List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Natural resources, Historic preservation, Marine resources, National marine sanctuaries, Recreation and recreation areas, Shipwrecks.

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 230905–0210]

RIN 0625–AB15

Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: Pursuant to its authority under title VII of the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is modifying its regulations governing procedures related to administrative protective orders (APO) and service of documents submitted in antidumping (AD) and countervailing duty (CVD) proceedings. Specifically, Commerce is making certain changes to its procedures governing the filing of documents (including public documents, business proprietary documents, and public versions of business proprietary documents), as well as service of documents. Commerce is also making additional clarifications and corrections to other procedural aspects of its AD/CVD regulations, including updates to the scope, circumvention, and covered merchandise referral regulations. Lastly, Commerce is deleting from its regulations two provisions that have been invalidated by the United States Court of Appeals for the Federal Circuit (Federal Circuit).

DATES: Effective date: October 30, 2023. This final rule will apply to all AD/CVD proceedings that are ongoing on the effective date and all AD/CVD proceedings initiated on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Nikki Kalbing at (202) 482–4343, Elio Gonzalez at (202) 482–3765, or Scott McBride at (202) 482–6292.

SUPPLEMENTARY INFORMATION:

General Background

On November 28, 2022, Commerce published a proposed modification of its regulations governing procedures related to APOs and service of documents submitted in AD and CVD proceedings and to procedural aspects of its AD/CVD regulations (hereafter, the *Proposed Rule*).[1] The *Proposed Rule* explained Commerce's proposal to make permanent certain changes to its service procedures that have been adopted on a temporary basis due to COVID–19, and proposed additional clarifications and corrections to its AD/CVD regulations, including updating the scope, circumvention, and covered merchandise referrals, and deleting from its regulations two provisions that have been invalidated by the Federal Circuit. Commerce received nine comments on the *Proposed Rule* and has addressed those comments below. After analyzing and carefully considering each comment it received in response to the *Proposed Rule,* Commerce has adopted the proposed modification with certain changes and is amending its regulations accordingly.

Explanation of Modifications From the Proposed Rule to the Final Rule

As we explained in the *Proposed Rule,* one of the purposes for modifying our regulations is to assist in making the administration of Commerce's AD/CVD proceedings more efficient by allowing parties to utilize available electronic or other efficient means of service. In this final rule, Commerce has determined to make certain modifications from the *Proposed Rule* in response to the comments received. With these modifications, as discussed further below, this final rule codifies the regulations proposed on November 28, 2022.

In this final rule, Commerce is amending proposed section 351.303(f)(1)(iii) to make service via electronic transmission for public documents and public versions of a business proprietary document, and service via secure electronic transmission for business proprietary documents, the default method of alternative service when service of such documents cannot be effectuated on ACCESS or when ACCESS is unavailable. This includes, for example, service of business proprietary documents filed under the one-day lag rule under section 351.303(c) (*i.e.,* non-final business proprietary documents filed on the due date under the one-day lag rule). As a result of adopting this change, Commerce is not adopting its proposed modification that parties file a standalone certificate of service for documents filed under the one-day lag rule under proposed section 351.303(c)(2)(i). Commerce is also modifying section 351.303(f)(2)(i) to permit electronic service of certain requests for review. In addition, Commerce is modifying section 351.305(c)(2) to specify that service of earlier-filed business proprietary submissions that are no longer available on ACCESS may be effectuated via secure electronic transmission. Commerce is also making some additional modifications for clarity and consistency. Finally, in this final rule, we are adopting the proposed amendments to the regulations discussed in the *Proposed Rule* for which we did not receive comments, or that we are not otherwise modifying, as discussed in greater detail below.

The following sections generally contain a brief discussion of each regulatory provision for which we received comments, a summary of the comments we received, and Commerce's responses to those comments. These sections contain further explanation of any changes Commerce is making in this final rule from the *Proposed Rule,* either in response to comments or that Commerce deems necessary for conforming to, or clarification of, the regulations, or for providing additional public benefit. The final section discusses additional comments suggesting other modifications to the ACCESS system and filing procedures that were not covered or addressed in the *Proposed Rule* and are therefore not included in this final rule.

Responses to Comments Received on the Proposed Rule

Commerce received nine comments on the *Proposed Rule.* Below is a summary of the comments, grouped by issue category, followed by Commerce's response.

Standalone Certificates of Service for Business Proprietary Documents

Proposed section 351.303(c)(2)(i) would require a party filing a business proprietary document on ACCESS to also file a separate, standalone, public certificate of service with its submission. Although the *Preamble* to

[1] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 87 FR 72916 (November 28, 2022) (*Proposed Rule*).

the *Proposed Rule* indicates that this provision would apply to business proprietary documents filed under the one-day lag rule, two commenters interpret the certificate of service requirement under section 351.303(c)(2)(i) as applying to any business proprietary filing. One commenter suggests that Commerce modify proposed section 351.303(c)(2)(i) to limit the standalone certificate of service requirement to only business proprietary documents filed under the one-day lag rule.

Several other commenters argue that any requirement to file a standalone certificate of service is burdensome, inefficient, costly, would clutter the docket, and would not necessarily provide same-day notice of a filing, because documents submitted close to 5:00 p.m. often do not appear on ACCESS until the next day. Another commenter argues that the standalone certificate of service would add little value if Commerce reinstates the requirement to serve documents submitted under the one-day lag rule and even if Commerce does not reinstate that service rule, the standalone certificate of service will only inform parties that the filing was made, which would become apparent anyway in one business day.

These commenters suggest several alternatives, including making technical changes to ACCESS to permit the one-day lag filing to appear on the ACCESS docket and digests, but not be viewable or downloadable, which would give parties notice of the filing without it becoming part of the official record. One commenter argues that Commerce should simply require a certificate of service with every public and proprietary filing. Another suggestion, further discussed below, is to require electronic service of documents filed under the one-day lag rule on the same day they are filed with Commerce, thereby obviating the need to file a standalone certificate of service.

Response: We clarify that the proposal to file standalone certificates of service only applies to documents submitted under the one-day lag rule and does not apply to all business proprietary documents. However, as explained below, we are amending the regulation to permit the service of one-day lag documents via secure electronic transmission. That will obviate the need to file a standalone certificate of service, because parties served via secure electronic transmission will be able to receive the documents the same day they are filed on ACCESS. Thus, we are removing from this final rule the provision of section 351.303(c)(2)(i) that would require the filing of a standalone certificate of service with the submission of business proprietary documents filed under the one-day lag rule.

Further, we are not adopting the suggestion that Commerce make one-day lag documents appear on the ACCESS docket and digests without being viewable or downloadable, as an alternative way of providing notice to parties that a one-day lag submission has been filed. As stated in the *Proposed Rule,* business proprietary documents filed under the one-day lag rule and containing non-final bracketing cannot be served via ACCESS using the same technology used for serving official record documents.[2] Similarly, ACCESS does not have the technical capability at this time to make these documents appear on the ACCESS docket and digests without being viewable or downloadable or becoming part of the official record. As stated above, we are amending the regulation to permit the service of one-day lag documents via secure electronic transmission, which will enable parties to receive the documents the same day they are filed on ACCESS. Therefore, we find it unnecessary to adopt this commenter's suggestion.

Service of Business Proprietary Documents, Public Documents, and Public Versions of Business Proprietary Documents via ACCESS

Most commenters express support for the proposal in proposed sections 351.303(f)(1)(i) and (ii)(A) that, in general, service of a public document, public version of a business proprietary document, and a business proprietary document will be effectuated on parties on the public and APO service lists upon filing of the submission on ACCESS, unless ACCESS is unavailable. Two commenters particularly support the proposal to move service requirements of case and rebuttal briefs from current section 351.303(f)(3)(i) (service of case and rebuttals briefs through personal service on the same day the brief is filed, or overnight mail or courier on the next day) to proposed section 351.303(f)(1), which would generally allow service through ACCESS.

However, some commenters express concern that due to the time it takes ACCESS to process filed documents and release digest notifications, parties are not able to download documents the same day they are filed and sometimes must wait a day or longer when documents are filed before a weekend or holiday. One commenter remarks that under the *Temporary Rule,*[3] case and rebuttal briefs were often not available on ACCESS the same day as filing, which was particularly problematic when filed under the one-day lag rule, which could result in parties not receiving case or rebuttal briefs until two days or more after the initial filing. Several commenters remark that ACCESS delays in making documents available shorten the time parties must respond to filings because certain response deadlines are triggered from the filing date. This in turn creates inefficiencies and compresses the time in which Commerce has to conduct a proceeding when parties file extension requests that Commerce must take the time to consider.

One commenter proposes that Commerce adjust ACCESS release times to ensure that documents are ''served'' on the same business day they are filed. Another commenter asserts that ACCESS delays in making documents available the same day as filing contravenes the statutory requirement under section 777(d) of the Act that ''[a]ny party submitting written information, including business proprietary information, to the administering authority . . . during a proceeding shall, *at the same time,* serve the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order'' (emphasis added). This commenter suggests that Commerce revise proposed sections 351.303(f)(1)(i) and (f)(1)(ii)(A) to require that if ACCESS does not release a business proprietary, public, or public version of a document within one business day, then the submitter must effectuate service of the document upon the request of a party on the service list, using one of the alternative methods of service provided for under proposed section 351.303(f)(1)(iii). The commenter relatedly proposes to add a requirement to proposed section 351.303(f)(1)(iii) that if such an alternative method of service is used

[2] *See Proposed Rule,* 87 FR at 72920.

[3] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Rule*) (temporarily modifying certain requirements for serving documents containing business proprietary information in AD/CVD cases to facilitate the effectuation of service through electronic means for purposes of promoting public health and slowing the spread of COVID–19). The *Temporary Rule* was extended on May 18, 2020, and then again indefinitely on July 10, 2020. *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

when ACCESS does not release documents within one business day, the submitter would then be required to file a revised certificate of service pursuant to sections 351.303(c)(2)(i) and 351.303(f)(3).

Response: We understand the concerns expressed by some commenters that parties sometimes must wait a day or longer to download filed documents due to ACCESS delays. While most of the time documents are made available on the same day they are filed on ACCESS, this is not always achievable. Commerce endeavors to review and approve for release on ACCESS all documents submitted on the same day of filing, but this is sometimes not possible due to Commerce's limited resources, as well as other factors, including the timing of when the document is filed on ACCESS, and the volume of files that must be reviewed and approved. On balance, Commerce makes documents available on ACCESS as soon as possible, and many times, on the same day the document is filed.

Relatedly, we disagree with the comment that section 777(d) of the Act requires documents to be made available the same day as filing. The statute requires that a document be *served* at the same time as it is filed, but it does not require that the document be *received* by parties on the same day as filing.[4] Thus, the requirements of the statute are fulfilled for those situations under the revised regulations where service is effectuated upon filing on ACCESS, even if the document is not received by other parties on the same day as filing. This is consistent with how service operates under the current regulations where, for example, parties may serve certain documents by first-class mail on the day the document is filed, but the documents are not necessarily received on the same day as filing.

For the reasons discussed above, we are not adopting the suggestion that Commerce revise the regulations to provide that if ACCESS does not release a business proprietary, public, or public version of a document within one business day, the submitter must effectuate service using an alternative method of service and file a revised certificate of service. Such a rule would be difficult for Commerce to administer given its limited resources. Moreover, submitters would not be able to predict when the submission will be made available in ACCESS, and thus, may not know that they should effectuate service using an alternative method.

Alternative Methods of Service for Business Proprietary Documents, Public Documents, and Public Versions of Business Proprietary Documents

Several commenters raise concerns about mail or hand delivery as alternative methods of service authorized under proposed section 351.303(f)(1)(iii) when service of a public, business proprietary, or public version of a business proprietary document cannot be effectuated through ACCESS. Commenters argue that mail or hand delivery is regressive, contrary to the stated purpose of the *Proposed Rule* to make service more efficient, costly, burdensome, less reliable than electronic transmission, out of step with modern professional practice of electronic transmission, wasteful (when the documents will usually be scanned and the delivered hard copy destroyed), and inequitable in that it requires some personnel to be in the office rather than telework. Several commenters also point out that Commerce itself uses encrypted electronic platforms when transmitting business proprietary documents.

One commenter argues that proposed section 351.303(f)(1)(iii) places a greater burden on petitioners' firms, which often file submissions containing business proprietary information of multiple parties, and therefore are required to serve submissions by hand delivery or mail. Even if a petitioner is commenting on the business proprietary information of only one respondent, the petitioner only has the option of seeking consent to electronic service from that particular respondent and would still have to serve all other parties on the APO service list by hand or by mail. One commenter points out that for documents submitted under the one-day lag rule, service by mail or hand delivery does not necessarily result in parties receiving the documents on the day of filing, but rather after filing of the final business proprietary version on ACCESS.

Thus, several commenters propose that Commerce eliminate the requirement for service by mail or hand delivery and make electronic service through secure electronic transmission the default rule. Some commenters propose that in making electronic service the default rule, Commerce should require that when parties sign an APO or make an entry of appearance, they agree to electronic transmission via secure file transfer unless they specifically opt out and request service by hand delivery or mail on their forms. One commenter suggests that Commerce may also consider giving parties the option to express inability to receive certain types of electronic service. Another commenter recommends amending proposed section 351.303(f)(1)(iii) to establish that service of documents containing business proprietary information of a person who is not included on the APO service list shall be made via secure electronic file transfer unless the party has ''opted out'' in its entry of appearance, in which case service may be effectuated by hand delivery or first-class mail. One commenter similarly proposes that electronic service through encrypted platforms should also be available to *pro se* and non-APO represented parties.

Several commenters also argue that Commerce should specify certain security standards that electronic transmission platforms used to transmit documents are required to contain.

Some commenters argue that under proposed section 351.303(f)(1)(iii), Commerce should allow secure electronic transmission of a third party's business proprietary information, rather than just that of the sender and recipient and eliminate the requirement of consent from the recipient for service through secure electronic transmission. Commenters argue that the requirement to seek consent for electronic service of business proprietary documents that contain business proprietary information of the sender or the recipient only is burdensome. For certain documents that include issues and arguments relating to multiple parties (*e.g.,* case briefs), it may not be possible to include business proprietary information without preparing party-specific versions of the submission. Thus, commenters argue that the default rule for electronic service through secure electronic transmission (unless a party affirmatively opts out) would eliminate the inefficiency of requiring parties to obtain consent before using electronic file transfer and eliminate the need for multiple different versions of the same document depending on whether a party affirmatively consented to electronic service.

If Commerce permits service by unencrypted email, several commenters argue that such submissions should still only contain the recipient's or submitter's business proprietary information, and that all parties must consent. Another commenter proposes that, in addition to these requirements, the recipient must explicitly request an unencrypted email transmission.

[4] Section 777(d) of the Act states, ''Any party submitting written information, including business proprietary information, to the administering authority or the Commission during a proceeding shall, at the same time, *serve* the information upon all interested parties who are parties to the proceeding, if the information is covered by a protective order'' (emphasis added).

One commenter raises concern regarding the requirement of section 351.303(f)(1)(ii)(B) that if a document contains the business proprietary information of a party who is not on the APO service list, the submitter of the document must serve the unrepresented party its own business proprietary information using one of the alternative service methods under section 351.303(f)(1)(iii). This requirement, according to the commenter, would require represented parties to reach an agreement with unrepresented parties on an alternative means of service, and potentially place the represented party in the position of needing to explain the regulations to the unrepresented party, which could lead to conflicts in which Commerce would need to intervene. The commenter proposes that Commerce amend section 351.303(f)(1)(ii)(B) to include specific language stating that Commerce will instruct, and will assume the responsibility for such instruction of, the parties as to the alternative means of service submitters must use under section 351.303(f)(1)(iii).

Another commenter requests clarification of the statements that public and business proprietary documents will be served via ACCESS ''unless ACCESS is unavailable'' and that an alternative method of service must be used if service ''cannot be effectuated on ACCESS (for any reason).'' Although the commenter interprets these phrases to encompass situations where a filing is not submitted through ACCESS (*e.g.,* ACCESS is temporarily unavailable due to technical failure) or a party is unable to receive service via ACCESS (*e.g.,* a *pro se* party that would not be able to receive service via ACCESS of a document containing only its own business proprietary information), the commenter notes that these phrases could be interpreted to encompass other situations. For example, there may be a situation in which a party files a document on ACCESS but due to a technical error the document is not made available via ACCESS, and the submitter is unaware and unable to know that it is necessary to take alternative measures. Thus, the commenter seeks clarification on the circumstances under which service would not be ''effectuated on ACCESS.''

Response: Upon consideration of these comments, we agree that electronic service via secure electronic transmission between parties should be the primary method of service when service cannot be effectuated on ACCESS or when ACCESS is unavailable. This approach is consistent with modern professional practice and would fulfill the goal of these regulatory amendments to make service more efficient. Thus, for this final rule we are amending section 351.303(f)(1)(iii) so that service via electronic transmission for public documents and public versions of business proprietary documents, and secure electronic transmission for business proprietary documents, is the default method of alternative service when service of such documents cannot be effectuated on ACCESS or when ACCESS is unavailable.

This default rule for electronic service will apply to APO-authorized, non-APO authorized, and *pro se* parties. Thus, non-APO authorized representatives and *pro se* parties generally will be permitted to transmit business proprietary information electronically, subject to additional restrictions as explained below. Accordingly, we find that the concern expressed by one commenter that a represented party may be put in a situation where it needs to explain the regulations to an unrepresented party is rendered moot by adoption of electronic transmission as the default method of alternative service under section 351.303(f)(1)(iii).

Because this is the default rule, parties generally will not need to affirmatively consent to receiving business proprietary information by electronic transmission. Service by mail or personal service [5] will continue to be an acceptable means of alternative service only in the very limited circumstance that a party does not have the capacity to send or receive documents electronically (*e.g.,* an interested party in a foreign country that does not have access to email). Because electronic service is the default rule, we are not adopting the proposal that parties be permitted to affirmatively opt out of electronic service in their entries of appearance and APO applications.

We also clarify that in making electronic service the default rule, APO-authorized representatives will be permitted to serve documents on other APO-authorized representatives that include third-party business proprietary information, and not just that of the sender or the recipient, and the recipient need not affirmatively consent to service (as was required in the *Proposed Rule*). That is, any APO-authorized representative may serve documents that include any business proprietary information (including that of a third party) on another APO-authorized representative. This alleviates the concern expressed by some commenters that there is a greater burden on petitioners' firms because they often file submissions containing the business proprietary information of multiple parties. However, the APO-authorized representative must ensure that when serving documents on non-APO authorized representatives and *pro se* parties, the documents contain only the business proprietary information of the non-APO authorized representative or of the *pro se* party.

When compared to APO-authorized representatives, the procedures differ for non-APO authorized representatives and *pro se* parties where electronic service is the default rule. Non-APO authorized representatives and *pro se* parties will be permitted to serve documents containing the business proprietary information of the non-APO represented party or the *pro se* party (respectively) on APO-authorized representatives.[6] They may also receive service of documents containing their own business proprietary information.

We strongly encourage the transmission of business proprietary information through secure electronic transmission. However, we will permit service via unsecure electronic transmission (*i.e.,* electronic mail) if an APO-authorized representative, *pro se* party, or non-APO authorized representative of a party requests service via unsecure electronic transmission, the recipient consents, and the document contains only the business proprietary information of the submitter or recipient. If the business proprietary document is encrypted, then consent is not required.

Given rapid changes in technology, we do not find it practical to set minimum security standards in these regulations. Thus, we are not adopting the proposal to specify a particular encryption level for secure electronic transmission in the regulation but rather advise that generally, business proprietary documents should be served through platforms that use secure electronic transmission (*e.g.,* encrypted emails, File Transfer Protocol Secure (FTPS), or secure file share such as Kiteworks, DocuSign, or Google Drive).

[5] For consistency with our current regulations, in this final rule we have adopted the term ''personal service'' instead of ''hand delivery,'' which was used in the *Proposed Rule.* By reverting to the term in our current regulations, we indicate that methods of personal service that have been used under the current regulations continue to be acceptable as alternative methods of service when secure electronic transmission is not possible.

[6] We note that a non-APO authorized representative or *pro se* party may also serve its own client's or its own business proprietary information (respectively) on anyone, but for purposes of our proceedings, they would normally serve APO-authorized representatives.

However, more specific security standards may be added to the ACCESS Handbook and updated from time to time as technological changes necessitate.

In response to the comment that language describing ACCESS as ''unavailable'' under sections 351.303(f)(1)(i) and (f)(1)(ii)(A) could be interpreted to include multiple situations, we have amended the regulation to add a requirement that an alternative form of service in accordance with section 351.303(f)(1)(iii) is needed when a submission is filed manually, including bulky document filings, super bulky filings, and data files that exceed the file size limit. The reason for this change is to expedite the availability of these submissions, which require additional processing. In some cases, as a commenter mentioned, there may be delays in making those files available, especially in situations where the ACCESS team may need to find an alternative method of releasing the files. In our experience, the transmittal of extremely large collections of documents has, at times, required a corresponding large use of ACCESS resources. The use of such resources has, in turn, caused the ACCESS system to operate at much slower speeds, resulting in extensive download times for parties and forcing them to download documents during non-peak times. Considering the above, Commerce has determined that for such manual filings (including bulky document filings, super bulky filings and data files exceeding the file size limit), that the submitter who is filing the submission in this alternative manner also be required to serve the submission in an alternative manner in accordance with section 351.303(f)(1)(iii). This additional step for the submitter to ensure timely service will be offset by the time savings the submitter will gain in manually filing its voluminous submission. This requirement also addresses the concerns of those commenters who expressed concern about receiving access to submissions in a timely manner.

We also clarify that ACCESS is considered ''unavailable'' when, due to a technical failure, ACCESS is unable to accept electronic filings, as specified in the Handbook on Electronic Filing Procedures, which is available on the ACCESS website at *https://access.trade.gov* (via the ACCESS Handbook link). If ACCESS is unable to accept electronic filings for more than one hour between the hours of 12:00 p.m. and 4:30 p.m. Eastern Time, or for any duration of time between the hours of 4:31 p.m. and 5:00 p.m. Eastern Time, Commerce will allow a document or data to be filed manually. In such a situation, if a submitter files a submission manually, it must also serve the submission on the parties to the proceeding in accordance with section 351.303(f)(1)(iii). Thus, generally, if a submitter must file a submission manually, the submitter must also use an alternative form of service. The reason for requiring alternative service is that a technical failure that requires manual filing will cause a delay in service, as discussed above. At the time of filing, the submitter will be aware of the technical failure and therefore should also be aware of the service obligations for manual filings.

If a technical failure occurs, but a submitter already successfully filed a submission electronically before the technical failure occurred, the submitter does not need to serve the submission using an alternative method. Rather, the would-be recipients should wait until the ACCESS technical failure has been resolved, and the submissions will be available at that time. If Commerce determines that the technical failure will be lengthy in duration given the severity of the problem or a large backlog of filings to process, Commerce may direct parties to seek service copies from one another.

Finally, we clarify what is meant by situations when service ''cannot be effectuated on ACCESS'' under section 351.303(f)(1)(iii). There are certain situations in which ACCESS does not have the capability to effectuate service based on the way the system is structured. There are two categories that determine who and what gets served. Who gets served is determined by the individuals on the APO and public service lists. What gets served is determined by the documents that are on the record. A party to the proceeding can use these guidelines to understand whether, at the time of filing, service of a particular submission can be effectuated on ACCESS.

For example, a document submitted under the one-day lag rule under section 351.303(c)(2)(i) is not considered a record document due to the non-final nature of the designation of business proprietary information; therefore, service cannot be effectuated on ACCESS. Another example is a document that contains the business proprietary information of a person who is not included on the APO service list. Under section 351.303(f)(1)(ii)(B), service cannot be effectuated on ACCESS for that person and must be made in accordance with section 351.303(f)(1)(iii). A further example is a situation where a representative of an interested party is granted APO access after other parties to the proceeding have already filed submissions to the record and they are no longer available for download on ACCESS, as addressed in section 351.305(c)(2).

Other situations in which a document is not immediately made available on ACCESS are not situations in which service cannot be effectuated on ACCESS.

Reinstatement of Service Requirement for Documents Filed Under the One-Day Lag Rule

Commenters are divided in their support of Commerce's proposed reinstatement of the requirement that business proprietary documents filed under the one-day lag rule be served on interested parties. Commenters who oppose the reinstatement of the service requirement argue that it is burdensome (even if done by electronic means); creates inconsistencies; increases the likelihood of errors, including APO violations; and does not allow the flexibility to manage varied situations, such as another pandemic, inclement weather, and increased telework. One commenter argues that the burden of service of one-day lag documents is greater for petitioners' firms, because they are more likely to file submissions containing multiple parties' business proprietary information, and such documents cannot be served by electronic means under the *Proposed Rule.*

Several commenters address Commerce's observation in the *Proposed Rule* that under the waiver of the service requirement for one-day lag submissions under the *Temporary Rule,* parties were sometimes not aware of a filing. One commenter notes that any uncertainty as to whether a document has been filed under the one-day lag rule lasts only about a day, and parties have been dealing with that uncertainty now for over two years under the *Temporary Rule.* This commenter points out that any inconvenience in having a tighter rebuttal period could be alleviated by maintaining the extension of the time for rebuttal briefs from five to seven days, as adopted under the *Temporary Rule.* Another commenter points out that lack of same-day notice of the filing of a business proprietary document under the one-day lag rule also occurred before the *Temporary Rule,* for example when first-class mail delivery of the document arrived the next business day after filing with Commerce. Some commenters note that under the proposed alternative methods of service under section 351.303(f)(1)(iii), one-day lag filings

might still be received after the final bracketed version is released by Commerce because of delays in the type of service used (*e.g.,* first-class mail). Thus, several commenters conclude that the benefits of notice through reinstatement of the service requirement for one-day lag documents do not outweigh the burdens and risks.

Other commenters propose measures to address Commerce's concern that parties are not aware of the filing of documents under the one-day lag rule, without reinstating the service requirement for one-day lag documents. For example, one commenter suggests that Commerce adopt the proposal under section 351.303(c)(2)(i) to file a standalone certificate of service for documents filed under the one-day lag rule that would include the name of the submission and the party for whom it was filed. This would effectively be a ''certificate of non-service'' because the documents would not be served but would give parties notice of the filing of the one-day lag document through the ACCESS public service list. This commenter also proposes that parties be permitted to file the ''certificate of non-service'' before the filing of the document on ACCESS to reduce the burden on parties filing multiple submissions on the same day, to help ensure submissions are made in their entirety prior to the filing deadline, and to increase the likelihood that other parties will be made aware of the filing on the actual filing day. Alternatively, the commenter proposes that Commerce permit that the ''certificate of non-service'' be filed two hours after the deadline for the one-day lag document (*e.g.,* 7:00 p.m. for a 5:00 p.m. filing deadline), and still be deemed timely.

One commenter suggests that Commerce itself release the one-day lag submission under the same procedures as the release of the final bracketed business proprietary versions. Another commenter suggests that Commerce could require that final business proprietary and public versions of one-day lag documents contain a header indicating whether the one-day lag rule was used, an approach that is similar to the current ''bracketing not final'' designations on documents filed under the one-day lag rule.

Several other commenters support reinstatement of the service requirement for documents filed under the one-day lag rule. One commenter states that Commerce's concern over parties not receiving notice of filings of one-day lag documents under the *Temporary Rule's* waiver of service requirements was borne out by its own experiences. That commenter states that parties often did not know if a document had been filed under the one-day lag rule, or a party had missed the deadline. Moreover, because parties did not receive the document the day it was filed with Commerce, they missed a day or more of the regulatory rebuttal period, requiring the filing of extension requests. Another commenter supports the reinstatement of the service requirement of documents filed under the one-day lag rule because it prevents parties from delaying service of documents through the one-day lag rule, and because it enables other parties to ensure that the only changes made between the document filed by the deadline under the one-day lag rule and the final document relate to identification of business proprietary information.

Some commenters support the reinstatement of the service requirement for documents filed under the one-day lag rule, but object to the requirement that such service be effectuated outside of ACCESS. These commenters suggest that documents submitted under the one-day lag rule should be deemed served on parties on the APO service list when filed on ACCESS. Several parties address Commerce's explanation in the *Proposed Rule* that a business proprietary document filed under the one-day lag rule contains non-final bracketing that is not treated as an official record document, and thus cannot be served via ACCESS with the same technology used for serving official record documents. Some commenters suggest that Commerce make technical changes to ACCESS to prevent one-day lag filings from becoming part of the official record, including permitting parties 14 days to download business proprietary documents filed under the one-day lag rule before deleting the documents from the record.

Several commenters state that if documents filed under the one-day lag rule are not served via ACCESS, parties should be permitted to serve such documents via secure electronic transmission on the day the document is filed with Commerce, and object to any requirement that service be completed via first-class mail or hand delivery as inefficient, costly, and burdensome on parties. These commenters argue that parties often do not receive the documents filed under the one-day lag rule before the final proprietary version is filed on ACCESS because documents served by such means are not always received on the same day as filing. One commenter proposes that documents filed under the one-day lag rule may be served via email if all parties agree, and that first-class mail or hand delivery should only be required when a party explicitly requests that method of service. Other commenters state that electronic service of one-day lag documents would obviate the need for the standalone public certificate of service requirements under proposed section 351.303(c)(2)(i).

One commenter notes that because the bracketing in one-day lag filings is only provisional, an attorney may not be able to share it with a client until the final business proprietary version is filed. The commenter indicates that delays in receipt when documents are served via first-class mail are particularly problematic with respect to case and rebuttal briefs, and suggests that Commerce could require that business proprietary case and rebuttal briefs served under the one-day lag rule be served by hand delivery or overnight mail or courier, and that Commerce could set an earlier deadline for submission of the final proprietary and public versions of a document submitted under the one-day lag rule. According to this commenter, setting an earlier deadline would result in a greater likelihood that the submissions would be ''approved'' and available to other parties on ACCESS on the same day.

Finally, two commenters argue that if Commerce reinstates the service requirement for business proprietary documents filed under the one-day lag rule, service should only be made on parties on the APO service list, and not on *pro se* or non-APO authorized parties. The commenters argue that to require service of such documents to non-APO authorized parties before the final bracketing is checked creates significant risk of an APO violation, particularly when submissions contain the business proprietary information of multiple parties. These commenters argue that this undermines the purpose of the one-day lag rule to protect business proprietary information.

Response: Upon consideration of these comments, we are adopting our proposal to reinstate the requirement that a business proprietary document filed on the due date under the one-day lag rule must also be served on the persons on the APO service list and those non-APO authorized parties whose business proprietary information is contained in the document. However, as discussed above, for this final rule we are amending section 351.303(f)(1)(iii) so that electronic service via secure electronic transmission is the default method of alternative service, including for business proprietary documents filed under the one-day lag rule. We believe

that reinstating the service requirement of such documents eliminates uncertainties that resulted from waiving service during the past three years under the *Temporary Rule* and helps with providing parties as much time as possible with such documents to protect their interests. In our view, this fulfills the goal of these regulatory amendments to make service more efficient and addresses many of the concerns raised regarding the burden of other forms of service, such as first-class mail or personal service, while also maintaining flexibility. Although some commenters oppose the reinstatement of service requirements for documents filed under the one-day lag rule, we are not convinced that, overall, the benefits of not being required to serve these documents under the *Temporary Rule* outweigh the benefits of requiring service. This is particularly true when considering that Commerce is amending the regulations to permit such documents to be served via secure electronic transmission, which greatly reduces the burdens expressed by certain commenters.

Further, as discussed above, because we are amending the regulation to permit the service of one-day lag documents via secure electronic transmission, we are removing the requirement to file a standalone certificate of service from this final rule. For similar reasons, we determine it is not necessary to adopt one commenter's alternative proposal to require a ''certificate of non-service.'' Because we are reinstating the service requirements for business proprietary documents filed under the one-day lag rule, filing a ''certificate of non-service'' would not be needed because such documents would in fact be served.

Allowing electronic service of business proprietary documents filed under the one-day lag rule removes the uncertainty parties may have experienced over whether a document was filed under the one-day lag rule or whether the document was untimely filed or not filed at all. Having the submitter serve parties via secure electronic service will also help to reduce delays in service, enable parties to ensure that any changes made to the final business proprietary document are only related to bracketing, and increase the likelihood that parties will receive the documents the same day they are filed on ACCESS. Accordingly, we find it unnecessary to adopt the suggestion that the time for submitting rebuttal briefs be increased from five to seven days as a method of relieving the potential compressed period for submitting rebuttal briefs that may result from delays in receiving documents filed under the one-day lag rule. For similar reasons, we also find it unnecessary to adopt the suggestion that Commerce set an earlier deadline for the submission of final business proprietary and public versions of documents submitted under the one-day lag rule as a potential way for these documents to be approved faster on ACCESS. We also note that neither of these suggestions are responsive to the proposed regulatory amendments in the *Proposed Rule,* and thus, such modifications would be outside the scope of this rulemaking.

Moreover, as discussed above, in making electronic service the default rule, APO-authorized representatives will be permitted to serve third-party business proprietary information, not just that of the sender or the recipient, and the recipient need not affirmatively consent to service. This alleviates the concern expressed by some commenters that there is a greater burden on petitioners' firms that often file submissions containing the business proprietary information of multiple parties, because these parties will be able to electronically serve documents containing the business proprietary information of multiple parties.

Some commenters suggest that Commerce itself should release non-final business proprietary documents filed under the one-day lag rule by making technical changes to ACCESS to prevent such documents from becoming part of the official record. These commenters suggest that this would be a method of allowing ACCESS to effectuate service of such documents without reinstating service requirements outside of ACCESS. As stated in the *Proposed Rule,* business proprietary documents filed under the one-day lag rule and containing non-final bracketing cannot be served via ACCESS using the same technology used for serving official record documents.[7] Should ACCESS technology capabilities change in the future, we will consider whether service of non-final bracketing documents can be effectuated upon filing on ACCESS. At this time, however, we believe that permitting electronic service of non-final bracketing documents is efficient, consistent with modern professional practice, and sufficiently addresses the various concerns raised by parties.

Finally, certain commenters argue that if Commerce reinstates service requirements for non-final business proprietary documents filed under the one-day lag rule, such requirement should only apply to persons on the APO service list and not on non-APO authorized representatives or *pro se* parties because it creates a significant risk of an APO violation. We recognize there may be some risk of a potential APO violation if parties do not properly bracket business proprietary information in a non-final business proprietary submission. At the same time, we are cognizant that non-APO authorized representatives and *pro se* parties would benefit from service of such documents in defending their interests during a segment of the proceeding. We remind parties of their responsibility to properly safeguard business proprietary information.[8] Commerce's regulations have required parties to identify whose business proprietary information is contained in a submission; this is not a new requirement.[9] If a submitter cannot identify certain business proprietary information as definitively belonging to a non-APO authorized representative or *pro se* party, then it is the submitter's responsibility to bracket the information accordingly in the non-final business proprietary submission and consider whether service of the submission needs to be made. When preparing the final version of the submission, the submitter should assess whether the bracketing should be updated or corrected. On balance, we believe it is important to reinstate service requirements for non-final business proprietary documents filed under the one-day lag rule on all parties, whether or not they are APO-authorized, and are adopting this change.

To be clear, the requirement to serve business proprietary documents filed under the one-day lag rule applies to non-final business proprietary documents. For final business proprietary documents, with or without bracketing corrections, and public versions of final business proprietary documents, the general rule applies that ACCESS will effectuate service, as outlined elsewhere in this final rule and in the *Proposed Rule.*

Request for Review

Two commenters express concern over the requirement in proposed section 351.303(f)(2)(i) that requests for an expedited AD review, an administrative review, a new shipper review, or a changed circumstances review be served by personal service or first-class mail on each exporter or producer specified in the request. One

[7] *See Proposed Rule,* 87 FR at 72920.

[8] *See, e.g.,* 19 CFR 351.305(a)(1) and 351.306(d).

[9] *See* 19 CFR 351.306(c)(1)–(2) (requiring a submitting party to identify, contiguously with each item of business proprietary information, the person that originally submitted the item).

commenter argues that such delivery methods are inefficient, costly, and prejudice small- and medium-sized enterprises (particularly for overseas deliveries), and that publicly listed addresses are sometimes undeliverable or refuse service. Moreover, the commenter notes that the **Federal Register** already provides public notice of the initiation of such proceedings. Thus, the commenter proposes that Commerce permit parties to serve requests for these reviews through electronic means, unless there are no means for electronic service.

Response: Upon consideration of these comments, we are amending the regulation so that requests for an expedited AD review, an administrative review, a new shipper review, or a changed circumstances review may be served via electronic service. Service of documents containing business proprietary information must be effectuated in accordance with the rules provided elsewhere in this final rule. Although the **Federal Register** provides public notice of the initiation of these proceedings, there is a delay between when parties may request these reviews and when Commerce will initiate the proceeding itself and publish the **Federal Register** notice. There is a benefit to service of requests for these types of proceedings because it may inform another party's decision whether to participate in the proceeding or to potentially comment on another party's request prior to a decision by Commerce to initiate the proceeding. Therefore, we are maintaining the requirement to serve requests for these types of reviews but are permitting parties to serve these requests via electronic service.

APO Applications Using Electronic Form ITA–367

The only commenter remarking on this provision in proposed section 351.305(b)(2) supports the codification of the APO application process to use electronic Form ITA–367, because it would expedite the APO application approvals by Commerce, as well as service of applications and updated service lists.

Response: Upon consideration of this comment, we have made no changes to this provision from the *Proposed Rule.*

Service of Business Proprietary Documents to Newly Authorized APO Representatives

Several commenters support the general proposal in proposed section 351.305(c)(2) that representatives that are newly granted APO access would be responsible for requesting business proprietary documents that are no longer available on ACCESS from the party that made the business proprietary submission. However, one commenter notes that proposed section 351.305(c)(2) does not indicate the acceptable means of service for such documents, or whether a certificate of service would be required. Thus, the commenter suggests that Commerce amend subparagraphs (c)(2)(i) and (ii) to state that parties may agree upon any acceptable means of service listed in section 351.303(f)(1)(iii), and to state that a certificate of service is not required.

Response: Upon consideration of these comments, we clarify that service via secure electronic transmission is permitted and that a certificate of service is not required and are amending this regulation accordingly.

Service of Business Proprietary Information

Commenters generally support the proposal in proposed section 351.306(c)(2) that when a party is not represented, or when its representative is not APO-authorized, another party need only serve that party or its representative its own business proprietary information, and not the business proprietary information of other parties. However, one commenter notes that in some instances a party files its own submission even when it is otherwise represented, and requests that Commerce clarify that a submitting party need only serve a party's representative rather than serve both the party and its representative.

Another commenter requests that Commerce limit the service exceptions under section 351.306(c)(2) to parties and representatives who are not eligible to obtain approval for access under an APO. The commenter states that if a U.S. attorney is eligible to obtain APO access, it should be required to do so to receive business proprietary information, including that of its client. If the attorney is eligible to obtain APO access but simply chooses not to, the commenter asserts other parties should not be required to serve the attorney under the service exceptions under section 351.306(c)(2) for *pro se* parties and non-APO authorized representatives and suggests that Commerce could require that parties indicate in their entry of appearance if they are not eligible to submit an APO application and the reasons why they are ineligible to submit an APO application.

Response: We clarify that a submitting party is required to serve the party or parties that are on the service list. If a party is not on the service list, but its representative is, the submitting party is only required to serve the party's representative, even if the party itself, and not its representative, filed the submission.

In addition, we decline to adopt the suggestion that Commerce limit service exceptions under this provision to parties that are not eligible to obtain approval for access to an APO. There is no requirement to file an APO application, and we do not view it as appropriate to require a person to file an APO application simply because that person is an attorney. As such, we are not making changes to the regulations to limit the service exceptions in this manner.

Labor Factors of Production Valuation

One commenter argues that if Commerce adopts its proposal to remove paragraph (c)(3) and redesignate paragraph (c)(4) as paragraph (c)(3) under proposed section 351.408, Commerce should also remove the reference to current paragraph (c)(3) in paragraph (c)(2). The commenter notes that paragraph (c)(2) currently reads: ''Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.'' The commenter argues that for consistency, that paragraph could be revised to state: ''The Secretary normally will value all factors in a single surrogate country.''

Response: We agree and are amending the regulation accordingly.

Other Suggestions From Commenters

Commenters recommended several modifications to the ACCESS system and filing procedures that were not covered or addressed in the *Proposed Rule.*

1. Commenter Suggestions Related to ACCESS

Commenters suggested a variety of changes to ACCESS, including:

- creating a separate docket and separate notification digests for procedural documents such as APO applications, entries of appearance, and amendments thereto;
- adding additional notification digests;
- adding a ''released date'' column to show the date and time a document is made available to parties;
- extending the number of days business proprietary documents are available on ACCESS to 30 days;
- increasing the number of ACCESS proxy users, including a proposal to create firm-wide proxies;
- increasing the ACCESS file-size limit;

• increasing the number of files available for batch download;
• requiring optimization of PDFs for maximum compression; and
• consolidating all parts of a filing under one barcode.

Response: We note that these suggestions are not responsive to the proposed regulatory amendments in the *Proposed Rule.* Thus, such modifications would be outside the scope of this rulemaking. However, Commerce is committed to improving the ACCESS system by implementing features that will foster efficiency and ease of use for the most users while staying within Commerce's resource constraints. As such, we will take these proposals into consideration and may address one or more in possible future rulemakings. To the extent consideration or implementation of certain new features would not require notice and comment, Commerce will consider these proposals and any new features adopted will be announced on the ACCESS website at *https://access.trade.gov* and included in the ACCESS Handbook.

2. Additional Commenter Suggestions

Commenters also proposed three additional changes to Commerce's filing procedures that were not included in the *Proposed Rule:* amending section 351.309(d) to require rebuttal briefs to be due seven days after the due date for case briefs, rather than the current five days; amending section 351.303(b)(1) to set a filing deadline of 12:00 a.m. Hawaiian Standard Time, or at a minimum changing to a midnight Eastern Time deadline rather than 5:00 p.m. Eastern Time; and amending section 351.303(b)(1) to deem the time of filing of a submission as the time the party begins the filing process, rather than the end time at which it is filed in its entirety.

Response: Commerce has not adopted these three recommendations in this final rule. The *Proposed Rule* did not cover or address these regulatory provisions in sections 351.309(d) and 351.303(b)(1), and the comments are outside the scope of the modifications and additions to regulations that we proposed for comment.

Classification

Executive Order 12866

OMB has determined that this rule is not significant for purposes of Executive Order 12866.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Paperwork Reduction Act

This rule does not contain a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule, if adopted, would not have a significant economic impact on a substantial number of small business entities under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b). The factual basis for the certification was published with the *Proposed Rule* and is not repeated here. We received no comments and were not made aware of any positions of opposition to the certification. As a result, a Final Regulatory Flexibility Analysis was not required and none was prepared.

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.

Dated: September 25, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce amends 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR 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. In § 351.103, revise paragraphs (a) and (b) to read as follows:

§ 351.103 Central Records Unit and Administrative Protective Order and Dockets Unit.

(a) Enforcement and Compliance's Central Records Unit maintains a Public File Room in Room B8024, 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 p.m. Eastern Time on business days. Visitors to the Public File Room should consult the ACCESS website at *https://access.trade.gov* for information regarding in-person visits. 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) Enforcement and Compliance's Administrative Protective Order and Dockets Unit (APO/Dockets Unit) is located in Room 18022, 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 p.m. Eastern Time on business days. Visitors to the APO/Dockets Unit should consult the ACCESS website at *https://access.trade.gov* for information regarding in-person manual filings. 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.

* * * * *

■ 3. In § 351.104, revise paragraph (a)(2)(ii)(A) to read as follows:

§ 351.104 Record of proceedings.

(a) * * *
(2) * * *
(ii) * * *
(A) The document, although otherwise timely, contains untimely filed new factual information (see § 351.301(c));

* * * * *

§ 351.204 [Amended]

■ 4. In § 351.204, remove paragraph (d)(3) and redesignate paragraph (d)(4) as paragraph (d)(3).

■ 5. In § 351.225, revise paragraphs (b), (d)(1), (e)(2), and (f)(1) and (2) to read as follows:

§ 351.225 Scope rulings.

* * * * *

(b) *Self-initiation of a scope inquiry.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order, the Secretary may initiate a scope

inquiry by publishing a notice of initiation in the **Federal Register**.

* * * * *

(d) *Initiation of a scope inquiry and other actions based on a scope application*—(1) *Acceptance and Initiation of a scope inquiry ruling application.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a scope application, the Secretary will determine whether to accept or reject the scope ruling application and to initiate or not initiate a scope inquiry, or, in the alternative, paragraph (d)(1)(ii) will apply.

* * * * *

(e) * * *

(2) *Extension.* The Secretary may extend the deadline in paragraph (e)(1) of this section by no more than 180 days, for a final scope ruling to be issued no later than 300 days after initiation, if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

* * * * *

(f) * * *

(1) Within 30 days after the Secretary's self-initiation of a scope inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a scope inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

* * * * *

■ 6. In § 351.226, revise paragraphs (b), (d)(1), (f)(1) and (2), and (l)(2)(ii) to read as follows:

§ 351.226 Circumvention Inquiries

* * * * *

(b) *Self-initiation of a circumvention inquiry.* If the Secretary determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under section 781 of the Act exist, the Secretary may initiate a circumvention inquiry by publishing a notice of initiation in the **Federal Register**.

* * * * *

(d) * * *

(1) *Initiation of circumvention inquiry.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a request for a circumvention inquiry, the Secretary will determine whether to accept or reject the request and whether to initiate or not initiate a circumvention inquiry. If it is not practicable to determine whether to accept or reject a request or initiate or not initiate within 30 days, the Secretary may extend that deadline by an additional 15 days.

* * * * *

(f) * * *

(1) Within 30 days after the Secretary's self-initiation of a circumvention inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information submitted by the other interested parties.

(2) Within 30 days after the initiation of a circumvention inquiry under paragraph (d)(1) of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days after the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification, or correction.

* * * * *

(1) * * *

(2) * * *

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the notice of initiation of the circumvention inquiry; and

* * * * *

■ 7. In § 351.227, revise paragraphs (b) and (d)(1) to read as follows:

§ 351.227 Covered merchandise referrals.

* * * * *

(b) *Actions with respect to covered merchandise referral.* (1) Within 20 days after acknowledging receipt of a covered merchandise referral from the Customs Service pursuant to section 517(b)(4)(A)(i) of the Act that the Secretary determines to be sufficient, the Secretary will take one of the following actions.

(i) Initiate a covered merchandise inquiry; or

(ii) If the Secretary determines upon review of the covered merchandise referral that the issue can be addressed in an ongoing segment of the proceeding, such as a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226, rather than initiating the covered merchandise inquiry, the Secretary will address the covered merchandise referral in such other segment.

(2) The Secretary will publish a notice of its action taken with respect to a covered merchandise referral under paragraph (b)(1) of this section in the **Federal Register**.

* * * * *

(d) * * *

(1) Within 30 days after the date of publication of the notice of an initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the initiation. Within 14 days after the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

* * * * *

■ 8. In § 351.301, revise paragraphs (c)(2)(vi) and (c)(3)(iv) to read as follows:

§ 351.301 Time limits for submission of factual information.

* * * * *

(c) * * *

(2) * * *

(vi) *Rebuttal, clarification, or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is filed with the Department.

(3) * * *

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).* An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information submitted pursuant to § 351.408(c) or § 351.511(a)(2) 10 days after the date such factual information is filed with the Department. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this paragraph (c)(3)(iv). Additionally, all factual information submitted under this paragraph (c)(3)(iv) must be accompanied by a written explanation identifying what information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).

* * * * *

■ 9. In § 351.303, revise paragraphs (c)(2)(ii) and (f)(1) through (3) to read as follows:

§ 351.303 Filing, document identification, format, translation, service, and certification of documents.

* * * * *

(c) * * *

(2) * * *

(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.

* * * * *

(f) *Service of copies on other persons*—(1) *In general.* Generally, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list. Except as provided in § 351.202(c) (filing of petition), § 351.208(f)(1) (submission of proposed suspension agreement) and paragraph (f)(2) of this section:

(i) Service of a public document or public version of a business proprietary document is effectuated on the persons on the public service list upon the electronic filing of the submission in ACCESS, unless it is filed manually in accordance with paragraph (b)(2) of this section, or ACCESS is unavailable. If a submission is filed manually or ACCESS is unavailable, paragraph (f)(1)(iii) of this section is applicable.

(ii)(A) Service of a business proprietary document is effectuated on the persons on the APO service list upon the electronic filing of the submission in ACCESS, unless it is filed manually in accordance with paragraph (b)(2) of this section, or ACCESS is unavailable. If a submission is filed manually or ACCESS is unavailable, paragraph (f)(1)(iii) of this section is applicable. In addition, a business proprietary document submitted under the one-day lag rule under paragraph (c)(2)(i) of this section must be served in accordance with paragraph (f)(1)(iii) of this section.

(B) If the document contains the business proprietary information of a person who is not included on the APO service list, then service of such documents on that person cannot be effectuated on ACCESS and the submitter must serve that person its own business proprietary information in accordance with paragraph (f)(1)(iii) of this section. In addition, specific service requirements under § 351.306(c)(2) are applicable.

(iii) If service of a public document, public version of a business proprietary document, or a business proprietary document cannot be effectuated on ACCESS, the submitter must serve the recipient by electronic transmission. Generally, a business proprietary document must be served by secure electronic transmission. If the submitter is not able to use such a method, it may use an acceptable alternative method of service, including personal service, first-class mail, or electronic mail. Electronic mail may only be used as an acceptable alternative method of service for a business proprietary document under paragraph (f)(1)(ii)(B) of this section if the business proprietary document contains the business proprietary information of either the submitter or the recipient, with the consent of the recipient.

(2) *Service requirements for certain documents*—(i) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(3) of this section, an interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review must serve a copy of the request on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. Service may be made by an electronic transmission method if the interested party that files the request has an electronic mail address for the recipient; otherwise, service must be made by personal service or first-class mail. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(ii) *Scope and circumvention.* In addition to the certificate of service requirements under paragraph (f)(3) of this section, an interested party that files with the Department a scope ruling application or a request for a circumvention inquiry must serve a copy of the request on all persons included in the annual inquiry service list in accordance with §§ 351.225(n) and 351.226(n), respectively.

(3) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

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■ 10. In § 351.304, revise paragraphs (c)(1) and (2) to read as follows:

§ 351.304 Establishing business proprietary treatment of information.

* * * * *

(c) * * *

(1) A person filing a submission that contains information for which business proprietary treatment is claimed must also file a public version of the submission. The public version must be filed on the filing deadline for the business proprietary document. If the business proprietary document was filed under the one-day lag rule (*see* § 351.303(c)(2)), the public version and the final business proprietary document must be filed on the first business day after the filing deadline. 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* § 351.303(c)(2)(ii) through (iii)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(1) 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.

* * * * *

■ 11. In § 351.305:
■ a. Revise the introductory text of paragraph (a);
■ b. Revise paragraph (b)(2) and (3), and remove paragraph (b)(4); and
■ c. Revise paragraph (c).

The revisions read as follows:

§ 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:

* * * * *

(b) * * *

(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 accordance 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.

* * * * *

■ 12. In § 351.306, revise paragraph (c)(2) to read as follows:

§ 351.306 Use of business proprietary information.

* * * * *

(c) * * *

(2) If a party to a proceeding is not represented, or its representative is not an authorized applicant, the submitter of a document containing that party's business proprietary information must serve that party or its representative, if applicable, with a version of the document that contains only that party's business proprietary information consistent with § 351.303(f)(1)(iii). The document must not contain the business proprietary information of other parties.

* * * * *

■ 13. In § 351.404, revise paragraph (d) to read as follows:

§ 351.404 Selection of the market to be used as the basis for normal value.

* * * * *

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(c)(2)(i).

* * * * *

■ 14. In § 351.408:
■ a. Revise paragraph (c)(2).
■ b. Remove paragraph (c)(3) and redesignate paragraph (c)(4) as paragraph (c)(3).

The revisions read as follows:

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

* * * * *

(c) * * *

(2) *Valuation in a single country.* The Secretary normally will value all factors in a single surrogate country.

(3) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

[FR Doc. 2023–21516 Filed 9–28–23; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2023–0023]

RIN 0960–AI85

Extension of the Flexibility in Evaluating "Close Proximity of Time" To Evaluate Changes in Healthcare Following the COVID–19 Public Health Emergency

AGENCY: Social Security Administration.

ACTION: Temporary final rule with request for comments.

SUMMARY: On July 23, 2021, we issued a temporary final rule (TFR) with request for comments to lengthen the ''close proximity of time'' standard in the Listing of Impairments (the listings) for musculoskeletal disorders because the COVID–19 national public health emergency (PHE) caused many individuals to experience barriers that prevented them from timely accessing in-person healthcare. That prior TFR is effective until six months after the effective date of a determination by the Secretary of Health and Human Services (HHS) that a PHE resulting from the COVID–19 pandemic no longer exists. The Secretary of HHS made that determination, and the COVID–19 national PHE ended on May 11, 2023. However, healthcare practices in a post-PHE world are still evolving. We are therefore issuing this new TFR to extend the flexibility provided by the prior TFR until May 11, 2025, so we can evaluate changes in healthcare practices and determine the proper ''close proximity of time'' standard for the musculoskeletal disorders listings.

DATES:

Effective date: This TFR is effective on October 30, 2023.

Comment date: We invite written comments. Comments must be submitted no later than November 28, 2023.

Expiration date: Unless we extend the provisions of this TFR by a final rule published in the **Federal Register**, it will cease to be effective on May 11, 2025.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comment(s) multiple times or by more than one method. Regardless of which method you choose, please state that your comment(s) refer to Docket No. SSA–2023–0023 so that we may associate your comment(s) with the correct regulation.

Caution: You should be careful to include in your comment(s) only information that you wish to make publicly available. We strongly urge you not to include any personal information in your comment(s), such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comment(s) via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the ''search'' function to find docket number SSA–2023–0023. The system will issue a tracking number to confirm your submission. You will not be able to view your comment(s) immediately because we must post each comment manually. It may take up to one week for your comment(s) to be viewable.

2. *Fax:* Fax comments to 1–833–410–1631.

3. *Mail:* Mail your comments to the Office of Legislation and Congressional Affairs Regulations and Reports Clearance Staff, Mail Stop 3253, Altmeyer, 6401 Security Blvd., Baltimore, MD 21235.

Comments are available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Michael J. Goldstein, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2020, we published the final rule, *Revised Medical Criteria for Evaluating Musculoskeletal Disorders* (final rule),[1] which became effective on April 2, 2021. This final rule revised the criteria in the listings that we use to evaluate disability claims involving musculoskeletal disorders in adults and children at the third step of our sequential evaluation process under titles II and XVI of the Social Security Act (Act).[2] The final rule, among other things, revised the listings in response to the decision in *Radford* v. *Colvin,*[3] which interpreted former listing 1.04A to require a disability claimant to show only ''that each of the symptoms are present, and that the claimant has suffered or can be expected to suffer from [the condition] continuously for at least 12 months.'' [4] Under the court's interpretation of the former listing, a claimant did not need to show that each necessary criterion was present simultaneously or in particularly close proximity, as required by our interpretation of that listing.[5] The final rule clarified that, for the purposes of applying certain musculoskeletal disorders listings,[6] all of the required medical criteria must be present simultaneously, or within a close proximity of time, to satisfy the level of severity needed for the impairment to meet the listing. The final rule further defined the phrase ''within a close proximity of time'' to mean ''that *all* of the relevant criteria must appear in the medical record within a consecutive 4-month period'' (emphasis in original).[7] We also provided that ''[w]hen the criterion is imaging, we mean that we

[1] 85 FR 78164 (2020).

[2] For adults, the listings describe, for each of the major body systems, impairments that we consider to be severe enough to prevent an individual from doing any gainful activity regardless of his or her age, education, or work experience. 20 CFR 404.1525(a) and 416.925(a). For children, the listings describe impairments we consider severe enough to cause marked and severe functional limitations. 20 CFR 416.925(a). We use the listings at step 3 of the sequential evaluation process to identify claims in which the individual is clearly disabled under our rules. 20 CFR 404.1520, 416.920, and 416.924). We do not deny a claim when a person's medical impairment(s) does not satisfy the criteria of a listing. Instead, we continue the sequential evaluation process. 20 CFR 404.1520(a)(4) and 416.920(a)(4).

[3] *Radford* v. *Colvin,* 734 F.3d 288 (4th Cir. 2013).

[4] Id. at 294.

[5] See Acquiescence Ruling 15–1(4). We rescinded that Acquiescence Ruling after we revised the listings in 2020. 85 FR 79063 (2020).

[6] Listings 1.15, 1.16, 1.17, 1.18, 1.20C, 1.20D, 1.22, 1.23, 101.15, 101.16, 101.17, 101.18, 101.20C, 101.20D, 101.22, and 101.23.

[7] See 85 FR 78164 (2020) (revising 20 CFR part 404, subpart P, Appendix 1, 1.00C7c and 101.00C7c).