

makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this submitter as necessary to ensure secure submission of non-public materials.

(c) An application for non-public treatment made under paragraph (a) or (b) of this section shall also clearly indicate if any special relief is sought. Examples of special relief include a request that any person not granted access to the materials under § 3011.300 or § 3011.301 perform any or all of the following actions:

(1) Immediately destroy or return all versions of the materials that are claimed to have been inadvertently submitted publicly;

(2) Refrain from disclosing or using the materials, and the information contained therein, that are claimed to be non-public; and

(3) Take reasonable steps to retrieve any materials, and the information contained therein, that are claimed to be non-public and were disclosed to any person not granted access to the materials under § 3011.300 or § 3011.301 prior to the submission of application for non-public treatment.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9641, Feb. 19, 2020]

Subpart C—Seeking Access to Non-Public Materials

§ 3011.300 Eligibility for access to non-public materials.

(a) The following persons may access non-public materials without an order issued pursuant to § 3011.301(e):

(1) Members of the Commission;

(2) Commission employees, including Public Representatives, carrying out their official responsibilities;

(3) Non-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts), assisting the Commission in carrying out its duties;

(4) Reviewing courts and their staffs; and

(5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) No person involved in competitive decision-making for any individual or

entity that might gain competitive advantage from using non-public materials shall be granted access to non-public materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

(c) Any person not described in paragraph (a) or (b) of this section may request access to non-public materials as described in § 3011.301, for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9642, Feb. 19, 2020; 86 FR 48503, Aug. 31, 2021]

§ 3011.301 Motion for access to non-public materials.

(a) *Filing requirements.* A request for access to non-public materials shall be made by filing a motion with the Commission. Any part of the motion revealing non-public information shall be filed in accordance with subpart B of this part. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(b) *Content requirements.* The motion shall:

(1) Identify the particular non-public materials to which the movant seeks access;

(2) Include a detailed statement justifying the request for access:

(i) If access is sought to aid participation in any pending Commission proceeding, the motion shall identify all proceedings (including compliance proceedings) in which the movant proposes to use the materials and how those materials are relevant to those proceedings, or

§ 3011.302

39 CFR Ch. III (7-1-23 Edition)

(ii) If access is sought to aid initiation of a proceeding before the Commission, the motion shall describe the subject of the proposed proceeding, how the materials sought are relevant to that proposed proceeding, and when the movant anticipates initiating the proposed proceeding;

(3) List all relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the movant, and whether the movant is affiliated with the delivery services, communications or mailing industries;

(4) Specify if actual notice of the motion has been provided to each person identified in the application pursuant to §3011.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person;

(5) Attach a description of protective conditions completed and signed by the movant's attorney or non-attorney representative, who may use and modify the template Protective Conditions Statement in Appendix A to this subpart; and

(6) Attach a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access, who may use and modify the template Certification to Comply with Protective Conditions in Appendix A to this subpart.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to §3011.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within three business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within seven calendar days of fil-

ing the motion, unless the Commission otherwise provides.

(d) *Reply.* No reply to a response shall be filed, unless the Commission otherwise provides.

(e) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that actual notice has been given to each person identified pursuant to §3011.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining if access will be granted after the response period described in paragraph (c) of this section has expired. If no opposition to the motion has been filed by the submitter or any person other than the submitter with a proprietary interest before the expiration of the response period described in paragraph (c) of this section, the Commission may issue an order granting access, subject to the agreed protective conditions. In determining whether to grant access to non-public materials, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c). If access is granted, access shall commence following the issuance of the appropriate order setting forth all protective conditions.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9642, Feb. 19, 2020]

§ 3011.302 Non-dissemination, use, and care of non-public materials.

(a) No person who has been granted access to non-public materials in accordance with §3011.300 or §3011.301 may disseminate the materials or the information contained therein, in whole or in part, to any person not allowed access pursuant to §3011.300 or §3011.301.

(b) Persons with access to non-public materials under §3011.300 or §3011.301 shall use non-public materials only for the purposes for which the non-public materials are supplied.

(c) Persons with access to non-public materials under §3011.300 or §3011.301 shall protect the non-public materials from any person not granted access