§ 356.9 Persons authorized to receive proprietary information.

Persons described in paragraphs (a), (d), (e), (f) and (g) of this section shall, and persons described in paragraphs (b) and (c) of this section may, be authorized by the Department to receive access to proprietary information if they comply with this subpart and such other conditions imposed upon them by the Department:

(a) The members of, and appropriate staff of, a binational panel or extraordinary challenge committee;

(b) Counsel to participants in panel reviews and professionals retained by, or under the direction or control of such counsel, provided that the counsel or professional does not participate in competitive decision-making activity (such as advice on production, sales, operations, or investments, but not legal advice) for the participant represented or for any person who would gain competitive advantage through
§ 356.10 Procedures for obtaining access to proprietary information.

(a) Persons who must file an application for disclosure under protective order. In order to be permitted access to proprietary information in the administrative record of a final determination under review by a panel, all persons described in §§356.9 (a), (b), (d), (e), (f) and (g) shall file an application for a protective order. The procedures for applying for a protective order described in paragraph (b) of this section apply as well to amendments or modifications filed by persons described in §356.9.

(b) Procedures for applying for a protective order—(1) Contents of applications.

(i) The Department has adopted application forms for disclosure of proprietary information which are available from the United States section of the Secretariat or the Central Records Unit, room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. The application forms may be amended from time to time.

(ii) Such forms require the applicant to submit a personal sworn statement stating, in addition to such other terms as the Department may require, that the applicant shall:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to the applicant, to any person other than:

1. An official of the Department involved in the particular panel review in which the proprietary information is part of the administrative record;
2. The person from whom the information was obtained;
3. A person who has been granted access to the proprietary information at issue under §356.9; and
4. A person employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as a paralegal, law clerk, or secretary if such person:
   (i) Is not involved in competitive decision-making for a participant in the panel review or for any person that would gain competitive advantage through knowledge of the proprietary information sought; and
   (ii) Has agreed to be bound by the terms set forth in the application for protective order by the counsel, professional, panelist, or committee member;

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 1904 of the Agreement;

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return