

DEPARTMENT OF COMMERCE  
International Trade Administration

19 CFR Part 351

[Docket No. 100614263-0263-01]

RIN 06-25-AA84

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

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

ACTION: Proposed Rule; Request for Comments.

SUMMARY: The Department of Commerce (“the Department”) proposes to amend its regulations governing the submission of information to the Department in antidumping duty (“AD”) and countervailing duty (“CVD”) proceedings to adopt rules of practice and procedure that will incorporate changes resulting from the Department’s implementation of an electronic filing and documents management program. More detailed procedures for electronic filing will be set forth in a document separate from the regulations that will be entitled “IA ACCESS Handbook On Electronic Filing Procedures” (“IA ACCESS Handbook”), which the Department intends to publish on its website at <http://www.trade.gov/ia> by the effective date of the Final Rule.

DATES: To be assured of consideration, written comments must be received no later than

[INSERT DATE 60 days after publication in the FR].

ADDRESSES: Written comments should be submitted by using the Federal eRulemaking Portal at <http://www.Regulations.gov>. All comments must be submitted into Docket Number ITA-2010-0003. All comments should refer to RIN 0625-AA84. If a submitter is unable to submit comments online, the Department will accept hardcopy comments by mail or hand delivery/courier. Please

submit the original and two copies of hardcopy comments to the Secretary of Commerce, Attn: Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, Constitution Avenue and 14th Street NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Evangeline Keenan at (202) 482-3354, Mykhaylo Gryzlov at (202) 482-0833 or Brian Soiset at (202) 482-1284.

SUPPLEMENTARY INFORMATION:

Background

The Department proposes to amend its regulations governing the submission of information to the Department in antidumping and countervailing duty proceedings to adopt rules of practice and procedure that will incorporate 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 goal of this system is to expand the public's access to information in antidumping and countervailing duty proceedings by making all publicly filed documents available on the internet. It will also allow interested parties to file all submissions (both public and business proprietary) with the Department using an internet connection. The Department envisions that such a system will create efficiencies in both the process and costs associated with filing and maintaining the documents. The ease of document submission will increase accessibility of submission to the Department by interested parties located within and outside the Washington, DC area. The Department is currently conducting a pilot program to test IA ACCESS. See Import Administration IA ACCESS Pilot Program, Public Notice and Request For Comments, 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).

### 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 current regulations state that one function of the CRU is to maintain the Subsidies Library. However, CRU no longer maintains the Subsidies Library, which is now maintained by Import Administration's Subsidies Enforcement Office. Therefore, the Department proposes deleting the language referring to this function. The Department also proposes amending these sections to specify that the office hours pertain to Eastern Time and to clarify that the Department's official address is 14<sup>th</sup> Street and Constitution Avenue, NW, not Pennsylvania Avenue and 14<sup>th</sup> Street, NW. Additionally, the Department proposes deleting an extraneous period in "NW" in the addresses of the CRU and the APO/Dockets Unit.

Section 351.103(c) currently provides that while 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 proposes amending the regulations so that the Department will consider a document to be officially received by the Department only when it is filed electronically in accordance with section 351.303(b)(2) unless a relevant exception applies.

The Department also proposes deleting the language stating that a party is free to provide the Department with a courtesy copy of a document. It has been the Department's experience that Import Administration staff will often accept electronic and/or hardcopy courtesy copies of

documents from the submitter rather than wait for the official copy to be delivered via intra-Department mail to expedite review of the document. 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.

The Department intends to require all documents to be filed electronically unless the submission meets the exception criteria in the IA ACCESS Handbook. For example, such exceptions include instances where a submitter does not have internet access or the submission itself cannot be submitted in an electronic format. In accordance with section 782(c) of the Tariff Act of 1930, as amended, (“the Act”), 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.

Section 351.103(d)(1) currently requires 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 proposes amending the regulations 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 amendment also includes a reference to the definition of “interested party” under section 351.102(b)(29). The Department is proposing this amendment to improve and clarify the explanation of how an interested party is placed on the public service list. *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(a) currently specifies which documents comprise the official record of an AD and CVD proceeding. The regulations state that the Secretary will not use factual information,

written argument, or other material that the Secretary returns to the submitter. They also specify the circumstances under which the official record will include a copy of a returned document. Sections 351.302(a) and 351.302(d) set forth the procedures for requesting an extension of time limits and procedures for returning untimely filed submissions. Because the Department will be using 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. Thus, the Department proposes amending the regulations to replace the term “return” with “reject” in sections 351.104(a), 351.302(a), and 351.302(d).

Section 351.104(b) currently provides that the Secretary will maintain in the CRU a public record of each proceeding. The Department proposes amending the regulations to indicate that the public record will also be accessible online at <http://www.trade.gov/ia>.

Section 351.302(c) currently states that a request for an extension of a specific time limit must be filed in writing. The Department’s experience with extension requests is that there are instances when an extension is requested by phone or by email, or the extension request is in the form of a letter, but not filed properly. The Department proposes amending the regulations to refer to section 351.303 to specify that an extension request must be in writing and filed properly with the Department through the new electronic filing system for consideration of an extension request. *Sections 351.303(a), 351.303(b), 351.303(c), 351.303(d), and 351.303(g). Filing, Document Identification, Format, Specifications and Markings, Service and Certifications.*

The Department proposes amending section 351.303 to require electronic filing of all documents unless a relevant exception applies. The Department also proposes to clarify the identification of documents, and to correct minor typographical errors in this section.

The Department proposes amending section 351.303(b) to add subparagraphs (1) through (4). Section 351.303(b) currently requires 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 proposes amending this section by designating it as subparagraph (1) and specifying that manually filed submissions must be submitted between the hours of 8:30 a.m. and 5:00 p.m. Eastern Time on business days, but that electronically filed submissions must be filed by 5:00 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 5:00 p.m. Eastern Time on the due date. The Department intends to include 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. We also propose omitting the period after “NW” in the Department’s address, which was a typographical error.

The Department proposes adding section 351.303(b)(2), which specifies that, notwithstanding sections 351.103, 351.302, 351.303, 351.304, 351.305, and 351.306 of the Department’s procedures and rules, all documents must be filed electronically unless a relevant exception applies. Exceptions to the electronic filing requirements will be set forth in the IA ACCESS Handbook, which will be available at <http://www.trade.gov/ia>. The Department anticipates that the list of relevant exceptions may evolve over time, as the Department and the interested parties who use the electronic system gain experience with the electronic filing process and identify new exceptions that may be needed to accommodate previously unforeseen limitations both on the part of the Department and the users of the electronic filing system.

Furthermore, allowing exceptions to the electronic filing requirement meets the requirement in section 782(c) of the Act, which requires that a submitter notify the Department promptly of any

difficulties encountered in submitting requested information in the form and manner requested, and that the submitter must suggest an alternative form in which to submit the requested information. The Department will consider the ability of the submitter, and may modify the electronic filing requirements on a case-by-case basis. The Department anticipates that the alternative suggestion that will be provided by the party would be to file the submission manually. Therefore, in the proposed regulations, the Department has not mentioned the requirement in section 782(c) of the Act that a person suggest an alternative form in which to submit the requested information. This omission does not in any way change a submitter's obligation to comply with section 782(c) of the Act. Section 351.303(b)(2) would also specify that a person making an electronic filing must comply with the procedures set forth in the IA ACCESS Handbook. These procedures may be subject to change at a future time. The Department intends to notify the public on Import Administration's website whenever it makes updates to the IA ACCESS Handbook.

The Department proposes adding section 351.303(b)(3) to specify that all submissions must be accompanied by a cover sheet as will be described in the IA ACCESS Handbook. 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 submissions. For electronic filings, the submitter will need to complete the cover sheet online at the time of filing. For manual filings, the submitter will need to complete the cover sheet, print it, and submit it as the cover to the submission. The person submitting the cover sheet is responsible for the accuracy of the information on the cover sheet.

The Department proposes adding section 351.303(b)(4) to identify and distinguish among the five document classifications that may be submitted to the Department. The reasons for this

clarification are twofold. First, in the Department’s experience, there has been some confusion among interested parties with regard to the identification and labeling of documents, especially with regard to documents containing double-bracketed information. Section 351.303(b)(4) is intended to standardize the identification and labeling of all documents. Second, a submitter will need to identify the document properly when completing the cover sheet and 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. We have moved the definition of “business proprietary version” from section 351.303(c)(2)(i), to proposed section 351.303(b)(4). We propose defining “business proprietary document or version, as applicable” rather than only “business proprietary version” to make the terminology consistent with that in proposed sections 351.303(b)(4)(i), (ii), and (iii).

The Department proposes 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 section 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 for which a party agrees to release under administrative protective order (“APO”).

The document classifications described in sections 351.303(b)(4)(ii) and (iii) are business proprietary documents that use double-bracketing. The document described in section 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 section 351.303(b)(4)(iii) is called “Business Proprietary/APO Version–May Be Released Under APO.” It will 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 proposes adding sections 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 section 351.304(c). The second is the “Public Document,” which contains only public information. There is no corresponding business proprietary document for a public document.

Section 351.303(c) deals with filing and service requirements under the one-day lag rule. In sections 351.303(c)(1), 351.303(c)(2)(ii), and 351.303(c)(2)(iii), the Department proposes 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 original reason for requiring multiple copies of a document was to make a copy available to each person assigned to the Import Administration team administering the proceeding. However, with implementation of electronic filing, the Import Administration team will be able to access all submissions electronically and print them from IA ACCESS. In section 351.303(c)(2)(i), the Department has deleted the sentence defining “business proprietary version” because it has been included in proposed section 351.303(b)(4).

Section 351.303(c)(1) currently states that a person must file six copies of each submission with the Department. Section 351.303(c)(2)(i) currently states a that person must file one copy of the business proprietary version of any document with the Department within the applicable time limit. The Department proposes deleting the references to copy and copies because the terms copy and copies imply paper submissions. The Department also proposes 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 our practice not to apply the one-day lag rule during the 20-day pre-initiation period. The reason for this practice is to ensure that a business proprietary document and public version are filed simultaneously in their final form. Under the one-day lag rule, the final business proprietary document and the public version are not due until the next business day after a business proprietary document is filed, often the next business day after an applicable deadline. 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 our obligation to provide a copy of the petition and all amendments to the petition to embassies of exporting countries named in a petition under section 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) currently states 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 proposes amending this section 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 also proposes specifying 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 section 351.303(d)(2)(v). The Department believes 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 proposed amendment, the Department hopes to clarify that except as discussed above, the two documents must be identical. The Department also proposes amending this section to require persons to serve the complete final business proprietary document on other persons only if there are bracketing corrections. The Department proposes making explicit that if there are no bracketing corrections, a person need not serve a copy of the final business proprietary document. The reason service is not required in the absence of bracketing corrections is that in accordance with section 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) currently states that if a person serves authorized applicants with a business proprietary version of a document that excludes information in double brackets pursuant to section 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 proposes

amending this section by adding a reference to section 351.303(b)(4)(iii) and correctly identifying the document type as the “Business Proprietary/APO Version.” The Department intends to require 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 authorized applicants.

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

Section 351.303(c)(3) currently requires 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 section also requires that information on computer media must be releasable under APO, consistent with section 351.305. The Department proposes 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 proposes 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. If a submitter cannot file the database electronically, the Department will require the submission of the electronic database on computer media (such as a CD). Because the Department will upload the electronic databases to IA ACCESS, printouts of the databases will no longer be necessary. The Department proposes amending section 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 proposes changing section 351.303(d) to make references to the filing terminology consistent with the other terminology used in the rest of this section. Specifically, in section 351.303(d), which deals with the format of copies, the Department proposes replacing 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) currently 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 proposes amending paragraph (d)(2) to specify the dimensions of letter-size paper (8½ x 11 inches). Because CRU staff will need to insert all manually filed submissions into a scanner, the Department proposes requiring 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. For this reason, the Department proposes prohibiting the use of stapled, spiral, velo, or other type of solid binding in manual submissions.

The Department also proposes amending 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 Department proposes specifying that the document be formatted to print on letter-size (8½ x 11 inch) paper, single-sided and double-spaced so that the requirement is the same for both manually filed and electronically filed documents. The Department also proposes specifying 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) currently requires 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 proposes amending section 351.303(d)(2)(iii) to replace the current list of types of segments with a non-exhaustive list. The Department also proposes providing a specific date format for use in indicating the period of review, if relevant. The Department proposes eliminating 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 Department will require 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 also proposes amending section 351.303(d)(2)(v) to make it consistent with the terminology in section 351.303(b)(4). Specifically, this section currently requires that, on the

fifth and subsequent lines of each submission, a submitter 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 proposes 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 section 351.303(b)(4). The Department also proposes capitalizing the first letter in the words “is” and “be” to correct typographical errors. This section also requires 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 proposes deleting the term “the copies of” because a submitter will no longer be filing multiple copies of a submission, in accordance with proposed section 351.303(b)(2)(v). The Department also proposes replacing the term “business proprietary version” with “business proprietary document” to make the terminology consistent with that in section 351.303(b)(4).

Section 351.303(d)(2)(vi) currently requires that public versions of business proprietary documents contain the marking requirements required in paragraphs (d)(2)(i)-(v) of this section and conspicuously mark the first page “Public Version.” The Department proposes 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. We propose 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 paragraphs (b)(4).

Section 351.303(f) currently states 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 proposes changing the reference to section 351.207(f)(1) to section 351.208(f)(1) to correct a typographical error.

Section 351.303(f)(1)(ii) currently states 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 proposes changing the reference to "business proprietary version of a document" to "business proprietary document" to make the terminology consistent with that used in proposed section 351.303(b)(4). The Department also proposes 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.

Section 351.303(g) currently requires that the "person's" officially responsible for the presentation of factual information in a submission to certify to the accuracy and completeness of the information. The Department proposes correcting the typographical error to change "person's" to "person" in section 351.303(g)(1).

*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)(i) currently states that information claimed to be exempt from disclosure under APO must be enclosed in double brackets, and must include a full explanation of the reasons for the claim. Section 351.304(b)(2)(iii) states 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 proposes amending this sentence to replace “business proprietary information version” with “Business Proprietary/APO Version” to make the terminology consistent with that in section 351.303(b)(4)(iii).

Section 351.304(c) currently provides requirements for filing the public version of a business proprietary document. Section 351.304(c)(1) specifies, 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 proposes amending this section to replace “business proprietary version of the submission” with “business proprietary document” to make the terminology consistent with that in sections 351.303(b)(4)(i) and (ii).

Section 351.304(c)(2) currently specifies, 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 proposes amending this section to replace “business proprietary version of the submission” with “business proprietary document” to make the terminology consistent with that in sections 351.303(b)(4)(i) and (ii).

Section 351.304(d)(1) currently states 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) further specifies 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. Section 351.304(d)(1)(iv) specifies 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. Thus, the Department proposes amending the regulations to change the term “return” with “reject” in sections 351.304(d)(1) and 351.304(d)(1)(iv).

The Department is also considering providing for the implementation of electronic APO release as part of the overall transition to IA ACCESS. We do not believe it is necessary to address the actual process for such release in the Department’s regulations, because the existing regulations do not include our current practice of physically releasing APO materials to APO authorized applicants. The provision for electronic release of business proprietary information under APO can be reflected in the terms of the Department’s administrative protective order, and an acknowledgment of the additional security requirements that may be imposed on APO authorized applicants may be included in the APO application. We are requesting 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.

Comments –Deadline, Format, Number of Copies

The deadline for the submission of comments is sixty days after the publication of this notice. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured.

Parties wishing to comment should submit comments online at <http://www.regulations.gov>. If a party is unable to submit comments online, hardcopy comments may be filed with the Department. Comments must be addressed and labeled as specified under the “ADDRESSES” heading above. Comments filed with the Department must be signed, and must consist of the original and two copies of each set of comments, including reasons for any recommendations. To help simplify the processing and distribution of comments, the Department requests that a copy of the submission on electronic media accompany the required paper copies. Such electronic copies should be on CD-ROM in either Microsoft Word format or a format that the Microsoft Word program can convert into Microsoft Word Adobe portable document format (PDF).

The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in connection with this request for comment.

The Department will make comments received on CD-ROM available to the public on the internet at <http://www.regulations.gov>. In addition, upon request, the Department will make one copy of any comments received in paper on CD-ROM available to the public on CD-ROMs (at cost) with specific instructions for accessing compressed data (if necessary in the Department’s Central Records Unit. Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: [webmaster-support@ita.doc.gov](mailto:webmaster-support@ita.doc.gov).

#### 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 the proposed rule would not have a significant economic impact on a substantial number of small business entities.

Under the proposed rule, parties must file electronically all submissions with the Department, unless an exception for manual filing is applicable. If a submission is filed manually, a party need only submit one hard copy of the submission with the Department. The Department’s regulations currently require parties to submit one hard copy original and five hard copies of a public document. Alternatively, under the current regulations, if a document contains business proprietary information, a party must submit one hard copy original and five hard copies of a business proprietary document and three copies of a public version.

Parties who participate in AD/CVD proceedings include U.S. manufacturers, U.S. importers, and foreign exporters and manufacturers, some of whom are affiliated with U.S. companies. Some of these entities affected by this rule may be considered small entities under the SBA standard. The Department has determined that this rule will reduce the costs to produce written copies and the Department does not anticipate that electronic filing will add any significant operating costs for small entities. Because this proposed rule will reduce costs, it will not substantially impact a significant number of small business entities participating in AD/CVD proceedings. Thus no Initial Regulatory Flexibility Act statement is required, nor has one been prepared.

### *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.

---

Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

Date July 21, 2010

For the reasons stated, 19 CFR Ch. III is proposed to be amended as follows:

**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 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 1117, 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 5:00 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 5:00 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) or, where a relevant exception to electronic filing applies, 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. Both electronically and manually filed documents must be submitted with a cover sheet, consistent 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)(2) and (b) to read as follows:

**§ 351.104 Record of proceedings.**

(a) \* \* \*

(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 in the Central Records Unit 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. The public record will also be accessible at <http://www.trade.gov/ia>.

\* \* \* \* \*

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 paragraphs (a), (b), (c), (d), (f)(1), (g) introductory text, and (g)(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 5:00 p.m. Eastern Time on the due date. When applicable, a submitter must manually file a document between the hours of 8:30 a.m. and 5:00 p.m. Eastern Time on business days (see § 351.103(b)). If the applicable time limit expires on a non-business day, the Secretary will accept documents that are filed on the next business day.

(2) Electronic filing. Notwithstanding the relevant provisions of §§ 351.103, 351.302, 351.303, 351.304, 351.305, and 351.306 of the Department's procedures and rules, unless a relevant exception applies, a person must file all documents electronically at <http://www.trade.gov/ia>. Exceptions to the electronic filing requirements are set forth in the IA ACCESS Handbook on Electronic Filing Procedures, which is available at <http://www.trade.gov/ia>. As provided in § 351.103(c), and in accordance with section 782(c) of the Act, 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. The Department will consider the ability of the submitter and may modify the electronic filing requirements on a case-by-case basis. A person making an electronic filing must comply with the procedures set forth in the IA ACCESS Handbook on Electronic Filing Procedures.

(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://www.trade.gov/ia> and print the cover sheet for submission to the APO/Dockets Unit. For

documents that are filed electronically, a person must complete the cover sheet for such filing online at <http://www.trade.gov/ia> at the time of the electronic filing. The person submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet.

(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 version, as applicable, means a document or 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 version 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 cannot file the database electronically, then the submitter must file such information on the computer medium specified by the Department’s request for such information. The computer medium need not be accompanied by a computer printout. All electronic database information must be releasable under APO (see § 351.305).

(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. A person must submit manually filed documents on letter-size (8½ x 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 x 11 inch) paper, single-sided 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 to 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 copy of the business proprietary version filed under paragraph (c)(2)(i) of this section (one-day lag rule). Do not include this warning in the final business proprietary version 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 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 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.

\* \* \*

(g) Certifications. A person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section:

(1) For the person officially responsible for presentation of the factual information:

I, (name and title), currently employed by (person), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

\* \* \* \* \*

6. Section 351.304 is amended by revising paragraphs (b), (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) 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.

(2) Information claimed to be exempt from disclosure under administrative protective order. (i) If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

(ii) In an investigation, the submitting person may enclose business proprietary customer names within double brackets (see paragraph (a)(1)(iii) of this section).

(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 Sec. 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.

\* \* \* \* \*

[FR Doc. 2010-18389 Filed 07/27/2010 at 8:45 am; Publication Date: 07/28/2010]