants will have access to the business proprietary information of all parties (whether or not service is waived) should reduce significantly the number of inadvertent disclosures. In this regard, the inadvertent service on an authorized applicant of a submission containing information of a party for which the applicant has waived service would not constitute an APO violation.

### Administrative Protective Order Sanction Procedures

Five parties commented on the proposed amendments to the APO sanction procedures. All commenters supported the proposed changes. Upon further reflection, the Department is amending its regulations consistent with the proposed regulations. As explained below, the Department also is making clerical revisions to use terms "administrative protective order" and "business proprietary information" consistently throughout this part, and to conform the regulations to changes made in the organization of the Department on July 1, 1996.

#### Section 354.2 Definitions.

The definition section is revised to be consistent with the definitions contained in the Department's proposed antidumping and countervailing procedural regulations at 19 CFR 351.102. The definitions of the terms "administrative protective order", "Secretary", "segment of the proceeding", and "Senior APO Specialist" are added to Part 354 in § 354.2.

The definition of "director" is revised to reflect the reorganization of the Department that became effective July 1, 1996. Under the reorganization, the APO function is consolidated under the Director for Policy and Analysis, and is managed by a Senior APO Specialist. The Senior APO Specialist is responsible for directing the Department's handling of business proprietary information. The Senior APO Specialist assists with investigations of alleged APO violations, which streamlines the APO violation investigation process. A definition of "Senior APO Specialist" is added in § 354.2, and the definition of "director" is revised to include the Senior APO Specialist. The definition of director is also amended to conform the regulation to the changes in office director positions made in the July 1, 1996 reorganization.

#### Section 354.5 Report of violation and investigation.

Paragraph (a)(1) is amended to require that all allegations of APO violations be reported to either the Senior APO Specialist or the Office of Chief Counsel for the Department. Under the current practice, alleged violations are reported to the APO specialist in the Office of Investigations or Office of Compliance, depending on where the alleged violation occurred. The amendment conforms the regulation to the July 1, 1996 reorganization of the Department.

Paragraphs (d) (7) and (8) are combined and revised to reflect changes in the Act and Department practice regarding the use of business proprietary information in segments of proceedings other than the one in which the information was originally submitted. These changes are discussed above. The Department's procedural regulations will now allow use of business proprietary information in more than one segment of a proceeding or another proceeding in limited situations. The segments of proceedings in which business proprietary information may be used will be contained in the administrative protective order. Paragraphs (d) (7) and (8) are combined and revised to reflect these changes.

#### Classification

*E.O. 12866*

This rule has been determined to be not significant for purposes of Executive Order 12866.

#### *Paperwork Reduction Act*

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

#### *Regulatory Flexibility Act*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these amendments would not have a significant economic impact on a substantial number of small business entities because the rule that they would amend does not have such an impact and, furthermore, the amendments would tend to simplify the procedures pertaining to administration of APO sanctions. The Deputy Under Secretary for International Trade is responsible for regulations governing sanctions for violations of APOs. The Assistant Secretary for Import Administration is responsible for the regulations governing issuance and use of APOs.

#### List of Subjects in 19 CFR Parts 351 and 354

Business and industry, Foreign trade, Imports, Trade practices.

Dated: April 29, 1998.

**Timothy J. Hauser,**  
*Deputy Under Secretary for International Trade.*

Dated: April 29, 1998.

**Robert S. LaRussa,**  
*Assistant Secretary for Import Administration.*

For the reasons stated, 19 CFR chapter III is amended as follows:

#### **PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES**

1. The authority citation for part 351 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. Section 351.103 is revised as follows:

##### **§ 351.103 Central Records Unit and Administrative Protective Order Unit.**

(a) Import Administration's Central Records Unit maintains a Public File Room in Room B-099 and a Dockets Center in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230. The office hours of the Public File Room and Dockets Center are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104), the Subsidies Library (see section 775(2) and section 777(a)(1) of the Act), and the service list for each proceeding (see paragraph (c) of this section).

(b) *Filing of documents with the Department.* While persons are free to provide Department officials with courtesy copies of documents, no document will be considered as having been received by the Secretary unless it is submitted to the Import Administration Dockets Center in Room 1870 and is stamped with the date and time of receipt.

(c) *Service list.* The Central Records Unit will maintain and make available a service list for each segment of a proceeding. Each interested party that asks to be included on the service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment. The service list for an application for a scope ruling is described in § 351.225(n).

(d) Import Administration's Administrative Protective Order Unit (APO Unit) is located in Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. The

office hours of the APO Unit are between 8:30 a.m. and 5:00 p.m. on business days. Among other things, the APO Unit is responsible for issuing administrative protective orders (APOs), maintaining the APO service list, releasing business proprietary information under APO, and APO violation investigations. The APO Unit also is the contact point for questions and concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under § 351.105 and § 351.304.

3. Sections 351.304, 351.305 and 351.306 are added to subpart C to read as follows:

##### **§ 351.304 Establishing business proprietary treatment of information.**

(a) *Claim for business proprietary treatment.* (1) Any person that submits factual information to the Secretary in connection with a proceeding may:

(i) Request that the Secretary treat any part of the submission as business proprietary information that is subject to disclosure only under an administrative protective order,

(ii) Claim that there is a clear and compelling need to withhold certain business proprietary information from disclosure under an administrative protective order, or

(iii) In an investigation, identify customer names that are exempt from disclosure under administrative protective order under section 777(c)(1)(A) of the Act.

(2) The Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except for

(i) Customer names submitted in an investigation,

(ii) Information for which the Secretary finds that there is a clear and compelling need to withhold from disclosure, and

(iii) Privileged or classified information.

##### (b) *Identification of business proprietary information.* (1) *In general.*

A person submitting information must identify the information for which it claims business proprietary treatment by enclosing the information within single brackets. The submitting person must provide with the information an explanation of why each item of bracketed information is entitled to business proprietary treatment. A person submitting a request for business proprietary treatment also must include an agreement to permit disclosure under an administrative protective order,

unless the submitting party claims that there is a clear and compelling need to withhold the information from disclosure under an administrative protective order.

(2) *Information claimed to be exempt from disclosure under administrative protective order.* (i) If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

(ii) In an investigation, the submitting person may enclose business proprietary customer names within double brackets (see paragraph (a)(1)(iii) of this section).

(iii) The submitting person may exclude the information in double brackets from the business proprietary information version of the submission served on authorized applicants. See § 351.303 for filing and service requirements.

(c) *Public version.* (1) A person filing a submission that contains information for which business proprietary treatment is claimed must file a public version of the submission. The public version must be filed on the first business day after the filing deadline for the business proprietary version of the submission (see § 351.303(b)). The public version must contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. A submitter should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary version of the submission along with the public version (see § 351.303(b)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(2) of this section, however, the

bracketing of business proprietary information in the original business proprietary version or, if a corrected version is timely filed, the corrected business proprietary version will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat non-bracketed information as public information.

(d) *Nonconforming submissions.* (1) *In general.* The Secretary will return a submission that does not meet the requirements of section 777(b) of the Act and this section with a written explanation. The submitting person may take any of the following actions within two business days after receiving the Secretary's explanation:

(i) Correct the problems and resubmit the information;

(ii) If the Secretary denied a request for business proprietary treatment, agree to have the information in question treated as public information;

(iii) If the Secretary granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold information under an administrative protective order, agree to the disclosure of the information in question under an administrative protective order; or

(iv) Submit other material concerning the subject matter of the returned information. If the submitting person does not take any of these actions, the Secretary will not consider the returned submission.

(2) *Timing.* The Secretary normally will determine the status of information within 30 days after the day on which the information was submitted. If the business proprietary status of information is in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.

**§ 351.305 Access to business proprietary information.**

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record within two days after the day on which a petition is filed or an investigation is self-initiated, or five days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

(1) Establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party,

an authorized applicant, or an appropriate Department official identified in section 777(b) of the Act;

(2) Notify the Secretary of any changes in the facts asserted by the authorized applicant in its administrative protective order application;

(3) Destroy business proprietary information by the time required under the terms of the administrative protective order;

(4) Immediately report to the Secretary any apparent violation of the administrative protective order; and

(5) Acknowledge that any unauthorized disclosure may subject the authorized applicant, the firm of which the authorized applicant is a partner, associate, or employee, and any partner, associate, or employee of the authorized applicant's firm to sanctions listed in part 354 of this chapter (19 CFR part 354).

(b) *Application for access under administrative protective order.* (1) Generally, no more than two independent representatives of a party to the proceeding may have access to business proprietary information under an administrative protective order. A party must designate a lead firm if the party has more than one independent authorized applicant firm.

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting Form ITA-367 to the Secretary. Form ITA-367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA-367 may be prepared on the applicant's own word-processing system, and must be accompanied by a certification that the application is consistent with Form ITA-367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA-367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question, but may waive service of business proprietary information if it does not wish to receive from other parties to the proceeding. An applicant must serve an APO application on the other parties in the same manner and at the same time as it serves the application on the Department.

(3) To minimize the disruption caused by late applications, an application should be filed before the first

questionnaire response has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due, but any applicant filing after the first questionnaire response is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record. Parties have five days to serve their business proprietary information already on the record to applicants authorized to receive such information after such information has been placed on the record.

(c) *Approval of access under administrative protective order; administrative protective order service list.* The Secretary will grant access to a qualified applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

**§ 351.306 Use of business proprietary information.**

(a) *By the Secretary.* The Secretary may disclose business proprietary information submitted to the Secretary only to:

- (1) An authorized applicant;
- (2) An employee of the Department of Commerce or the International Trade Commission directly involved in the proceeding in which the information is submitted;
- (3) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an antidumping or countervailing duty proceeding;
- (4) The U.S. Trade Representative as provided by 19 U.S.C. 3571(i);
- (5) Any person to whom the submitting person specifically authorizes disclosure in writing; and
- (6) A charged party or counsel for the charged party under 19 CFR part 354.

(b) *By an authorized applicant.* An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order. An authorized applicant may use business proprietary information for purposes of the segment of a proceeding in which the information was submitted. If

business proprietary information that was submitted in a segment of the proceeding is relevant to an issue in a different segment of the proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO.

(c) *Identifying parties submitting business proprietary information.* (1) If a party submits a document containing business proprietary information of another person, the submitting party must identify, contiguously with each item of business proprietary information, the person that originally submitted the item (e.g., Petitioner, Respondent A, Respondent B). Business proprietary information not identified will be treated as information of the person making the submission. If the submission contains business proprietary information of only one person, it shall so state on the first page and identify the person that originally submitted the business proprietary information on the first page.

(2) If a party to a proceeding is not represented by an authorized applicant, a party submitting a document containing the unrepresented party's business proprietary information must serve the unrepresented party with a version of the document that contains only the unrepresented party's business proprietary information. The document must not contain the business proprietary information of other parties.

(d) *Disclosure to parties not authorized to receive business proprietary information.* No person, including an authorized applicant, may disclose the business proprietary information of another person to any other person except another authorized applicant or a Department official described in paragraph (a)(2) of this section. Any person that is not an authorized applicant and that is served with business proprietary information must return it to the sender immediately, to the extent possible without reading it, and must notify the Department. An allegation of an unauthorized disclosure will subject the person that made the alleged unauthorized disclosure to an investigation and possible sanctions under 19 CFR part 354.

**PART 354 [AMENDED]**

4-5. The authority citation for part 354 is revised to read as follows:

**Authority:** 5 U.S.C. 301, and 19 U.S.C. 1677.

6. All references in part 354 to "protective order" are revised to read "administrative protective order", all

references to "proprietary information" are revised to read "business proprietary information", and all references to "appropriate Director" are revised to read "Director".

**§ 354.1 [Amended]**

7. Section 354.1 is amended by removing the citations "19 CFR 353.30 and 355.20" and replacing them with "19 CFR 351.306".

8. Section 354.2 is revised as follows:

**§ 354.2 Definitions.**

For purposes of this part:

Administrative protective order (APO) means an administrative protective order described in section 777(c)(1) of the Tariff Act of 1930, as amended; APO Sanctions Board means the Administrative Protective Order Sanctions Board.

Business proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR 351.105, or successor regulations;

Charged party means a person who is charged by the Deputy Under Secretary with violating a protective order;

Chief Counsel means the Chief Counsel for Import Administration or a designee;

Date of service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

Department means the United States Department of Commerce;

Deputy Under Secretary means the Deputy Under Secretary for International Trade or a designee;

Director means the Senior APO Specialist or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

Lesser included sanction means a sanction of the same type but of more limited scope than the proposed sanction; thus a one-year bar on representations before the International Trade Administration is a lesser included sanction of a proposed seven-year bar;

Parties means the Department and the charged party or affected party in an action under this part;

Presiding official means the person authorized to conduct hearings in administrative proceedings or to rule on any motion or make any determination under this part, who may be an Administrative Law Judge, a Hearing Commissioner, or such other person who is not under the supervision or

control of the Assistant Secretary for Import Administration, the Deputy Under Secretary for International Trade, the Chief Counsel for Import Administration, or a member of the APO Sanctions Board;

Proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR part 351 including business or trade secrets; production costs; distribution costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the gross net subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

Secretary means the Secretary of Commerce or a designee;

Segment of the proceeding means a portion of an antidumping or countervailing duty proceeding that is reviewable under section 516A of the Tariff Act of 1930, as amended.

Senior APO Specialist means the Department employee under the Director for Policy and Analysis who leads the APO Unit and is responsible for directing Import Administration's handling of business proprietary information;

Under Secretary means the Under Secretary for International Trade or a designee.

9. Section 354.3 is amended by revising paragraphs (a)(3), and (a)(4), and by adding a new paragraph (a)(5), as follows:

**§ 354.3 Sanctions.**

(a) \* \* \*

(3) Other appropriate administrative sanctions, including striking from the record any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect;

(4) Requiring the person to return material previously provided by the Secretary and all other materials containing the business proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order; and

(5) Issuing a private letter of reprimand.

\* \* \* \* \*

10. Section 354.5 is amended by revising paragraphs (a), (b), (c) and (d)(1), (d)(2), and (d)(7), and by

removing paragraph (d)(8), and redesignating paragraph (d)(9) as (d)(8), as follows:

**§ 354.5 Report of violation and investigation.**

(a) An employee of the Department who has information indicating that the terms of an administrative protective order have been violated will provide the information to the Senior APO Specialist or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of an administrative protective order from an employee of the Department or any other person, the director will conduct an investigation concerning whether there was a violation of an administrative protective order, and who was responsible for the violation, if any. No director shall investigate an alleged violation that arose out of a proceeding for which the director was responsible. For the purposes of this part, the director will be supervised by the Deputy Under Secretary for International Trade with guidance from the Chief Counsel. The director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the director, could have been discovered through the exercise of reasonable and ordinary care.

(c)(1) The director conducting the investigation will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 90 days after receiving information concerning a violation if:

(i) The person alleged to have violated an administrative protective order personally notified the Secretary and reported the particulars surrounding the incident; and

(ii) The alleged violation did not result in any actual disclosure of business proprietary information. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 90 days to conduct the investigation and submit the report.

(2) In all other cases, the director will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 180 days to

conduct the investigation and submit the report.

(d) \* \* \*

(1) Disclosure of business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Tariff Act of 1930, including disclosure to an employee of any other United States Government agency or a member of Congress.

(2) Failure to follow the terms and conditions outlined in the administrative protective order for safeguarding business proprietary information.

\* \* \* \* \*

(7) Use of business proprietary information submitted in one segment of a proceeding in another segment of the same proceeding or in another proceeding, except as authorized by the Tariff Act of 1930 or by an administrative protective order.

\* \* \* \* \*

11. Section 354.6 is revised as follows:

**§ 354.6 Initiation of proceedings.**

(a) *In general.* After an investigation and report by the director under § 354.5(c) and consultation with the Chief Counsel, the Deputy Under Secretary for International Trade will determine whether there is reasonable cause to believe that a person has violated an administrative protective order. If the Deputy Under Secretary for International Trade determines that there is reasonable cause, the Deputy Under Secretary for International Trade also will determine whether sanctions under paragraph (b) or a warning under paragraph (c) is appropriate for the violation.

(b) *Sanctions.* In determining under paragraph (a) of this section whether sanctions are appropriate, and, if so, what sanctions to impose, the Deputy Under Secretary for International Trade will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. If the Deputy Under Secretary for International Trade determines that sanctions are appropriate, the Deputy Under Secretary for International Trade will initiate a proceeding under this part by issuing a charging letter under § 354.7. The Deputy Under Secretary for International Trade will determine whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(c) *Warning.* If the Deputy Under Secretary for International Trade determines under paragraph (a) of this

section that a warning is appropriate, the Deputy Under Secretary will issue a warning letter to the person believed to have violated an administrative protective order. Sanctions are not appropriate and a warning is appropriate if:

- (1) The person took due care;
- (2) The Secretary has not previously charged the person with violating an administrative protective order;
- (3) The violation did not result in any disclosure of the business proprietary information or the Secretary is otherwise able to determine that the violation caused no harm to the submitter of the information; and
- (4) The person cooperated fully in the investigation.

12. Section 354.7 is amended by revising paragraph (b), as follows:

**§ 354.7 Charging letter.**

\* \* \* \* \*

(b) Settlement and amending the charging letter. The Deputy Under Secretary for International Trade and a charged or affected party may settle a charge brought under this part by mutual agreement at any time after service of the charging letter; approval of the presiding official or the administrative protective order Sanctions Board is not necessary. The charged or affected party may request a hearing but at the same time request that a presiding official not be appointed pending settlement discussions. Settlement agreements may include sanctions for purposes of § 354.18. The Deputy Under Secretary for International Trade may amend, supplement, or withdraw the charging letter as follows:

(1) If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not preclude future actions on the same alleged violation.

(2) If a hearing has been requested but no presiding official has been appointed, withdrawal of the charging letter will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(3) The Deputy Under Secretary for International Trade may amend, supplement or withdraw the charging letter at any time after the appointment of a presiding official, if the presiding

official determines that the interests of justice would thereby be served. If the presiding official so determines, the presiding official will also determine whether the withdrawal will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

\* \* \* \* \*

13. Section 354.9 is amended by revising paragraph (b), as follows:

**§ 354.9 Request for a hearing.**

(a) \* \* \*

(b) Upon timely receipt of a request for a hearing, and unless the party requesting a hearing requests that the Under Secretary not appoint a presiding official, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

**§ 354.15 [Amended]**

14. Section 354.15 is amended by removing paragraph (e).

**§ 354.17 [Amended]**

15. Section 354.17(b) is amended by removing the citations "19 CFR 353.30 and § 355.20" and replacing them with "19 CFR 351.305(c)".

16. Section 354.18 is added to part 354, to read as follows:

**§ 354.18 Public notice of sanctions.**

If there is a final decision under § 354.15 to impose sanctions, or if a charging letter is settled under § 354.7(b), notice of the Secretary's decision or of the existence of a settlement will be published in the **Federal Register**. If a final decision is reached, such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. In addition, whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a sanction under § 354.3(a)(1), the Deputy Under Secretary for International Trade also will provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations and to any Federal agency likely to have an interest in the matter. The Deputy Under Secretary for International Trade

will cooperate in any disciplinary actions by any association or agency. Whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a private letter of reprimand under § 354.3(a)(5), the Secretary will not make public the identity of the violator, nor will the Secretary make public the specifics of the violation in a manner that would reveal indirectly the identity of the violator.

17. Section 354.19 is added to part 354, to read as follows:

**§ 354.19 Sunset.**

(a) If, after a period of three years from the date of issuance of a warning letter, a final decision or settlement in which sanctions were imposed, the charged or affected party has fully complied with the terms of the sanctions and has not been found to have violated another administrative protective order, the party may request in writing that the Deputy Under Secretary for International Trade rescind the charging letter. A request for rescission must include:

(1) A description of the actions taken during the preceding three years in compliance with the terms of the sanctions; and

(2) A letter certifying that: the charged or affected party complied with the terms of the sanctions; the charged or affected party has not received another administrative protective order sanction during the three-year period; and the charged or affected party is not the subject of another investigation for a possible violation of an administrative protective order.

(b) Subject to the Chief Counsel's confirmation that the charged or affected party has complied with the terms set forth in paragraph (a) of this section, the Deputy Under Secretary for International Trade will rescind the charging letter within 30 days after receiving the written request.

**Appendix to 19 CFR Part 351, Subpart C**

**Note:** The following appendix will not appear in the Code of Federal Regulations: Application for Administrative Protective Order in Antidumping or Countervailing Duty Proceeding, and Administrative Protective Order.

BILLING CODE 3510-DS-P

Case Number  
Segment of Proceeding  
(Period of Review)  
Number of Pages  
Public Document

United States Department of Commerce  
International Trade Administration

APPLICATION FOR ADMINISTRATIVE PROTECTIVE ORDER  
in  
ANTIDUMPING OR COUNTERVAILING DUTY PROCEEDING

_____ )		
The Matter of the )		
<b>Antidumping/Countervailing Duty (indicate one)</b> )		ACCEPTED _____
Proceeding on )		REJECTED _____
_____ )		DATE _____
_____ )		
_____ )	from _____ )	
_____ )	(Country) )	
_____ )	)	
(Product) )	)	
_____ )		

This application covers business proprietary information in the following segment of the proceeding:

- [ ] Investigation - petition filed on : \_\_\_\_\_
- [ ] Administrative Review initiated on : \_\_\_\_ ( \_\_FR\_\_ )  
for period : \_\_\_\_\_ to \_\_\_\_\_
- [ ] Other \_\_\_\_\_ : \_\_\_\_ ( \_\_FR\_\_ )  
\_\_\_\_\_  
(specify)

This application is:

- [ ] the initial application to be placed on the APO service list; or
- [ ] a request to amend the APO service list.

**REPRESENTATION**

1. I am an applicant for: \_\_\_\_\_  
who is an interested party/parties as follows:  
  
[ ] petitioner; [ ] respondent; [ ] other interested party,  
as defined in 19 C.F.R. § \_\_\_\_\_ of the  
Department's regulations.
2. If the interested party/parties I represent have another  
authorized applicant or representative, \_\_\_\_\_  
  
\_\_\_\_\_ is the lead firm.

**REQUEST FOR INFORMATION**

3. I request disclosure of all business proprietary information  
under administrative protective order ("APO") which will be  
or has been placed on the record of this segment of this  
proceeding that is releasable under 19 C.F.R. § 351.305 for  
the purpose of fully representing the interests of my  
client:  
  
[ ] all business proprietary information, including  
hard copy and electronic data; or  
  
[ ] all business proprietary information in hard  
copy form only.

**INDIVIDUAL STATEMENTS**

4. **TO BE COMPLETED BY ATTORNEY APPLICANTS**
  - A. I **am/am not (indicate one)** an officer of the interested  
party or parties listed in paragraph 1, or of other  
competitors of the person submitting the business  
proprietary information requested in this application.
  - B. I **do/do not (indicate one)** participate in the  
competitive decision-making activity of the interested  
party or parties listed in paragraph 1, or of other  
competitors of the person submitting the business  
proprietary information requested in this application.  
I understand that competitive decision-making activity  
includes advice on production, sales, operations, or  
investments, but does not include legal advice.

- C. I **do/do not (indicate one)** have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person submitting the business proprietary information requested in this application.
- D. I **do/do not (indicate one)** currently intend within 12 months after the date upon which the final determination/results is/are published to enter into any of the relationships described in paragraphs 4A B and C.
- E. Explain for each applicant any affirmative response to paragraph 4A, B, C or D: \_\_\_\_\_
- \_\_\_\_\_ .

5. TO BE COMPLETED BY NON-ATTORNEY APPLICANTS

- A. I **am/am not (indicate one) employed by/retained by (indicate one)** a law firm representing the interested party or parties listed in paragraph 1.
- B. If I am retained by an attorney, the name of the lawyer and law firm are: \_\_\_\_\_
- \_\_\_\_\_ .
- C. If I am not an employee of a law firm and have not been retained by the attorney for the interested party or parties listed in paragraph 1, in a separate attachment to this application I am providing information concerning my practice before the International Trade Administration ("ITA").
- D. I **am/am not (indicate one)** an officer or employee of a interested party or parties listed in paragraph 1, or of other competitors of the submitter of the business proprietary information requested in this application.
- E. I **do/do not (indicate one)** participate in the competitive decision-making activity of the interested party or parties listed in paragraph 1, or of other competitors of the person submitting the business proprietary information requested in this application. I understand that competitive decision-making activity includes advice on production, sales, operations, or investments, but does not include legal advice.

- F. I do/do not (indicate one) have an official position or other business relationship other than providing advice for the purpose of this segment of the proceeding with the interested party or parties listed in paragraph 1, or with other competitors of the person submitting the business proprietary information requested in this application.
- G. I do/do not (indicate one) currently intend within 12 months after the date upon which the final determination/results is/are published to enter into any of the relationships described in paragraphs 5D, E and F.
- I. Explain for each applicant any affirmative response to paragraph 5D, E, F or G: \_\_\_\_\_

**AGREEMENT TO BE BOUND**

- 6. Recognizing the penalties for perjury under the laws of the United States, I affirm that all statements in this application are true, accurate, and complete to the best of my knowledge. I agree, individually and on behalf of my law firm, corporate law office, or company, if any, to be bound by the terms stated in the administrative protective order issued in this segment of the proceeding.
- 7. I certify that this application is a true and accurate copy of the Department's "Application for Administrative Protective Order", FORM ITA-367 (5.98). If there are any discrepancies, I agree to be bound by the Department's standard form.

**INDIVIDUAL SIGNATORIES**

- 8. ATTORNEY APPLICANTS (SAMPLE FORMAT)

Individual applicants:

(1) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
 (name of applicant) (signature) (date)

of \_\_\_\_\_  
 (name and address of law firm)

I am admitted to practice in the following jurisdiction(s) and before the following court(s):

\_\_\_\_\_

9. NON-ATTORNEY APPLICANTS (SAMPLE FORMAT)

Individual applicants:

(1) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(name of applicant) (signature) (date)

of \_\_\_\_\_  
(name and address of firm)

\_\_\_\_\_

I am a member of the following professional association(s):

\_\_\_\_\_.

COURTESY PAGE  
FOR  
WAIVER OF SERVICE

If my application for administrative protective order ("APO") in this proceeding is granted, I waive service of the following business proprietary information that I would be authorized to receive under the APO:

- 
- 
- 
- 

*Inadvertent service of a document  
containing business proprietary information  
on a party that has been granted APO access  
and has waived service  
IS NOT A VIOLATION OF THE APO.*

A/C-\_\_\_\_-\_\_\_\_  
 (Segment of Proceeding)  
 (Period of Review)  
 Public Document

\_\_\_\_\_  
 )  
 In the Matter of the Antidumping/Countervailing Duty )  
 (Segment of Proceeding) of \_\_\_\_\_ )  
 from \_\_\_\_\_ (A/C-\_\_\_\_-\_\_\_\_) )  
 \_\_\_\_\_ )

#### ADMINISTRATIVE PROTECTIVE ORDER

IT IS HEREBY ORDERED THAT:

All business proprietary information submitted in the above-referenced segment of the proceeding, including new information submitted in a remand during litigation on this segment of the proceeding, which the submitting party agrees to release or the Department of Commerce ("the Department") determines to release, will be released to the authorized applicants on the administrative protective order (APO) service list for this segment of the proceeding, except the following:

- o customer names in an investigation;
- o specific information of a type for which the Department determines there is a clear and compelling need to withhold from disclosure.

#### USE OF BUSINESS PROPRIETARY INFORMATION UNDER THIS APO

Business proprietary information subject to this APO may be used by an authorized applicant in this segment of the proceeding and in the following other segments or proceedings:

[This section will authorize use of business proprietary information in other segments of the same proceeding, or in other proceedings, consistent with the Tariff Act and the regulations. The terms in this section will vary, depending on what segment of the proceeding this APO covers. This section will also establish the deadline for destruction of business proprietary information in each set of circumstances.]

#### REQUIREMENTS FOR AUTHORIZED APPLICANTS

All applicants authorized to have access to business proprietary information under this APO are subject to the following terms:

1. The authorized applicant must establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or the appropriate Department official identified in section 351.306(a) of the regulations. No person in the authorized applicant's firm may release business proprietary information received under this APO to any person other than those described in this paragraph.
2. The authorized applicant may allow APO access to one or more paralegals, law clerks, secretaries, or other support staff employed by or on behalf of the applicant's firm and operating within the confines of the firm. The authorized applicant may also use the services of subcontracted individuals to pick up APO information released by the Department. All support staff must sign and date an acknowledgement that they will abide by the terms and conditions of the APO at the time they are first permitted access to any information subject to APO.
3. The authorized applicant must ensure that business proprietary information in an electronic format will not be accessible by modem to parties not authorized to receive business proprietary information.
4. The authorized applicant must pay all reasonable costs incurred by the submitter of the electronic business proprietary information for the copying of its electronic information released to the authorized applicant, if payment is requested. Reasonable costs include the cost of the electronic medium and the cost of copying the complete proprietary version of the electronic information/medium submitted to the Department in APO releasable form, but not costs borne by the submitter of the electronic data in the creation of the electronic data/medium submitted to the Department.

#### **NOTIFICATION REQUIREMENTS**

5. If changed circumstances affect the authorized applicant's representation of an interested party at any time authorized under this APO (i.e., reassignment, departure from firm), the authorized applicant must notify the Department in accordance with section 351.305(a)(2) of the regulations.
6. At the expiration of the time specified in this APO, the authorized applicant must destroy all business proprietary information and notify the Department of the destruction in accordance with section 351.305(a)(3) of the regulations, or provide to the Department official responsible for the administration of the APO in this segment of the proceeding a protective order issued by a court or in a binational panel proceeding.

**SANCTIONS FOR BREACH OF THIS APO**

7. The authorized applicant will be subject to any or all of the sanctions described in 19 C.F.R. Part 354 if there is a violation of this APO by the authorized applicant or any of the persons identified in item 9 of this APO.
8. The authorized applicant will accept full responsibility, individually and on behalf of the authorized applicant's firm or corporate office, for violation of this APO by any employee of the firm or corporate office, or support staff retained by the firm or corporate office, who is permitted access to APO information.
9. The authorized applicant will promptly report and confirm in writing any possible violation of this APO to the Department.

**DEFINITIONS**

For purposes of this APO, the following definitions apply:

**"Representative"** is an individual, enterprise, or entity acting on behalf of an interested party.

**"Applicant"** is a representative of an interested party who has applied for access to business proprietary information under this APO.

**"Authorized applicant"** is an applicant that the Secretary has authorized to receive business proprietary information under this APO.

**"Lead firm"** is the firm that will be the primary contact with the Department and that will accept service of all documents for the party it represents where two firms independently have access under APO.

**"Support staff"** includes paralegals, law clerks, secretaries and other support staff that are employed by or on behalf of the applicant's firm and operating within the premises of the firm, and work under the supervision of an authorized applicant, as well as subcontractors of the firm providing similar support staff functions.

**"Electronic data"** includes (1) data submitted by a party, generated by the Department, or entered by the recipient on computer tape, disk, diskette, or any other electronic computer

medium; and (2) all electronic work products resulting from manipulation of this data, as transferred in any form onto any other electronic computer medium, such as tape, disk, diskette, Bernoulli cartridge, removable disk pack, etc.

\_\_\_\_\_  
(Signature of Department Official)

Typed Name

Title

Import Administration

\_\_\_\_\_  
(date)

[FR Doc. 98-11802 Filed 5-1-98; 8:45 am]

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