

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:

(i) Correct the problems and resubmit the information;

(ii) If the Secretary denied a request for business proprietary treatment, agree to have the information in question treated as public information;

(iii) If the Secretary granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold information under an administrative protective order, agree to the disclosure of the information in question under an administrative protective order; or

(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.

(2) *Timing.* The Secretary normally will determine the status of information within 30 days after the day on which the information was submitted. If the business proprietary status of information is in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.

[63 FR 24401, May 4, 1998, as amended at 76 FR 39277, July 6, 2011; 88 FR 67079, Sept. 29, 2023]

§ 351.305 Access to business proprietary information.

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record as follows: within two business days after the day on which a petition is filed or an investigation is self-initiated; within five business days after the day on which a request for a new shipper review is properly filed in accordance with §§ 351.214 and 351.303, an application for a scope ruling is properly filed in accordance with §§ 351.225 and 351.303, or a request for a circumvention inquiry is properly filed in accordance with §§ 351.226 and 351.303; within five business days after the day on which a request for a changed circumstances review is properly filed in

accordance with §§ 351.216 and 351.303 or a changed circumstances review is self-initiated; or within five business days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

(1) Establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Act;

(2) Notify the Secretary of any changes in the facts asserted by the authorized applicant in its administrative protective order application;

(3) Destroy business proprietary information by the time required under the terms of the administrative protective order;

(4) Immediately report to the Secretary any apparent violation of the administrative protective order; and

(5) Acknowledge that any unauthorized disclosure may subject the authorized applicant, the firm of which the authorized applicant is a partner, associate, or employee, and any partner, associate, or employee of the authorized applicant's firm to sanctions listed in part 354 of this chapter (19 CFR part 354).

(b) *Application for access under administrative protective order.* (1) Generally, no more than two independent representatives of a party to the proceeding may have access to business proprietary information under an administrative protective order. A party must designate a lead firm if the party has more than one independent authorized applicant firm.

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting an electronic application available in ACCESS at <https://access.trade.gov> (Form ITA-367) to the Secretary. The electronic application will be filed and served in ACCESS upon submission. 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 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.

(3) To minimize the disruption caused by late applications, an application should be filed before the first response to the initial questionnaire has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due.

(c) *Approval of access under administrative protective order; administrative protective order service list; service of earlier-filed business proprietary submissions.*

(1) The Secretary will grant access to a qualified applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

(2) After the Secretary approves an application, the authorized applicant may request service of earlier-filed business proprietary submissions of the other parties that are no longer available in ACCESS.

(i) For an application that is approved before the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within two business days of the request. Service must be made in accord-

ance with section 351.303(f)(1)(iii). A certificate of service is not required.

(ii) For an application that is approved after the first response to the initial questionnaire is submitted, the submitting party must serve the authorized applicant those submissions within five business days of the request. Service must be made in accordance with section 351.303(f)(1)(iii). A certificate of service is not required. Any authorized applicant who filed the application after the first response to the initial questionnaire is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record.

(d) *Additional filing requirements for importers.* If an applicant represents a party claiming to be an interested party by virtue of being an importer, then the applicant shall submit, along with the Form ITA-367, documentary evidence demonstrating that during the applicable period of investigation or period of review the interested party imported subject merchandise. For a scope segment of a proceeding pursuant to §351.225 or a circumvention segment of a proceeding pursuant to §351.226, the applicant must present documentary evidence that the interested party imported subject merchandise, or that it has taken steps towards importing the merchandise subject to the scope or circumvention inquiry. For a covered merchandise referral segment of a proceeding pursuant to §351.227, an applicant representing an interested party that has been identified by the Customs Service as the importer in a covered merchandise referral is exempt from the requirements of providing documentary evidence to demonstrate that it is an importer for purposes of that segment of a proceeding.

[63 FR 24402, May 4, 1998, as amended at 73 FR 3643, Jan. 22, 2008; 76 FR 39277, July 6, 2011; 86 FR 52384, Sept. 20, 2021; 88 FR 67080, Sept. 29, 2023]

§ 351.306 Use of business proprietary information.

(a) *By the Secretary.* The Secretary may disclose business proprietary information submitted to the Secretary only to:

- (1) An authorized applicant;