

§ 165.2

19 CFR Ch. I (4–1–22 Edition)

importers who allegedly engaged in evasion, and not the Federal agency.

Regulations and Rulings. The term “Regulations and Rulings” means the Executive Director, Regulations and Rulings, Office of Trade, or his or her designee.

TRLED. The term “TRLED” refers to the Trade Remedy Law Enforcement Directorate, Office of Trade, that conducts the investigation of alleged evasion under this part, and that was established as required by section 411 of the EAPA.

[81 FR 56482, Aug. 22, 2016, as amended at 81 FR 62004, Sept. 8, 2016]

§ 165.2 Entries subject to this part.

Entries that may be the subject of an allegation made under § 165.11 or a request for an investigation under § 165.14 are those entries of allegedly covered merchandise made within one year before the receipt of an allegation under § 165.11 or of a request for an investigation under § 165.14. In addition, at its discretion, CBP may investigate other entries of such covered merchandise.

§ 165.3 Power of attorney.

(a) *When required.* Any submission made under this part other than by a principal or its employees may be filed by a person acting as agent or attorney in fact for the principal; a power of attorney must specifically authorize such person to make, sign, and file the submission or grant unlimited authority to such person.

(b) *Exception.* No power of attorney is required for an attorney at law to act as agent or attorney for the principal. The signing of a submission as agent or attorney for the principal by the attorney at law will be considered a declaration by the attorney that the attorney is currently an active member in good standing of the highest court of a state, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the submission for the principal.

(c) *Execution*—(1) *Corporation.* A corporate power of attorney to file the submissions described in paragraph (a) of this section must be signed by a duly authorized officer or employee of the corporation.

(2) *Partnership.* A partnership power of attorney to file the submissions described in paragraph (a) of this section must be signed by at least one member in the name of the partnership or by at least one duly authorized employee of the partnership, provided the power recites the name(s) of all of the members.

(3) *Other persons.* A power of attorney filed by a person other than a corporation or partnership must be signed by that person or an employee of that person who has the legal authority to act on that person's behalf when filing the submissions described in paragraph (a) of this section.

(d) *Revocation.* Any power of attorney will be subject to revocation at any time by written notice given to and received by CBP, Office of Trade.

(e) *Proof.* CBP will require proof of execution of a power of attorney, where applicable, the first time that an agent makes a submission on behalf of any interested party during an investigation or administrative review of a determination as to evasion. CBP may require proof of authority to execute a power of attorney pursuant to paragraph (c) of this section, at any point during the proceedings described in this part.

§ 165.4 Release of information provided by interested parties.

(a) *Claim for business confidential treatment.* Any interested party that makes a submission to CBP in connection with an investigation under this part, including for its initiation and administrative review, may request that CBP treat any part of the submission as business confidential information except for the information specified in paragraph (c) of this section. Business confidential treatment will be granted if the requirements of this section are satisfied and the information for which protection is sought consists of trade secrets and commercial or financial information obtained from any person, which is privileged or confidential in accordance with 5 U.S.C. 552(b)(4).

(1) *Identification of business confidential information.* An interested party submitting information must identify the information for which business confidential treatment is claimed by

enclosing the claimed confidential information within single brackets. The first page of any submission containing business confidential information must clearly state that the submission contains business confidential information. The submitting interested party must also provide with the claimed business confidential information an explanation of why each item of bracketed information is entitled to business confidential treatment.

(2) *Public version.* An interested party filing a submission containing claimed business confidential information must also file a public version of the submission. The public version must be filed on the same date as the business confidential version and contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting interested party claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. The public version must be clearly marked as a public version on the first page.

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

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

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

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

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

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

(3) *Effects of rejection.* If the submitting interested party does not take any

of the actions in paragraph (b)(2) of this section, CBP will not consider the rejected submission and, if applicable, adverse inferences may be drawn pursuant to § 165.6.

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

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

(2) Specification as to the basis upon which the party making the allegation qualifies as an interested party as defined in § 165.1;

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

(4) Description of covered merchandise; and

(5) Applicable AD/CVD orders.

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

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

§ 165.5 Obtaining and submitting information.

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