

(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]

§ 351.305 Access to business proprietary information.

(a) *The administrative protective order.* The Secretary will place an administrative protective order on the record within two days after the day on which a petition is filed or an investigation is self-initiated, or five 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 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 word-processing 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 in the same manner and at the same time as it serves the application on the Department.

(3) To minimize the disruption caused by late applications, an application should be filed before the first questionnaire response has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due, but any applicant filing after the first questionnaire response is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record. Parties have five days to serve their business proprietary information already on the record to applicants authorized to receive such information after such information has been placed on the record.

(c) *Approval of access under administrative protective order; administrative protective order service list.* 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.

[63 FR 24402, May 4, 1998]

§ 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;
- (2) An employee of the Department of Commerce or the International Trade Commission directly involved in the proceeding in which the information is submitted;
- (3) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an anti-dumping or countervailing duty proceeding;
- (4) The U.S. Trade Representative as provided by 19 U.S.C. 3571(i);
- (5) Any person to whom the submitting person specifically authorizes disclosure in writing; and
- (6) A charged party or counsel for the charged party under 19 CFR part 354.

(b) *By an authorized applicant.* An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order. An authorized applicant may use business proprietary information for purposes of the segment of a proceeding in which the information was submitted. If business proprietary information that was submitted in a segment of the proceeding is relevant to an issue in a different segment of the proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO.

(c) *Identifying parties submitting business proprietary information.* (1) If a party submits a document containing business proprietary information of another person, the submitting party

must identify, contiguously with each item of business proprietary information, the person that originally submitted the item (e.g., Petitioner, Respondent A, Respondent B). Business proprietary information not identified will be treated as information of the person making the submission. If the submission contains business proprietary information of only one person, it shall so state on the first page and identify the person that originally submitted the business proprietary information on the first page.

(2) If a party to a proceeding is not represented by an authorized applicant, a party submitting a document containing the unrepresented party's business proprietary information must serve the unrepresented party with a version of the document that contains only the unrepresented party's business proprietary information. The document must not contain the business proprietary information of other parties.

(d) *Disclosure to parties not authorized to receive business proprietary information.* No person, including an authorized applicant, may disclose the business proprietary information of another person to any other person except another authorized applicant or a Department official described in paragraph (a)(2) of this section. Any person that is not an authorized applicant and that is served with business proprietary information must return it to the sender immediately, to the extent possible without reading it, and must notify the Department. An allegation of an unauthorized disclosure will subject the person that made the alleged unauthorized disclosure to an investigation and possible sanctions under 19 CFR part 354.

[63 FR 24403, May 4, 1998]

§ 351.307 Verification of information.

(a) *Introduction.* Prior to making a final determination in an investigation or issuing final results of review, the Secretary may verify relevant factual information. This section clarifies when verification will occur, the contents of a verification report, and the procedures for verification.