

**DEPARTMENT OF COMMERCE****International Trade Administration****19 CFR Part 351**

[Docket No.100614263–1331–02]

RIN 0625–AA84

**Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Department of Commerce (“the Department”) is amending its regulations governing the submission of information to the Department in antidumping duty (“AD”) and countervailing duty (“CVD”) proceedings. These amendments will incorporate changes resulting from the Department’s implementation of an electronic filing and documents management program. More detailed procedures for electronic filing are set forth in a document separate from the regulations that is entitled “IA ACCESS Handbook On Electronic Filing Procedures” (“IA ACCESS Handbook”), which the Department has published on its Web site at <http://iaaccess.trade.gov>.

**DATES:** *Effective Date:* The effective date of this final rule is August 5, 2011. This final rule will apply to all AD/CVD proceedings that are active on the effective date and all AD/CVD proceedings initiated on or after the effective date.

**FOR FURTHER INFORMATION CONTACT:** Evangeline Keenan, Director of APO/Dockets Unit, Import Administration at (202) 482–3354; or Brian Soiset, Attorney, Office of the General Counsel, Office of Chief Counsel for Import Administration at (202) 482–1284.

**SUPPLEMENTARY INFORMATION:****Background**

On September 28, 2010, the Department published proposed amendments to the rules governing the submission of information to the Department in antidumping duty (“AD”) and countervailing duty (“CVD”) proceedings and requested comments from the public. 75 FR 44163 (September 28, 2010) (“Proposed Rule”). The Proposed Rule included changes resulting from the Department’s implementation of an electronic filing and documents management program named Import Administration Antidumping and Countervailing Duty

Centralized Electronic Service System, or IA ACCESS. The Department conducted a pilot program to test IA ACCESS from July 1, 2010 through September 30, 2010. 75 FR 32341 (June 8, 2010); *Import Administration IA ACCESS Pilot Program, Public Notice and Request For Comments; Correction*, 75 FR 34960 (June 21, 2010).

The Department received numerous comments on its Proposed Rule and pilot program. The Proposed Rule, the comments received, and this notice can be accessed using the Federal eRulemaking Portal at <http://www.Regulations.gov> under Docket Number ITA–2010–0003. After analyzing and carefully considering all of the comments that the Department received in response to the Proposed Rule and after review of the experience gained during the IA ACCESS Pilot Program and the comments thereto, the Department has amended certain provisions of the Proposed Rule and is publishing its final regulations. In addition, the Department has addressed below the comments received pertaining to the pilot program, implementation, and other technical aspects of IA ACCESS and the procedures for the release of public and business proprietary information using IA ACCESS.

**Explanation of Particular Provisions**

*Sections 351.103(a), 351.103(b), 351.103(c), and 351.103(d). Electronic and Manual Filing of Documents and Service Lists*

Sections 351.103(a) and 351.103(b) describe the functions of Import Administration’s Central Records Unit (CRU) and Administrative Protective Order and Dockets Unit (APO/Dockets Unit), as well as their location and office hours. The prior regulation stated that one function of the CRU is to maintain the Subsidies Library. The new regulation states that the Subsidies Library is maintained by Import Administration’s Subsidies Enforcement Office. The Department also amended § 351.103(a) to reflect that CRU is now located in Room 7046 of the Herbert C. Hoover Building. The Department also amended sections 351.103(a) and 351.103(b) to specify that the office hours pertain to Eastern Time and to clarify that the Department’s official address is 14th Street and Constitution Avenue, NW. Additionally, the Department deleted an extraneous period in “NW” in the addresses of the CRU and the APO/Dockets Unit.

The prior regulation provided, in § 351.103(c), that although a party is free to provide the Department with a

courtesy copy of a document, a document is not considered to be officially received by the Department unless it is submitted to the Import Administration’s APO/Dockets Unit in Room 1870 and stamped with the date and, where necessary, the time of the receipt. To implement electronic filing procedures, the Department is amending the regulation so that the Department will consider a document to be officially received by the Department only when it is filed electronically in its entirety using IA ACCESS, in accordance with § 351.303(b)(2)(i), or, where applicable, filed manually in the APO/Dockets Unit in accordance with § 351.303(b)(2)(ii). The Department also deleted the reference to courtesy copies of a document in the final rule. Because the Department will now require that documents be filed electronically, Import Administration staff will have faster access to filed submissions, thus reducing the need for courtesy copies.

With regard to manual filing, the Department had stated in the Proposed Rule that it would provide exceptions to the electronic filing requirement, but if a submitter experiences difficulty in filing a document electronically under circumstances for which “an” exception applies, the Department will consider the ability of the submitter and may modify the electronic filing requirement on a case-by-case basis. One commenter stated that this explanatory language in the Proposed Rule stood in contrast with the actual language in proposed § 351.303(b)(2), which stated that “if a submitter is unable to comply with the electronic filing requirement under certain circumstances for which no exception applies, the submitter must notify the Department promptly of any difficulties encountered in filing the document electronically.” *Proposed Rule*, 75 FR at 44164 (emphasis added). The commenter stated that the Department should unconditionally allow the relevant exception to apply, rather than make each situation a judgment call regarding the surrounding circumstances. The Department had made an inadvertent error in the explanatory language for § 351.103(c) in the Proposed Rule. The Department had intended to state that if a submitter experiences difficulty in filing a document electronically for which no exception applies, the submitter must notify the Department promptly of any difficulties encountered in filing the document electronically. However, the Department has amended sections 351.103(c) and 351.303(b)(2) so this language was not ultimately included in the final rule.

Section 351.103(d)(1) of the prior regulation required each interested party to file a letter of appearance separately from any other document filed with the Department, with the exception of a petitioner filing a petition in an investigation. The Department is amending the regulation to specify that it is this letter of appearance that triggers the interested party's inclusion in the public service list for the segment of the proceeding. The new regulation also refers to the definition of "interested party" under § 351.102(b)(29) to improve and clarify the explanation of how an interested party is placed on the public service list.

One commenter suggested that the notice of appearance should also indicate whether that person prefers to or consents to electronic service (*i.e.*, e-mail) for public documents and/or public versions of business proprietary documents. The Department has not adopted this suggestion because this rulemaking was intended to change the rules with regard to the filing of documents using IA ACCESS. It was not intended to change the rules regarding the method of serving documents. With the exception of the service of APO applications in § 351.305(b)(2) and the requirement that parties serve the complete final business proprietary document when bracketing changes have been made in § 351.303(c)(2)(ii), the Department has not changed the service requirements in the regulations.

*Sections 351.104(a), 351.104(b), 351.302(a), 351.302(c), and 351.302(d). Return of Material, Record of Proceedings, Extension of Time Limits, and Return of Untimely Filed or Unsolicited Material*

#### *Section 351.104*

Section 351.104(a) pertains to the official record of AD and CVD proceedings. The prior regulation stated that the CRU will maintain an official record of each proceeding. The Department is deleting the reference to the CRU because the official record will not be located in the CRU for documents filed after IA ACCESS is implemented. Instead, for those documents, IA ACCESS will comprise the official record. However, the CRU will continue to maintain the official record in paper form for those documents that were filed prior to the implementation of IA ACCESS.

In addition, § 351.104(a) previously stated that the Secretary will not use factual information, written argument, or other material that the Secretary returns to the submitter. The regulation also specifies the circumstances under

which the official record will include a copy of a returned document. Sections 351.302(a) and 351.302(d) also previously set forth the procedures for requesting an extension of time limits and procedures for returning untimely filed submissions. The Department is amending these sections by replacing the term "return" with "reject." Because the Department will use an electronic filing system, rather than physically returning inadmissible electronic submissions, the Department will reject such submissions and send written notice of the rejection to the submitter.

Section 351.104(b) pertains to the public record of AD and CVD proceedings. The prior regulation specified that the public record of each proceeding will be maintained by the CRU. In the Proposed Rule, the Department proposed adding a statement that the public record will also be accessible online at <http://www.trade.gov/ia>. The Department is removing the reference to CRU in this final rule because, as explained above, IA ACCESS, not CRU, will comprise and contain the public record for documents filed after its implementation. The CRU will continue to maintain the public record in paper form for those documents that were filed prior to implementation of IA ACCESS. During the first phase of implementation (which begins on the effective date of this final rule), the public will be able to access the public record on IA ACCESS from computers in the CRU. After the second phase of implementation of IA ACCESS, the public will be able to access the public record on the Department's Web site from any computer with Internet access. Because the public record will not be accessible from the Web site on the effective date of this final rule, the Department is deleting the reference to the Web site.

#### *Section 351.302*

Section 351.302(c) addresses procedures for requesting an extension of a specific time limit. The Department proposed amending the regulation by including a reference to § 351.303 in order to specify that an extension request be made in writing and properly filed using IA ACCESS. One commenter stated that the Department should clarify whether its proposed amendment to require extension requests to be made in writing suggests that telephonic or written requests by e-mail will never be accepted under the new regulations. The commenter stated that the Department must recognize that under certain circumstances, such as a power outage or a service outage on the part of

an Internet service provider, it may be impossible to timely and properly file a written extension request with the Department through electronic filing. The Department has not changed the requirement that an extension request must be in writing and properly filed. The only change in the final regulation is a reference to the requirement that the extension request must be filed consistent with § 351.303, which contains the electronic filing requirement as well as provisions for when manual filing may be appropriate. In addition, as discussed below, if a user experiences difficulty in electronically filing an extension request or any other submission, a Help Desk line will be available during business hours to assist the user.

*Sections 351.303(a), 351.303(b), 351.303(c), 351.303(d), and 351.303(f). Filing, Document Identification, Format, Specifications and Markings, and Service*

The Department is amending § 351.303 to require electronic filing of all documents and to specify when manual filing will be accepted as an alternative. The Department is also clarifying the identification of documents and correcting minor typographical errors in this section.

#### *Section 351.303(a). Introduction*

The Department is amending the heading for § 351.303 to add the term "Document Identification." The Department is also amending § 351.303(a) to include "documentation identification" in the list of procedural rules covered by this regulation.

#### *Section 351.303(b). Filing*

The Department is amending § 351.303(b) to add subparagraphs (1) through (4). Section 351.303(b) previously required all documents to be addressed and submitted to the APO/Dockets Unit, Room 1870 between the hours of 8:30 a.m. and 5 p.m. on business days. The Department is amending this section by designating it as subparagraph (1). The Department is also including in § 351.303(b)(1) the term "Eastern Time" to clarify the time a submission is due when the submitter may be filing the submission from a different time zone. The Department is also omitting the period after "NW" in the Department's address, which was a typographical error.

In the Proposed Rule, the Department proposed specifying that manually filed submissions must be submitted between the hours of 8:30 a.m. and 5 p.m. Eastern Time on business days, but that electronically filed submissions must be

filed by 5 p.m. Eastern Time on the due date. The reason for the distinction is that manually filed submissions may only be filed during business hours, but electronically filed submissions may be filed at any time, provided that they are filed in their entirety by 5 p.m. Eastern Time on the due date.

Two commenters requested clarification of whether electronically filed submissions will be due by 5 p.m. on the original due date, even if it falls on a weekend, holiday or non-business day. The commenters stated that parties whose deadlines do not fall on a business day will be at a disadvantage to parties whose deadlines fall on a business day and that there is no reason why the Department should grant less time for electronically filed documents on days when the Department is closed. Another commenter stated that electronic filing largely eliminates the rationale for a 5 p.m. deadline and suggested that the Department should require that documents to be filed prior to midnight on that date. The same commenter proposed, alternatively, that if the Department will maintain its requirement that different filing events be used for files that exceed the system's file size limit, then the Department should adopt other procedures to avoid harsh results. For example, the commenter suggested setting the deadline for such large documents at 6 p.m.

In response to the first two comments, the Department is amending the language in § 351.303(b)(1) to clarify that where the due date for either an electronic or manual filing falls on a non-business day, the Secretary will accept documents filed on the next business day. With regard to the proposals to change the filing deadline to midnight or, alternatively, 6 p.m. for submissions requiring multiple filing events, the Department has not adopted either proposal. The APO/Dockets Unit, which will continue to process manually filed documents, will maintain its current hours of operation, 8:30 a.m. through 5 p.m. Eastern Time, in order to provide equal treatment for both electronic and manual submissions. In addition, the Department's technical support for electronic filing will not be available after 5 p.m., so the Department believes that a 5 p.m. deadline is appropriate.

#### *Electronic Filing Requirement and Exceptions Thereto*

The Department is adding § 351.303(b)(2), which sets forth the electronic filing requirement using IA ACCESS and the exemptions to that requirement. This regulation also refers

to the IA ACCESS Handbook, which contains detailed filing procedures that a submitter must follow. The IA ACCESS Handbook is available on the Department's Web site at <http://www.trade.gov/ia>.

In the Proposed Rule, the Department stated that exceptions to the electronic filing requirement will be set forth in the IA ACCESS Handbook. Proposed § 351.303(b)(2)(i) stated that if a submitter were unable to comply with the electronic filing requirement under certain circumstances for which no exception in the IA ACCESS Handbook applies, in accordance with section 782(c) of the Tariff Act, as amended, the Department will consider the ability of the submitter and may modify the electronic filing requirements on a case-by-case basis.

The Department received numerous comments with regard to this regulation. Several commenters expressed the need for the Department to disclose the specific exceptions to or exemptions from the electronic filing requirement. One commenter stated that exceptions to the electronic filing requirement should be set forth in the regulations themselves, despite the commenter's agreement with the Department's rationale that the exceptions may evolve over time. The commenter stated that at a minimum, the initial list of exceptions should be inserted in the regulations with a notice that the list be amended as changes are made and that, until such time as the regulations can be updated, unpublished changes may be temporarily found on the Department's Web site. Another commenter requested that the Department establish a standard set of exemptions which do not require a case-by-case decision. In addition, the commenter proposed the development of a bulky document standard, whereby documents over a certain size would be routinely filed manually, without the need to request prior authorization on a case-by-case basis.

After considering these comments, the Department is including in § 351.303(b)(2)(ii)(A) two exemptions from the electronic filing requirement. First, as proposed by one commenter, the Department has adopted a bulky document standard, whereby documents exceeding 500 pages may be filed manually, with the inclusion of a cover sheet and separator sheets generated using IA ACCESS. The Department finds that giving parties the option of manually filing bulky documents will facilitate the processing and review of such documents as parties make the transition to an electronic filing system. Manual filing is optional for such documents, and the

Department anticipates that parties will prefer to electronically file bulky documents as they become more accustomed to electronic filing.

In determining whether a document qualifies as bulky, a submitter must not include database printouts in the page count, and as stated in § 351.303(c)(3), and further discussed below, database printouts need not be submitted to the Department. The Department has included detailed instructions regarding such manual filings in the IA ACCESS Handbook, and parties must follow those instructions.

The Department has also exempted large database files from the electronic filing requirement in § 351.303(b)(2)(ii)(A). As explained in detail in the IA ACCESS Handbook, the Department requires database files exceeding the maximum file size (currently 20 MB) to be filed manually in the APO/Dockets Unit on a CD or DVD as a separate submission accompanied with a cover sheet generated in IA ACCESS. Detailed instructions regarding the filing of database files are included in the IA ACCESS Handbook and parties must follow those instructions. Unlike the bulky document exemption, the large data file exemption is mandatory.

One commenter stated that the IA ACCESS system should have flexibility to allow exceptions to mandatory electronic filing and that the Department should make accommodations for technical difficulties.

In response to these comments, in § 351.303(b)(2)(ii)(B), the Department has specified that if the IA ACCESS system is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour between 12 noon and 4:30 p.m. Eastern Time, or for any duration of time between 4:31 p.m. and 5 p.m. Eastern Time, then a person may manually file the document in the APO/Dockets Unit. The Department will provide notice of such technical failures on its Help Desk line. Procedures for manual filing in this situation are provided in the IA ACCESS Handbook.

Apart from the two exemptions specified in § 351.303(b)(2)(ii)(A) and the IA ACCESS technical failures described in § 351.303(b)(2)(ii)(B), the Department has also specified in § 351.303(b)(2)(ii)(C) that if a submitter is unable to comply with the electronic filing requirement, as provided in § 351.103(c) and in accordance with section 782(c) of the Act, the submitter must notify the Department promptly of the reasons the submitter is unable to file the document electronically, and

provide a full explanation and suggested alternative forms in which to submit the information. The Department will consider the ability of the submitter and modify the electronic filing requirement on a case-by-case basis. As such, if an exception is made, it will apply to the submitter requesting it for the document on which the modification is being requested. An exception made under this provision will not serve as a blanket exemption for all submitters for future submissions.

One commenter stated that prior to finalizing any regulations applicable to the electronic filing process, the Department should disclose its entire list of exceptions and allow the public to comment on them. This commenter stated that doing so would allow parties to work with the Department in reducing or expanding the list of exceptions based on parties' experiences with other electronic filing systems.

Although the Department indicated in the Proposed Rule that it wanted the flexibility to amend the list of exceptions on an ongoing basis, the Department has determined that it is more appropriate to explicitly include the above exemptions in the regulations, subject to amendment through the notice and comment rulemaking process. Should the Department determine that additional exemptions are appropriate, it will amend the regulations as needed and solicit comments at that time.

One commenter suggested that the Department should create exceptions for petitions for the initiation of an AD or CVD investigation, *pro se* respondents, small businesses, and documents not readily susceptible to scanning such as physical exhibits. We have not adopted these proposals. The Department has decided not to create standard exceptions based on the document type being filed, such as a petition. Doing so would result in the imposition of different rules for counsel to petitioners and counsel to respondents. The commenter has not explained why *pro se* respondents and small businesses should automatically be exempt from the electronic filing requirement. Indeed, the Department believes that electronic filing will ultimately reduce the cost and burden on outside parties and thus be beneficial to *pro se* respondents and small businesses. The Department will also continue its practice of working closely with *pro se* respondents and small businesses in assisting them through the filing process. With regard to this commenter's request for an exception for physical exhibits, we have never required the submission of physical

exhibits: Therefore we will not make an electronic filing exception for them. The Department prefers that rather than submit a physical exhibit, which may be large, cumbersome, or even perishable, a submitter should include in its submission a narrative description and/or photograph or video format so that the characteristics of the physical exhibit may be included on the record of the proceeding. If the submitter wishes to submit a physical exhibit, the submitter will need to obtain prior written permission from the Department for an exception to file the physical exhibit manually in accordance with § 351.303(b)(2)(ii)(C).

#### File Size Limitations

One commenter recommended the Department consider a larger file size limitation, citing examples to the file size limits of the U.S. International Trade Commission and the Court of International Trade. Another commenter stated that if file size limits are imposed, they should be no less restrictive than the U.S. International Trade Commission's limits: 50 separate attachments of 25 MB each in a single filing event. Another commenter noted that because documentation is often submitted to a legal representative in its original form and needs to be submitted to the Department in Adobe portable document format ("PDF") or JPEG format, the memory size of such files is much larger than those prepared in Microsoft Word or Excel. This could result in possibly dozens of electronic submissions, requiring the Department to piece together multiple sets of files. Thus, the commenter recommended increasing the memory limitation of the size of files to the largest possible under the electronic filing system being proposed, including both for the overall memory threshold and the individual attachment threshold. Another commenter stated that to avoid the need for separate filing events, the Department should impose limits only on the size of the individual attachments, without limits on the total file size. The commenter further stated that repetitive entry of identical information is burdensome and may lead to error. Finally, two commenters recommended including the ability to link documents, so that the Department can more easily piece together submissions where the individual sections exceed the size limitation.

With respect to the comment on setting limits on file size, the Department has set the individual document file (*i.e.*, case briefs, general comments, *etc.*) size limit to 4 MB per file. A document can be separated into

numerous files, which can be uploaded in batches of five, provided each individual file is no larger than 4 MB and the total combined file size of the grouping does not exceed 20 MB. The user may upload up to a total of 99 additional files, grouped in combinations of five, with the same individual and combined file size as mentioned, and these individual files will be linked together, as suggested by one commenter. In addition, the Department has set the individual data file (*i.e.*, SAS files, databases, *etc.*) size limit to 20 MB per file. Thus, the Department expects that IA ACCESS will be able to accommodate large documents which will be filed as linked, smaller files. The Department added this feature during the last month of the Release 1 pilot program.

The Department has determined 4 MB to be the appropriate individual document file size limit and 20 MB to be the appropriate individual data file size limit based on numerous factors, each of which have been considered and balanced. Such factors include the ability of the IA ACCESS system to accommodate the high volume of anticipated submissions based on current server resources, the difficulty for Department personnel to work with larger files, and the available Internet bandwidth to users throughout the world, which may limit their ability to upload larger documents. The Department has also determined that because data files are submitted less frequently than document submissions, the IA ACCESS system is capable of accepting individual data files of 20 MB in size. In addition, the larger individual file size for data meets the important need of keeping databases intact.

Although the Department has determined 4 MB and 20 MB to be the appropriate individual file sizes for documents and data files, respectively, at this time, the Department anticipates that the attachment and overall file size requirement may change over time as Internet resources expand throughout the world and the Department gains experience in administering the IA ACCESS system and using larger files.

As for the commenter's statement that documentation must be submitted in JPEG format, IA ACCESS does not currently accept files in JPEG format.

The Department acknowledges that the U.S. International Trade Commission and Court of International Trade have different file size limitations for electronic filing. However, the Department must base the individual file size limitation for IA ACCESS upon the specific needs of the Department's AD/CVD proceedings, such as the

factors noted above as well as the type, size, frequency, and security classification of documents. Thus, the Department has not chosen to align its file size limitations to those of the U.S. International Trade Commission and the Court of International Trade.

#### *Section 782(c) of the Act*

One commenter noted that the Department did not propose to require submitters who notify the Department promptly of any difficulties encountered in submitting information to the Department to also provide a suggested alternative method for submitting the information, which seems to be required under section 782(c) of the Act. The commenter suggested that the Department specifically reference this obligation in its new regulation, particularly when the failure to comply with the requirement could substantially harm the submitter in relation to its respective proceeding and the “burden” on the Department of including notification of the requirement in its regulation is minimal.

In its explanation of § 351.303(b)(2), which addresses these requirements of section 782(c) of the Act, the Department noted that it did not discuss the requirement to propose an alternative method of submission in the regulations because it anticipates that the alternative suggestion would be for the submitter to file the submission manually. However, the Department stated that this omission does not affect a submitter’s obligation to satisfy such a requirement. The Department agrees with the commenter that the language in section 782(c) of the Act should be included in § 351.303(b)(2)(ii)(C) of the new regulations to put the public on notice of the requirement. Accordingly, the Department has amended § 351.303(b)(2)(ii)(C) to include the statutory requirement under section 782(c) of the Act that the submitter suggest alternative forms in which it is able to submit the requested information.

The Department is adding § 351.303(b)(2)(ii)(D) to provide the number of hardcopies required if a document is filed manually. Specifically, a submitter must manually file in the APO/Dockets Unit one hardcopy of each document, with the exception of a business proprietary document filed under the bulky document exemption, which requires two copies. This regulation also specifies that a manual filing requires submission of a cover sheet generated in IA ACCESS in accordance with § 351.303(b)(3).

The Department is adding § 351.303(b)(3) to specify that a cover sheet is required for manual submissions. A submitter must generate the cover sheet online at <http://iaaccess.trade.gov>, and print it for submission to the APO/Dockets Unit along with the hardcopy manual submission. The purpose of the cover sheet is to provide the Department with information indicating, among other things, the party filing the submission, the segment of the proceeding, and the type of submission being filed. The cover sheet will contain a barcode that will be used to identify and track the submission. The Department has removed the proposed requirement that a person complete a coversheet for a document that is filed electronically. Although IA ACCESS requests the same information for an electronic filing as it requires on the cover sheet for a manual filing, in the electronic filing mode, that information is referred to as “IA ACCESS Document Information,” not a cover sheet. Therefore, the Department has deleted this reference from the final rule. The Department had previously proposed including a statement that the person submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet. The Department has also removed that statement from the final rule because the information appearing on the cover sheet already appears on the submission itself, the accuracy of which is already subject to certifications of factual accuracy that accompany the submission.

The Department is adding § 351.303(b)(4) to identify and distinguish among the five document classifications that may be submitted to the Department. The Department has observed confusion among interested parties with regard to the identification and labeling of documents, especially with regard to documents containing double-bracketed information. Thus, the Department finds it necessary to standardize the identification and labeling of all documents. In addition, a submitter will need to identify the document properly when inputting the document information in IA ACCESS before filing the document. The document identification will determine who will have access to the document. Misidentification of a document may result in the unauthorized disclosure of business proprietary information. The Department is also moving the definition of “business proprietary version” from § 351.303(c)(2)(i) to § 351.303(b)(4). In addition, the Department is using the phrase

“business proprietary document or business proprietary/APO version, as applicable” rather than only “business proprietary version” to make the terminology consistent with that in proposed § 351.303(b)(4)(i), (ii), and (iii).

Accordingly, the Department is adding sections 351.303(b)(4)(i), (ii), and (iii) to identify and define the three types of business proprietary submissions. The document described in § 351.303(b)(4)(i) is called “Business Proprietary Document—May Be Released Under APO.” This business proprietary document contains only single-bracketed business proprietary information which a party agrees to release under administrative protective order (“APO”).

The document classifications described in § 351.303(b)(4)(ii) and (iii) are business proprietary documents that use double-bracketing. The document described in § 351.303(b)(4)(ii) is called “Business Proprietary Document—May Not Be Released Under APO.” This document may contain both single and double-bracketed business proprietary information, but the submitter does not agree to the release of the double-bracketed information under APO. In this document, the information inside the double brackets is included.

The third document classification described in § 351.303(b)(4)(iii) is called “Business Proprietary/APO Version—May Be Released Under APO.” It must contain only single-bracketed business proprietary information. The submitter must omit the double-bracketed business proprietary information from this version because this version will be released under APO. This is why the term “APO Version” is included in the name of the document.

The Department is adding § 351.303(b)(4)(iv) and (v), which identify the two types of public submissions. The first is the “Public Version,” which corresponds to a business proprietary document, except it omits all business proprietary information, whether single or double-bracketed. This section also refers to the specific filing requirements for filing the public version, which is found in § 351.304(c). The second is the “Public Document,” which contains only public information. In the Proposed Rule, the Department had stated that there is no corresponding business proprietary version for a public document. For the final rule, the Department is amending § 351.303(b)(4)(v) to change the term “business proprietary version” to “business proprietary document” in order to make the terminology

consistent with § 351.303(b)(4)(i) and (ii).

One commenter disagreed with the renaming of “business proprietary version” to “business proprietary document.” The commenter stated that the term “business proprietary version” implies that a public version will be filed on the next business day, while “business proprietary document” implies that no public version will be filed. The commenter also stated that the change will generate more confusion for a term that has become standard at both the Department and the U.S. International Trade Commission and that the existing confusion will be rectified by the inclusion of the definition of “APO version” in the amended regulations. Finally, the commenter stated that differing terminology may create unintended confusion regarding documents that must be filed at both agencies.

The Department does not agree that the proposed amendment will generate confusion. A public version of a business proprietary document must always be filed in accordance with § 351.304(c), and it therefore must correspond to the business proprietary document. It is possible that the commenter meant that when a business proprietary document is filed on the first day, in accordance with the one-day lag rule, it is in fact filed without the public version. However, the Department is not basing the document classifications on when the documents/versions are filed relative to one another. The Department’s reasoning stems from the content of the submissions. When compared to the other document classifications, the business proprietary document is the complete document and contains all business proprietary information enclosed in brackets. Thus, it should be referred to as a “document” and not a “version.” The public version and APO version are versions of that document and are therefore named as such.

*Section 351.303(c). Filing of Business Proprietary Documents and Public Versions Under the One-Day Lag Rule; Information in Double Brackets*

In § 351.303(c)(1), 351.303(c)(2)(ii), and 351.303(c)(2)(iii), the Department is deleting the requirement that a person must file multiple copies of each submission with the Department (*i.e.*, six copies of public documents, or the combination of: (A) six copies of the business proprietary version and (B) three copies of the public version of a document). The Department has replaced these sections with § 351.303(b)(2)(ii)(D), which specifies

the number of hard copies required if a document is filed manually. The original reason for these requirements concerning copies of a document was to make a copy available to each person in the Import Administration team administering the proceeding. However, with implementation of electronic filing and the uploading of manually filed submissions by CRU onto IA ACCESS, the Import Administration team will be able to access all submissions electronically and print them from IA ACCESS, making additional copies unnecessary. In § 351.303(c)(2)(i), the Department is deleting the sentence defining “business proprietary version” because it has been included in proposed § 351.303(b)(4).

Section 351.303(c)(2)(i) of the prior regulation stated that a person must file one copy of the business proprietary version of any document with the Department within the applicable time limit. The Department is deleting the reference to the copy and changing “business proprietary version” to “business proprietary document” to make the terminology consistent with that in 351.303(b)(4)(i) and (ii). The Department is also clarifying that the one-day lag rule does not apply to a petition, amendments to a petition, or any other submission filed prior to the initiation of an investigation. This amendment reflects the Department’s practice not to apply the one-day lag rule during the 20-day pre-initiation period. This practice ensures that a business proprietary document and public version are filed simultaneously in their final form. When the Department has only 20 days to initiate an investigation, waiting one business day for the final version of a document further shortens an already short deadline, especially when petitioners may be required to file responses to requests for additional information. In addition, because of the Department’s obligation to provide a copy of the public version of the petition and all amendments to the petition to embassies of exporting countries named in a petition under § 351.202(f), the Department does not allow submissions under the one-day lag rule so that the embassies may obtain their copies as expeditiously as possible.

Section 351.303(c)(2)(ii) of the prior regulation stated that, although a person must file the final business proprietary version of a document with the Department, the person may serve only those pages containing bracketing corrections on other persons. The Department is amending this regulation to replace “business proprietary version of a document” with “business

proprietary document” to make the terminology consistent with that in § 351.303(b)(4)(i) and (ii). This amendment will not change the requirement that a person must file a complete, final business proprietary document on the first business day after the business proprietary document is filed. The Department is also amending this regulation to specify that the final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day, except for any bracketing corrections and the omission of the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing,” in accordance with § 351.303(d)(2)(v). We believe emphasizing that the two documents must be identical with the exception of bracketing corrections and the requisite warning pertaining to bracketing is necessary because, in our experience, there appears to be some confusion about whether the dates or the content of the cover letters of the two documents should remain unchanged. With this amendment, the Department hopes to clarify that, except as discussed above, the two documents must be identical.

The Department is also amending this regulation to require persons to serve the complete final business proprietary document on other persons only if there are bracketing corrections. One commenter expressed agreement with this proposed change in its comments on the Proposed Rule. The new regulation also makes explicit that if there are no bracketing corrections, a person need not serve a copy of the final business proprietary document on persons on the APO service list. The reason service is not required in the absence of bracketing corrections is that in accordance with § 351.303(f), a person will have already served the business proprietary document filed on the due date. If there are no bracketing corrections, then there is no need to serve the business proprietary document again.

Section 351.303(c)(2)(iv) of the prior regulation stated that if a person serves authorized applicants with a business proprietary version of a document that excludes information in double brackets pursuant to § 351.304(b)(2), the person must simultaneously file with the Department one copy of those pages in which information in double brackets has been excluded. The Department is amending this section by adding a reference to § 351.303(b)(4)(iii) and correctly identifying the document type as the “Business Proprietary/APO Version.” The Department now requires

a person to file the complete Business Proprietary/APO Version of the document, as opposed to only those pages in which the double-bracketed information has been excluded, so that it has the complete document for the official record. The original purpose of requiring a copy of only the pages where the double-bracketed information has been omitted was to conserve the amount of paper filed by the submitter. However, because the document will be filed electronically, the submitter will be able to reduce the amount of paper used while simultaneously ensuring that the Department receives the same submission that is served on the APO authorized applicants.

In addition to the foregoing amendments to § 351.303(c)(1) and 351.303(c)(2)(i)–(iv), the Department replaced the term “business proprietary version” with “business proprietary document” in these sections, as well as in the title of § 351.303(c). These amendments make the terminology consistent with that in § 351.303(b)(4)(i), (ii), and (iii).

Section 351.303(c)(3) previously required that if factual information is submitted on computer media at the request of the Secretary, it must be accompanied by the number of copies of any computer printout specified by the Secretary. This regulation also required that information on computer media must be releasable under APO, consistent with § 351.305. The Department is deleting the statement that the Secretary may require submission of factual information on computer media because it implies that the Secretary may make such requests only occasionally. Over time, the Department has requested with increasing frequency the submission of sales and cost databases to accompany questionnaire responses. This practice has become the norm rather than the exception. In order to clarify how such electronic databases should be submitted in conjunction with the electronic filing requirement, the Department is amending this section to require that all sales files, cost files, or other electronic databases submitted to the Department be filed electronically in the format specified by the Department. For the final rule, the Department has revised this language to clarify the situation in which a submitter would file a database manually, citing to § 351.303(b)(2)(ii)(A), which requires large data files to be filed manually. The Department is also amending § 351.303(c)(3) to remind submitters that all electronic database information must be releasable under APO regardless of

whether it is filed electronically or manually.

The Department wants to emphasize that the complete databases submitted by the parties will now be maintained in an electronic format in the official and public files. Previously, parties submitted only one electronic copy of the database, which became the working copy used by the Department in performing its calculations. The official and public records only contained hardcopy printouts of the databases, and oftentimes, the printouts reflected only a portion of the databases if they were voluminous. Because the Department will have the capability to accept the databases in an electronic format, the Department has had to consider how parties can bracket or seek business proprietary treatment for information on the databases when the format in which the data is presented does not allow for the use of brackets to indicate the information for which the submitter is requesting business proprietary treatment. Thus, the Department has determined that it will deem all databases containing business proprietary information that are submitted in electronic format as business proprietary submissions. Brackets will not be required on the electronic databases. However, the Department urges submitters to include, where possible, headers or footers requesting business proprietary treatment of the information on the databases. For public versions of databases, the Department requires submitters to submit the public version in a PDF format. The public version of the database must still be publicly summarized and ranged in accordance with § 351.304(c). The public version of the database, together with the narrative portion of a questionnaire response, will indicate the fields and values for which the submitter requests business proprietary treatment. Deeming the entire electronic database as business proprietary will not render each and every field and value submitted in the database as eligible for business proprietary treatment.

One commenter stated that the Department already envisions that databases may be filed electronically, where possible, therefore IA ACCESS should accommodate the filing of electronic files other than PDF files, where appropriate. The Department has selected PDF as the appropriate file format for documents because the Department seeks a uniform format that is widely available, acceptable by users, and compatible with most computer systems. Furthermore, as a PDF, the content of the submissions cannot be

altered and the PDF format ensures that the Department will be able to open the submissions in the future. With regard to databases, submitters should refer to the questionnaire or specific request for information by the Department to determine the acceptable formats for the requested databases. The Department has also made available in the IA ACCESS Handbook additional information as to file types accepted in IA ACCESS and specific instructions which parties must follow when filing databases.

#### *Section 351.303(d). Format of Submissions*

The Department is amending § 351.303(d) to make references to the filing terminology consistent with the other terminology used in the rest of this section. Specifically, the Department has replaced the term “copies” with “submissions” because, as stated above, the Department will no longer require a person to file multiple copies of a submission.

Section 351.303(d)(2) provides the specifications and markings required for filing documents with the Department. Paragraph (d)(2) specifies that a person must submit documents on letter-size paper, single-sided, and double-spaced, and that the first page of each document must contain information in the formats described in subparagraphs (i) through (vi). The Department amended paragraph (d)(2) to specify the dimensions of letter-size paper (8½ × 11 inches). Because CRU staff will need to insert all manually filed submissions into a scanner, the Department requires that manually filed documents be bound only with a paper clip, butterfly/binder clip, or rubber band. The omission of binding will ensure that the paper in the submission is not damaged, thereby facilitating the scanning process. Thus, the Department has prohibited the use of stapled, spiral, velo, or other type of solid binding in manual submissions. The Department has also amended paragraph (d)(2) to require the placement of the cover sheet described in paragraph (b)(3) before the first page of the document being manually filed. With regard to electronically filed documents, the new regulation specifies that the document be formatted to print on letter-size (8½ × 11 inch) paper and double-spaced. The new regulation also specifies that spreadsheets, unusually sized exhibits, and databases are best utilized in their original printing format and should not be reformatted for submission.

Section 351.303(d)(2)(iii) of our prior regulation required submitters to indicate on the third line of the upper

right-hand corner the segment of a proceeding for which a document is being filed and, if for a review, the inclusive dates of the review, the type of review, and section number of the Act corresponding to the type of review. The Department is amending § 351.303(d)(2)(iii) to replace the current list of types of segments with a non-exhaustive list. The new regulation also provides a specific date format for use in indicating the period of review, if relevant. The Department has eliminated the requirement that the submitter indicate the relevant section of the Act that corresponds to the type of review for which the document is submitted. The Department has observed that this marking requirement is often overlooked by submitters, and when it is included, submitters often refer only to section 751 of the Act without referring to the specific subsection. Because the new regulation requires a submitter to indicate the specific segment of a proceeding in which a document is being filed, the Department has determined it would be redundant to also require the submitter to specify the particular subsection of the Act corresponding to the type of review.

The Department is also amending § 351.303(d)(2)(v) to make it consistent with the terminology in § 351.303(b)(4). Specifically, the prior regulation required that, on the fifth and subsequent lines of each submission, a submitter must indicate whether any portion of the document contains business proprietary information and, if so, to list the applicable page numbers and state either “Document May Be Released Under APO” or “Document May Not Be Released Under APO.” The Department is changing the terminology so that the term “Document” is replaced with either “Business Proprietary Document –” or “Business Proprietary/APO Version,” as applicable, so that it is consistent with the terminology in § 351.303(b)(4). The Department is also capitalizing the first letter in the words “is” and “be” to correct typographical errors. The prior version of 351.303(d)(2)(v) also stated that the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing” must not be included in “the copies of the final business proprietary version filed on the next business day.” The Department is deleting the term “the copies of” because a submitter will no longer be filing multiple copies of a submission, in accordance with proposed § 351.303(b)(2)(v). The Department is also replacing the term

“business proprietary version” with “business proprietary document” to make the terminology consistent with that in § 351.303(b)(4).

Section 351.303(d)(2)(vi) of the prior regulation required that public versions of business proprietary documents contain the marking requirements in paragraphs (d)(2)(i)–(v) of this section and that the first page is conspicuously marked “Public Version.” The Department is amending this section to refer to both the public version and the business proprietary document in the singular. This amendment clarifies that there is only one public version of a business proprietary document. The Department is also adding subparagraph 351.303(d)(2)(vii) to this section to require the same markings for a “Public Document” as for a “Public Version,” with the exception being use of the word “Document” instead of “Version.” These amendments bring the language in this section into conformity with the document classifications in paragraph (b)(4).

*Section 351.303(f). Service of Copies on Other Persons*

Section 351.303(f) of the prior regulation stated that except as provided in sections 351.202(c), 351.207(f)(1), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail. The Department is changing the reference to § 351.207(f)(1) to § 351.208(f)(1) to correct a typographical error.

Section 351.303(f)(1)(ii) of the prior regulation stated that a party may serve a public version or a business proprietary version of a document containing only the server’s own business proprietary information on persons on the service list by facsimile or other electronic transmission process, with the consent of the person to be served. The Department is changing the reference to “business proprietary version of a document” to “business proprietary document” to make the terminology consistent with that used in § 351.303(b)(4). The Department is also specifying that the business proprietary document may be served on persons on the APO service list and that the public version of such a document may be served on persons on the public service list by facsimile transmission or other electronic transmission process, with the consent of the person to be served.

One commenter asked the Department to clarify in § 351.303(f) that public documents may also be served electronically. The Department has

amended this regulation to include public documents in the types of documents that may be served by facsimile or other electronic transmission with the consent of the party being served.

One commenter stated that changes affecting service of business proprietary information should be introduced gradually, subject to extensive comment. Another commenter stated that the Department should mandate electronic service to parties on the respective service list (where allowed under the Department’s regulations). That commenter noted that electronic service is consistent with the Department’s stated goal of creating efficiencies in both the process and costs associated with filing and maintaining documents, and that electronic service would be consistent with the Court of International Trade’s filing system currently in place. The commenter stated that the Department could expressly state that electronic service will not be mandatory where a document is filed manually.

The Department agrees that changes affecting service of business proprietary information should be introduced gradually and be subject to comment. With the exception of service of APO applications, which were previously required to be served by the same means as they were filed with the Department (§ 351.305(b)(2)), and the requirement that parties serve the complete final business proprietary document when bracketing corrections are made under the one-day lag rule (§ 351.303(c)(2)(ii)), the Department has not changed any of the service requirements in the regulations. The Department has decided to focus on electronic filing, rather than electronic service, at this time. However, parties may continue to consent to electronic service in accordance with § 351.303(f)(1)(ii).

Although the Department had proposed correcting a typographical error in § 351.303(g), that regulation is currently the subject of another rulemaking. See 76 FR 7491 (February 10, 2011). Therefore, the Department has not made any changes to § 351.303(g) in this final rule.

*Sections 351.304(b), 351.304(c), and 351.304(d). Identification of Business Proprietary Information, Public Version, and Returning Submissions That Do Not Conform With Section 777(b) of the Act*

Section 351.304(b)(2)(iii) of the prior regulation stated that “the submitting person may exclude the information in double brackets from the business proprietary information version of the submission served on authorized

applicants.” The Department is amending this sentence to replace “business proprietary information version” with “Business Proprietary/APO Version” to make the terminology consistent with that in § 351.303(b)(4)(iii).

In addition, the Department is amending § 351.304(b)(1) by creating two subsections. Subsection 351.304(b)(1)(i) addresses the identification of business proprietary information in general, and subsection 351.304(b)(1)(ii) addresses the identification of business proprietary information with regard to electronic databases. The Department is specifying in the latter subsection that in accordance with § 351.303(c)(3), an electronic database containing business proprietary information need not contain brackets for the submitter to request proprietary treatment for its information. Instead, 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.

Section 351.304(c) of the prior regulation provided requirements for filing the public version of a business proprietary document. Section 351.304(c)(1) specified, among other things, that the public version must be filed on the first business day after the filing deadline for the “business proprietary version of the submission.” The Department is amending this section to replace “business proprietary version of the submission” with “business proprietary document” to make the terminology consistent with that in § 351.303(b)(4)(i) and (ii).

Section 351.304(c)(2) of the prior regulation specified, among other things, that if a submitting party discovers that it failed to bracket information correctly, the submitter may file a complete, corrected “business proprietary version of the submission” along with the public version. The Department is amending this section to replace “business proprietary version of the submission” with “business proprietary document” to make the terminology consistent with that in § 351.303(b)(4)(i) and (ii).

One commenter asked the Department to amend § 351.304(c), which currently states that if an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. The commenter proposed limiting the amount of information to be summarized from one percent of the portion of the data to one percent of the

entire submission because the ranging of data takes a considerable amount of time and increases the cost of compliance with the regulation. The Department did not propose any changes to this section of the regulations in the Proposed Rule. Further, the Department continues to find that requiring public summarization of one percent of each portion of data best implements section 777(b)(1)(B) of the Act, which requires public summaries of information submitted to the Department, and best serves the ability of the public to participate in the Department’s proceedings. Thus, the Department has not made the requested change in the final rule.

Section 351.304(d)(1) of the prior regulation stated that the Secretary will return a submission that does not meet the requirements of section 777(b) of the Act, which governs the Department’s APO rules of practice and procedure. Section 351.304(d)(1) of the prior regulation further specified that the submitting person may take any of four enumerated actions within two business days of the Secretary’s explanation of its reasons for returning the submission. Prior § 351.304(d)(1)(iv) also specified that one of those enumerated actions is the submission of other material concerning the subject matter of the returned information and that, if the submitting person takes none of the enumerated actions, the Secretary will not consider the returned submission. As discussed above, because the Department will be using an electronic filing system, rather than physically return an electronic submission, the Department will instead reject the submission. The Department will follow the same procedure for manually filed submissions. Thus, the Department is amending the regulations to change the term “return” with “reject” in sections 351.304(d)(1) and 351.304(d)(1)(iv).

#### *Section 351.305(b). Application for Access Under Administrative Protective Order*

Section 351.305(b)(2) of the prior regulation required the applicant for access to business proprietary information under APO to serve the APO application in the same manner and at the same time as it serves the application on the Department. The Department is amending this regulation because an applicant cannot currently serve other parties electronically using IA ACCESS. Although an applicant may serve other parties electronically with the consent of the parties being served, the Department will not require electronic service. The Department recognizes that a party being served an

APO application has a limited time period in which to serve its previously-filed business proprietary submissions on a newly-approved applicant; therefore, the Department is requiring that the applicant serve the other parties in the most expeditious manner possible, simultaneously with the filing of the APO application with the Department.

#### **Comments Pertaining to Pilot Program, Implementation, and Technical Aspects of IA ACCESS**

##### *1. Future Pilot Programs, Additional Focus Groups, Training, and Staggered Implementation*

One commenter stated that it supports the Department’s plans to conduct additional pilot programs and strongly suggests that the Department consider a mechanism by which the experiences gained in the first pilot program can be shared with the larger user public. The commenter stated that the Department should conduct additional focus groups and public meetings for Release 2 and 3 Pilots and that the Department should consider holding larger scale public meetings. With regard to implementation of IA ACCESS, one commenter proposed a staggered implementation process, such that the Department would first require electronic filing of only public documents for a period of time before requiring electronic filing of business proprietary documents. The commenter stated that users may not have experience with the electronic filing of business proprietary documents, and the staggered implementation would allow users time to implement new internal procedures, including security measures, or seek guidance from the Department on particular matters, based on practical prior experience with public filings. In addition, the commenter stated that the Department should consider providing training sessions prior to the start of Release 1, noting that the training sessions conducted by the Court of International Trade for its electronic filing system were helpful. The commenter also stated that the Department should consider a “recall” procedure to enable users to promptly remove electronically filed documents if business proprietary information has been inadvertently disclosed or other problems are discovered after filing.

*Response:* As discussed in the notice regarding the IA ACCESS pilot program, IA ACCESS will be implemented in three separate phases, or releases, with each release implementing an additional feature of IA ACCESS. 75 FR 32341

(June 8, 2010). Release 1 will allow for the electronic submission of documents, Release 2 will allow for the electronic release of public documents and public versions, and Release 3 will allow for the electronic release of business proprietary documents to authorized applicants. Each phase will be preceded by a pilot program designed to test and evaluate the functionality of that release. The Department completed the pilot program for Release 1 on September 30, 2010. The Department received comments from pilot participants at the conclusion of the pilot and a summary of those comments is available to the public at <http://iaaccess.trade.gov> under the "Help" link. Comments on the second and third pilot programs will also be made available to the public in the same manner. The Department will hold additional focus groups and public meetings in conjunction with the Release 2 and 3 pilot programs. The Department will consider a large public meeting as the need arises.

The Department disagrees with the proposal to stagger the implementation of the electronic filing requirement such that only public filings will first be required for a period of time before requiring the filing of business proprietary documents. Staggering the implementation for public and business proprietary submissions is not practicable because it would require the Department to operate under two filing systems, one for public documents and one for proprietary documents, and such a bifurcated process would create the potential for confusion and inconsistency. Furthermore, requiring parties to manually file business proprietary submissions while electronically filing public versions of the corresponding submission will create additional work for parties and reduce the efficiencies inherent in electronic filing.

To alleviate the concerns associated with learning to use IA ACCESS, the Department will provide an IA ACCESS online training site one month prior to implementing Release 1. On the training site, users will be able to familiarize themselves with IA ACCESS by filing test documents and navigating the system. The Department has already provided and will continue to provide training prior to implementing Release 1, including online demonstrations, webinars and classes. Such training will provide users opportunities to confer with the Department regarding any questions pertaining to the system, including the implementation of any necessary procedures for the user, such as security measures.

With regard to a "recall" procedure, the Department did not adopt this proposal. The Department believes that the continuation of its current practice of providing assistance to those parties wishing to correct errors discovered after filing is the most effective way to address inadvertent disclosures. Where problems are discovered after filing, the user should contact the Department for assistance. Detailed procedures are included in the IA ACCESS Handbook. Where business proprietary information is inadvertently disclosed and only discovered after filing, the user should contact the APO/Dockets Unit as soon as possible.

#### 2. Grace Period

One commenter proposed a three-month grace period whereby the Department allows users to file submissions manually, at the option of the user.

*Response:* The Department will not provide such a three-month grace period. Allowing a grace period would be extremely disruptive for the Department because it would require the Department to operate and synchronize two different filing, document management, and recordkeeping systems. As discussed above, however, the Department will provide an online training site one month prior to implementation of Release 1, so that users may have an opportunity to try out the system, practice filing test documents and familiarize themselves with IA ACCESS.

#### 3. Opportunities for Further Comment

One commenter requested that the Department provide an opportunity to submit additional comments prior to publication of the final rule, including comments on other parties' comments on the proposed rule and on the views of the participants to the Release 1 pilot program. In addition, the commenter stated that the Department should make the IA ACCESS Handbook available prior to the start of Release 1 to allow users to become familiar with the new electronic filing rules and procedures before introduction of mandatory electronic filing. Two commenters requested that the Department provide an opportunity to submit comments on the upcoming IA ACCESS Handbook.

*Response:* The IA ACCESS Handbook is currently available. Parties will be given the opportunity to submit comments on the handbook on the IA ACCESS Web site at <http://iaaccess.trade.gov>. The Department will post a summary of the comments online and take them into consideration. The Department will not provide a formal

opportunity for parties to comment on the Release 1 pilot participants' comments nor on the other parties' comments to the Proposed Rule. There is no such requirement in the rulemaking process. See 5 U.S.C. 553(c). As the Department continues to add enhancements and features to IA ACCESS, it will welcome parties' input on an ongoing basis.

#### 4. Comments on Pilot Experience

The Department received the following technical comments based on the commenters' experiences during the pilot program: (1) The case name should be automatically populated by case number; segments should show up in drop-down menu; (2) the Department should expand the number of characters for document title and file name; (3) "document type" and "subject" options have not been appropriate to the filings, so "Other" was often selected; (4) the Department should refine the "document type" and "subject" options and provide the ability to customize by typing in words prior to or after the standard types/subjects; (5) the Department should provide an "approval" or confirmation screen prior to submission; and (6) one commenter wished to confirm that the Department personnel have the ability to review and print documents in color.

*Response:* The Department is considering these comments as it develops the IA ACCESS system. A summary of these comments in addition to others received at the conclusion of the Release 1 pilot program is available on the Department's IA ACCESS Web site at <http://iaaccess.trade.gov> under the "Help" link.

#### 5. After-Hours Help Line

One commenter recommended the Department to establish a help line that has relevant personnel available after 5 p.m. Eastern Time to assist with electronic submissions.

*Response:* A help line will be available and staffed with relevant personnel between 8:30 a.m. and 5 p.m. on business days to assist submitters with any technical issues. We encourage parties to give themselves ample time prior to 5 p.m. on the due date to successfully complete submissions using IA ACCESS. Further, parties who cannot meet the 5 p.m. filing deadline should request an extension from the relevant personnel in the Office of Operations. Because personnel at the Help Line cannot grant such extensions, after-hours assistance should not be necessary.

#### 6. Destruction of Files

One commenter stated that it understood that IA ACCESS will host only documents received after the launch of the electronic document system, and that the Department currently does not envision scanning older documents already in the Official File. Currently, the Department is destroying or in the process of destroying files from proceedings that have been terminated for five years or more. This destruction practice would appear inconsistent with the goal of expanding public access to information. If older documents are destroyed as a matter of course, then parties are at a disadvantage in preparing for ongoing proceedings because some documentation relied upon is only available in paper form. The commenter recommended that the Department reconsider its destruction practice and work towards making all existing paper documentation and submissions from prior proceedings available to the public as part of a docket for that proceeding.

*Response:* The Department's current document retention policy requires it to keep the Public File for five years after an order has closed. The Department plans to continue following this retention policy, which the Department believes makes the information sufficiently accessible to the public. The Department will not scan older documents into IA ACCESS that are already in the Official File. Doing so would be costly and an inefficient use of the Department's resources. Older files will continue to be available in the Public Reading Room in accordance with the Department's retention policy.

#### Comments Pertaining to Procedures for Release of Public and Business Proprietary Information Under APO Using IA ACCESS

In the Proposed Rule, the Department stated that it was considering providing for the implementation of electronic APO release as part of the overall transition to IA ACCESS. The Department requested comments on the APO release process, the adequacy of providing for electronic release in the APO, and the necessity of additional security requirements in the APO application.

In response to the Department's request for comments, one commenter expressed its support for the Department's approach. Another commenter recommended a system whereby the lead attorney for service and any other designated authorized individuals will be notified via e-mail that a new document has been posted to

a particular record and that the authorized user would be able to access the document by logging into the secure database to upload the document on the authorized user's secure server. The commenter also requested that the same release process apply to documents filed by parties or placed on the record by Department personnel, thereby effecting service via electronic notification. Another commenter stated that the Proposed Rule did not specify whether, in addition to APO release, the Department also plans public electronic release to authorized representatives of interested parties who have entered an appearance. The commenter encouraged the Department to adopt this practice, either as part of formal rulemaking or under its IA ACCESS procedures.

In addition to the electronic APO release process through IA ACCESS, the Department plans to release public Department-generated documents and public versions of Department-generated business proprietary documents using IA ACCESS. The Department plans to notify the lead attorney for service and any other designated authorized individuals via e-mail that a new document has been posted to a particular segment. The authorized individual would then be able to securely access the document.

The Department has not implemented a similar release process to effect service of documents filed by interested parties on one another. As discussed above, with the exception of service of APO applications in § 351.305(b)(2) and the requirement that parties serve the complete final business proprietary document when bracketing changes have been made in § 351.303(c)(2)(ii), the Department has not changed the service requirements in the regulations. However, parties may continue to consent to electronic service in accordance with 19 CFR 351.303(f)(1)(ii) and continue to serve one another in accordance with this provision.

One commenter stated that it supports the Department's approach to electronic release under APO using the IA ACCESS system, but it urges the Department to impose conditions on such document releases, such as prohibiting access to another party's business proprietary information using file servers, networks and other electronic data storage and transmission devices located overseas or accessible to the public (such as computers in libraries and Internet cafes). The commenter stated that use of such systems would greatly increase the likelihood of unauthorized interception of and access to the business proprietary information of another party.

The commenter also encouraged the Department to retain the requirement that authorized applicants certify that they will "ensure that business proprietary information in an electronic format will not be accessible to parties not authorized to receive business proprietary information" in all future APOs. The commenter proposed requiring, as an additional safeguard, that all applicants for access to business proprietary information under an APO further specify (as part of their APO applications) each location from which they will access electronic documents containing business proprietary information of another interested party. According to the commenter, other interested parties should be permitted to comment on such applications and have their comments considered by the Department as part of its review of the APO application.

The Department is committed to securing the business proprietary information of parties participating in its proceedings. The Department has determined that it is not necessary for applicants for APO access to specify the location from which they will access electronic documents containing business proprietary information of another interested party. The Department already requires parties to use diligence in protecting other interested parties' business proprietary information and will continue to allow the firms to develop their own internal procedures to ensure that business proprietary information is downloaded in a secure manner. In addition, the Department will continue to address the improper release of business proprietary information through its sanctions proceedings at 19 CFR part 354.

#### Classification

*E.O. 12866*

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

#### Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration ("SBA") under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if promulgated, would not have a significant economic impact on a substantial number of small business entities. The factual basis for the certification was published in the Proposed Rule and is not repeated here. The Department received no comments questioning or regarding this certification.

*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.*).

**List of Subjects in 19 CFR Part 351**

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: June 22, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

**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 to read as follows:

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

(a) Import Administration's Central Records Unit maintains a Public File Room in Room 7046, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The office hours of the Public File Room are between 8:30 a.m. and 5 p.m. Eastern Time 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).

(b) Import Administration's Administrative Protective Order and Dockets Unit (APO/Dockets Unit) is located in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The office hours of the APO/Dockets Unit are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Among other things, the APO/Dockets Unit is responsible for receiving submissions from interested parties, issuing administrative protective orders (APOs), maintaining the APO service list and the public service list as provided for in paragraph (d) of this section, releasing business proprietary information under APO, and conducting APO violation investigations. The APO/Dockets 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.

(c) *Filing of documents with the Department.* No document will be considered as having been received by the Secretary unless it is electronically filed in accordance with § 351.303(b)(2)(i) or, where applicable, in accordance with § 351.303(b)(2)(ii), it is manually submitted to the Import Administration's APO/Dockets Unit in Room 1870 and is stamped with the date, and, where necessary, the time, of receipt. A manually filed document must be submitted with a cover sheet, in accordance with § 351.303(b)(3).

(d) *Service list.* The APO/Dockets Unit will maintain and make available a public service list for each segment of a proceeding. The service list for an application for a scope ruling is described in § 351.225(n).

(1) With the exception of a petitioner filing a petition in an investigation, all persons wishing to participate in a segment of a proceeding must file a letter of appearance. The letter of appearance must identify the name of the interested party, how that party qualifies as an interested party under § 351.102(b)(29) and section 771(9) of the Act, and the name of the firm, if any, representing the interested party in that particular segment of the proceeding. All persons who file a letter of appearance and qualify as an interested party will be included in the public service list for the segment of the proceeding in which the letter of appearance is submitted. The letter of appearance may be filed as a cover letter to an application for APO access. If the representative of the party is not requesting access to business proprietary information under APO, the letter of appearance must be filed separately from any other document filed with the Department. If the interested party is a coalition or association as defined in subparagraph (A), (E), (F) or (G) of section 771(9) of the Act, the letter of appearance must identify all of the members of the coalition or association.

(2) Each interested party that asks to be included on the public service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment.

■ 3. Section 351.104 is amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

**§ 351.104 Record of proceedings.**

(a) *Official record*—(1) *In general.* The Secretary will maintain an official record of each antidumping and countervailing duty proceeding. The

Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, notices published in the **Federal Register**, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material rejected.* (i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary rejects.

(ii) The official record will include a copy of a rejected document, solely for purposes of establishing and documenting the basis for rejecting the document, if the document was rejected because:

(A) The document, although otherwise timely, contains untimely filed new factual information (see § 351.301(b));

(B) The submitter made a nonconforming request for business proprietary treatment of factual information (see § 351.304);

(C) The Secretary denied a request for business proprietary treatment of factual information (see § 351.304);

(D) The submitter is unwilling to permit the disclosure of business proprietary information under APO (see § 351.304).

(iii) In no case will the official record include any document that the Secretary rejects as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (see § 351.302(d)).

(b) *Public record.* The Secretary will maintain a public record of each proceeding. The record will consist of all material contained in the official record (see paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see § 351.103). The Secretary will charge an

appropriate fee for providing copies of documents.

\* \* \* \* \*

■ 4. Section 351.302 is amended by revising paragraphs (a), (c) and (d) to read as follows:

**§ 351.302 Extension of time limits; rejection of untimely filed or unsolicited material.**

(a) *Introduction.* This section sets forth the procedures for requesting an extension of a time limit. In addition, this section explains that certain untimely filed or unsolicited material will be rejected together with an explanation of the reasons for the rejection of such material.

\* \* \* \* \*

(c) *Requests for extension of specific time limit.* Before the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b) of this section. The request must be in writing, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing.

(d) *Rejection of untimely filed or unsolicited material.* (1) Unless the Secretary extends a time limit under paragraph (b) of this section, the Secretary will not consider or retain in the official record of the proceeding:

(i) Untimely filed factual information, written argument, or other material that the Secretary rejects, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided under § 351.204(d)(2).

(2) The Secretary will reject such information, argument, or other material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for rejection.

■ 5. Section 351.303 is amended by revising the section heading and paragraphs (a), (b), (c), (d), and (f)(1) to read as follows:

**§ 351.303 Filing, document identification, format, translation, service, and certification of documents.**

(a) *Introduction.* This section contains the procedural rules regarding filing, document identification, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an antidumping or countervailing duty proceeding.

(b) *Filing—(1) In general.* Persons must address all documents to the Secretary of Commerce, Attention: Import Administration, APO/Dockets

Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time on the due date. Where applicable, a submitter must manually file a document between the hours of 8:30 a.m. and 5 p.m. Eastern Time on business days (see § 351.103(b)). For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day. A manually filed document must be accompanied by a cover sheet generated in IA ACCESS, in accordance with § 351.303(b)(3).

(2) *Filing of documents and databases—(i) Electronic filing.* A person must file all documents and databases electronically using IA ACCESS at <http://iaaccess.trade.gov>. A person making a filing must comply with the procedures set forth in the IA ACCESS Handbook on Electronic Filing Procedures, which is available on the Department's Web site at <http://www.trade.gov/ia>.

(ii) *Manual filing.* (A) Notwithstanding § 351.303(b)(2)(i), a person must manually file a data file that exceeds the file size limit specified in the IA ACCESS Handbook on Electronic Filing Procedures and as referenced in § 351.303(c)(3), and the data file must be accompanied by a cover sheet described in § 351.303(b)(3). A person may manually file a bulky document. If a person elects to manually file a bulky document, it must be accompanied by a cover sheet described in § 351.303(b)(3). The Department both provides specifications for large data files and defines bulky document standards in the IA ACCESS Handbook on Electronic Filing Procedures, which is available on the Department's Web site at <http://www.trade.gov/ia>.

(B) If the IA ACCESS system is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour between 12 noon and 4:30 p.m. Eastern Time or for any duration of time between 4:31 p.m. and 5 p.m. Eastern Time, then a person may manually file the document in the APO/Dockets Unit. The Department will provide notice of such technical failures on its Help Desk line. Procedures for manual filing in this situation are provided in the IA ACCESS Handbook on Electronic Filing Procedures.

(C) Apart from the documents and database files described in

§ 351.303(b)(2)(ii)(A), if a submitter is unable to comply with the electronic filing requirement, as provided in § 351.103(c), and in accordance with section 782(c) of the Act, the submitter must notify the Department promptly of the reasons the submitter is unable to file the document electronically, provide a full explanation, and suggest alternative forms in which to submit the information. The Department will consider the ability of the submitter and may modify the electronic filing requirement on a case-by-case basis.

(D) *Number of hardcopies for manual filing.* If a document is filed manually, the submitter must file one hardcopy of the document in the APO/Dockets Unit, along with a cover sheet generated in IA ACCESS. If the document contains business proprietary information, the submitter must file one hardcopy of the business proprietary document and one hardcopy of the public version, along with the requisite IA ACCESS-generated cover sheets. If applicable, the submitter must also file one hardcopy of the business proprietary/APO version, along with the requisite IA ACCESS-generated cover sheet. For a bulky document, in addition to the foregoing, the submitter must also provide one additional hardcopy of the business proprietary document or public document, as applicable.

(3) *Cover sheet.* When manually filing a document, parties must complete the cover sheet (as described in the IA ACCESS Handbook on Electronic Filing Procedures) online at <http://iaaccess.trade.gov> and print the cover sheet for submission to the APO/Dockets Unit.

(4) *Document identification.* Each document must be clearly identified as one of the following five document classifications and must conform with the requirements under paragraph (d)(2) of this section. Business proprietary document or business proprietary/APO version, as applicable, means a document or a version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(i) *Business Proprietary Document—May be Released Under APO.* This business proprietary document contains single-bracketed business proprietary information that the submitter agrees to release under APO. It must contain the statement "May be Released Under APO" in accordance with the requirements under paragraph (d)(2)(v) of this section.

(ii) *Business Proprietary Document—May Not be Released Under APO.* This business proprietary document contains double-bracketed business proprietary

information that the submitter does not agree to release under APO. This document must contain the statement "May Not be Released Under APO" in accordance with the requirements under paragraph (d)(2)(v) of this section. This type of document may contain single-bracketed business proprietary information in addition to double-bracketed business proprietary information.

(iii) *Business Proprietary/APO Version—May be Released Under APO.* In the event that a business proprietary document contains both single- and double-bracketed business proprietary information, the submitting person must submit a version of the document with the double-bracketed business proprietary information omitted. This version must contain the single-bracketed business proprietary information that the submitter agrees to release under APO. This version must be identified as "Business Proprietary/APO Version" and must contain the statement "May be Released Under APO" in accordance with the requirements under paragraph (d)(2)(v) of this section.

(iv) *Public Version.* The public version excludes all business proprietary information, whether single- or double-bracketed. Specific filing requirements for public version submissions are discussed in § 351.304(c).

(v) *Public Document.* The public document contains only public information. There is no corresponding business proprietary document for a public document.

(c) *Filing of business proprietary documents and public versions under the one-day lag rule; information in double brackets.*

(1) *In general.* If a submission contains information for which the submitter claims business proprietary treatment, the submitter may elect to file the submission under the one-day lag rule described in paragraph (c)(2) of this section. A petition, an amendment to a petition, and any other submission filed prior to the initiation of an investigation shall not be filed under the one-day lag rule. The business proprietary document and public version of such pre-initiation submissions must be filed simultaneously on the same day.

(2) *Application of the one-day lag rule—(i) Filing the business proprietary document.* A person must file a business proprietary document with the Department within the applicable time limit.

(ii) *Filing of final business proprietary document; bracketing corrections.* By the close of business one business day

after the date the business proprietary document is filed under paragraph (c)(2)(i) of this section, a person must file the complete final business proprietary document with the Department. The final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day except for any bracketing corrections and the omission of the warning "Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing" in accordance with paragraph (d)(2)(v) of this section. A person must serve other persons with the complete final business proprietary document if there are bracketing corrections. If there are no bracketing corrections, a person need not serve a copy of the final business proprietary document.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary document under paragraph (c)(2)(ii) of this section, a person also must file the public version of such document (see § 351.304(c)) with the Department.

(iv) *Information in double brackets.* If a person serves authorized applicants with a business proprietary/APO version of a document that excludes information in double brackets pursuant to §§ 351.303(b)(4)(iii) and 351.304(b)(2), the person simultaneously must file with the Department the complete business proprietary/APO version of the document from which information in double brackets has been excluded.

(3) *Sales files, cost of production files and other electronic databases.* When a submission includes sales files, cost of production files or other electronic databases, such electronic databases must be filed electronically in accordance with paragraph (b)(2) of this section. If a submitter must file the database manually pursuant to § 351.303(b)(2)(ii)(A), the submitter must file such information on the computer medium specified by the Department's request for such information. The submitter need not accompany the computer medium with a paper printout. All electronic database information must be releasable under APO (see § 351.305). A submitter need not include brackets in an electronic database containing business proprietary information. The submitter's selection of the security classification "Business Proprietary Document—May Be Released Under APO" at the time of filing indicates the submitter's request for business proprietary treatment of the information contained in the database. Where possible, the submitter must

insert headers or footers requesting business proprietary treatment of the information on the databases for printing purposes. A submitter must submit a public version of a database in pdf format. The public version of the database must be publicly summarized and ranged in accordance with § 351.304(c).

(d) *Format of submissions—(1) In general.* Unless the Secretary alters the requirements of this section, a document filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may reject such document in accordance with § 351.104(a).

(2) *Specifications and markings.* If a document is filed manually, it must be on letter-size (8½ × 11 inch) paper, single-sided and double-spaced, bound with a paper clip, butterfly/binder clip, or rubber band. The filing of stapled, spiral, velo, or other type of solid binding is not permitted. In accordance with paragraph (b)(3) of this section, a cover sheet must be placed before the first page of the document.

Electronically filed documents must be formatted to print on letter-size (8½ × 11 inch) paper and double-spaced. Spreadsheets, unusually sized exhibits, and databases are best utilized in their original printing format and should not be reformatted for submission. A submitter must mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, indicate the Department case number;

(ii) On the second line, indicate the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, indicate the specific segment of the proceeding, (e.g., investigation, administrative review, scope inquiry, suspension agreement, etc.) and, if applicable, indicate the complete period of review (MM/DD/YY–MM/DD/YY);

(iv) On the fourth line, except for a petition, indicate the Department office conducting the proceeding;

(v) On the fifth and subsequent lines, indicate whether any portion of the document contains business proprietary information and, if so, list the applicable page numbers and state either: "Business Proprietary Document—May Be Released Under APO," "Business Proprietary Document—May Not Be Released Under APO," or "Business Proprietary/APO Version—May Be Released Under APO," as applicable, and consistent

with § 351.303(b)(4). Indicate “Business Proprietary Treatment Requested” on the top of each page containing business proprietary information. In addition, include the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing” on the top of each page containing business proprietary information in the business proprietary document filed under paragraph (c)(2)(i) of this section (one-day lag rule). Do not include this warning in the final business proprietary document filed on the next business day under paragraph (c)(2)(ii) of this section (see § 351.303(c)(2) and § 351.304(c)); and

(vi) For the public version of a business proprietary document required under § 351.304(c), complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document, but conspicuously mark the first page “Public Version.”

(vii) For a public document, complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document or version, as applicable, but conspicuously mark the first page “Public Document.”

\* \* \* \* \*

(f) \* \* \*

(1)(i) *In general.* Except as provided in § 351.202(c) (filing of petition), § 351.208(f)(1) (submission of proposed suspension agreement), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail.

(ii) *Service of public versions, public documents, or a party's own business proprietary information.*

Notwithstanding paragraphs (f)(1)(i) and (f)(3) of this section, service of a business proprietary document containing only the server's own business proprietary information, on persons on the APO service list, or the public version of such a document, or a public document on persons on the public service list, may be made by facsimile transmission or other electronic transmission process, with the consent of the person to be served.

\* \* \* \* \*

■ 6. Section 351.304 is amended by revising paragraphs (b)(1), (b)(2)(iii), (c), (d)(1) introductory text and (d)(1)(iv) to read as follows:

**§ 351.304 Establishing business proprietary treatment of 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 § 351.303(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) \* \* \*

(iii) The submitting person may exclude the information in double brackets from the business proprietary/APO 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 document (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 document 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 document or, if a corrected version is timely filed, the corrected business proprietary document 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) \* \* \*

(1) *In general.* The Secretary will reject 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:

\* \* \*

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

\* \* \*

■ 7. Section 351.305 is amended by revising paragraph (b)(2) to read as follows:

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

\* \* \*

(b) \* \* \*

(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 wordprocessing 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 it does not wish to receive from other parties to the proceeding. An applicant must serve an APO application on the other parties by the most expeditious manner possible at the same time that it files the application with the Department.

\* \* \* \* \*

[FR Doc. 2011-16352 Filed 7-5-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

[Docket No. FDA-2011-N-0003]

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of address for Huvepharma AD, a sponsor of approved new animal drug applications.

DATES: This rule is effective July 6, 2011.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240-276-8300, e-mail: steven.vaughn@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria, has informed FDA that it has changed its address to 5th Floor, 3A Nikolay Haitov Str., 1113 Sofia, Bulgaria. Accordingly, the Agency is amending the regulations in 21 CFR 510.600 to reflect this change.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. In § 510.600, in the table in paragraph (c)(1), revise the entry for "Huvepharma AD"; and in the table in paragraph (c)(2), revise the entry for "016592" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

Table with 2 columns: Firm name and address, Drug labeler code. Row 1: Huvepharma AD, 5th Floor, 3A Nikolay Haitov Str., 1113 Sofia, Bulgaria, 016592

(2) \* \* \*

Table with 2 columns: Drug labeler code, Firm name and address. Row 1: 016592, Huvepharma AD, 5th Floor, 3A Nikolay Haitov Str., 1113 Sofia, Bulgaria.

Dated: June 24, 2011.

Elizabeth Rettie, Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2011-16845 Filed 7-5-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 48

[TD 9533]

RIN 1545-BK28

Modification of Treasury Regulations Pursuant to Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that remove any reference to, or requirement of reliance on, "credit ratings" in regulations under the Internal Revenue Code (Code) and provides substitute standards of credit-worthiness where appropriate. This action is required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires Federal agencies to remove any reference to, or requirement of reliance on, credit ratings from their regulations and to substitute such standard of credit-worthiness as the agency deems appropriate for such regulations. These regulations affect persons subject to various provisions of the Code. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

DATES: Effective Date: These regulations are effective on July 6, 2011.

Applicability Dates: For dates of applicability, see §§ 1.150-1T(a)(4), 1.171-1T(f), 1.197-2T(b)(7), 1.249-1T(f)(3), 1.475(a)-4T(d)(4), 1.860G-2T(g)(3), 1.1001-3T(d), (e), and (g), and 48.4101-1T(l)(5).

FOR FURTHER INFORMATION CONTACT: Arturo Estrada, (202) 622-3900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 939A(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (124 Stat. 1376 (2010)), (the "Dodd-Frank Act"), requires each Federal agency to review its regulations that require the use of an assessment of credit-worthiness of a security or money market instrument, and to review any references or requirements in those regulations regarding credit ratings. Section 939A(b) directs each agency to