§ 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(e)(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) Information releasable under administrative protective order—(i) 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.

(ii) Electronic databases. In accordance with §351.300(c)(3), an electronic database need not contain brackets. The submitter must select the security classification “Business Proprietary Document—May Be Released Under APO” at the time of filing to request business proprietary treatment of the information contained in the database. The public version of the database must be publicly summarized and ranged in accordance with §351.304(c).

(2) Information claimed to be exempt from disclosure under administrative protective order. (i) If the submitting person claims that there is a clear and
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§ 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 business days after the day on which the information was submitted. The Secretary will then determine the status of the information in dispute. If the business proprietary status of the information remains in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.