

§ 165.5

19 CFR Ch. I (4–1–20 Edition)

information. If the submitting interested party claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. The public version must be clearly marked as a public version on the first page.

(b) *Nonconforming submissions.* CBP will reject a submission that includes a request for business confidential treatment but does not meet the requirements of paragraph (a) of this section.

(1) *Notice of rejection.* If CBP determines that the claim of confidentiality is nonconforming, it will treat the relevant portion of the submission as business confidential information until the appropriate corrective action is taken or the submission is rejected.

(2) *Corrective action.* The submitting interested party may take any of the following actions within two business days after receiving CBP's notice of rejection:

(i) Correct the problems and resubmit the information by an email message or through any other method approved or designated by CBP;

(ii) If CBP denies a request for business confidential treatment, agree to have the information in question treated as public information;

(iii) Submit other material concerning the subject matter in lieu of the rejected information.

(3) *Effects of rejection.* If the submitting interested party does not take any of the actions in paragraph (b)(2) of this section, CBP will not consider the rejected submission and, if applicable, adverse inferences may be drawn pursuant to § 165.6.

(c) *Information that will not be protected as confidential.* The following information provided by a party to the investigation in an allegation of evasion will not be protected as business confidential information and will be treated as public pursuant to the certification of informed consent referenced in § 165.11(c):

(1) Name of the party to the investigation providing the information and identification of the agent filing on its behalf, if any, and email address for communication and service purposes;

(2) Specification as to the basis upon which the party making the allegation

qualifies as an interested party as defined in § 165.1;

(3) Name and address of importer against whom the allegation is brought;

(4) Description of covered merchandise; and

(5) Applicable AD/CVD orders.

(d) *Certification.* In accordance with paragraph (a)(2) of this section, when providing a public version of their submissions, interested parties must certify that the information they are providing is either their own information (*i.e.*, information from their own business records and not business confidential information of another entity) or information that was publicly obtained or in the public domain.

(e) *Information placed on the record by CBP.* Any information that CBP places on the administrative record, when obtained other than from an interested party subject to the requirements of this section, will include a public summary of the business confidential information as described in paragraph (a)(2) of this section, when applicable.

§ 165.5 Obtaining and submitting information.

(a) *Obtaining of information by CBP.* In obtaining information necessary to carry out its functions and duties under this part, CBP may employ any means authorized by law. In general, CBP will obtain information from its own files, from other agencies of the United States Government, through questionnaires and correspondence, and through field work by its officials.

(b) *Submissions to CBP.* The following requirements pertain to all parties who knowingly make submissions covered in this part:

(1) *Form.* All submissions to CBP must be in writing in the English language or accompanied by an adequate English language translation as they will be part of the record for proceedings and determinations covered in this part. Oral discussions or communications with CBP will not be considered part of the record, unless they are memorialized in a written document that is placed on the record. All submissions must be made electronically

to the designated email address specified by CBP for purposes of the investigation or through any other method approved or designated by CBP.

(2) *Certifications.* Every written submission made to CBP by an interested party under this part must be accompanied by the following certifications from the person making the submission:

(i) “On behalf of the party making this submission, I certify that all statements in this submission (and any attachments) are accurate and true to the best of my knowledge and belief.”

(ii) “On behalf of the party making this submission, I certify that any information for which I have not requested business confidential treatment pursuant to 19 CFR 165.4(a), may be released for public consumption.”

(iii) “On behalf of the party making this submission, I certify that I will advise CBP promptly of any knowledge of or reason to suspect that the covered merchandise poses any health or safety risk to U.S. consumers pursuant to 19 CFR 165.7(a).”

(3) *False statement.* Any interested party that provides a material false statement or makes a material omission or otherwise attempts to conceal material facts at any point in the proceedings may be subject to adverse inferences (see §165.6) and prosecution pursuant to 18 U.S.C. 1001.

(c) *Compliance with CBP time limits—*

(1) *Requests for extensions.* CBP may, for good cause, extend any regulatory time limit if a party requests an extension in a separate, stand-alone submission and states the reasons for the request. Such requests must be submitted no less than three business days before the time limit expires unless there are extraordinary circumstances. An extraordinary circumstance is an unexpected event that could not have been prevented even if reasonable measures had been taken. It is within CBP’s reasonable discretion to determine what constitutes extraordinary circumstances, what constitutes good cause, and to grant or deny a request for an extension.

(2) *Rejection of untimely submissions.* If a submission is untimely filed, then CBP will not consider or retain it in the administrative record and adverse

inferences may be applied, if applicable.

§165.6 Adverse inferences.

(a) *In general.* If the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion pursuant to §165.27 and subpart D of this part.

(b) *Other adverse inferences.* CBP may also apply an inference adverse to the interests of a party based on a prior determination in another CBP investigation, proceeding, or action that involves evasion with respect to AD/CVD orders, or any other available information.

(c) *Application.* An adverse inference described in this section may be used with respect to the importer of the covered merchandise, or the foreign producer or exporter of the covered merchandise without regard to whether another party involved in the same transaction or transactions under examination has provided the information sought by CBP, such as import or export documentation.

§ 165.7 Protection of public health and safety.

(a) *Notification to CBP.* Any interested party, including an importer, must promptly notify CBP if it has knowledge or reason to suspect that the covered merchandise may pose a health or safety risk to U.S. consumers at any point during the proceedings described in this part.

(b) *Transmission by CBP.* During the course of an investigation or administrative review of a determination as to evasion under this part, CBP will consider whether the covered merchandise may pose a health or safety risk to U.S. consumers and will take into account any notification received under paragraph (a) of this section. CBP will promptly transmit information to the appropriate Federal agencies for purposes of mitigating the risk and will