

United States Int'l. Trade Commission

§ 207.93

Notice of appearance means the notice of appearance provided for by the Binational Panel Rules or ECC Rules, as applicable.

Panel review means review of a final determination, including review by an extraordinary challenge committee, pursuant to Section D of Chapter 10 of the USMCA or Chapter 19 of the NAFTA.

Party means, for the purposes of §§ 207.100 through 207.120, either the investigative attorney(ies) or the charged party(ies).

Person means, for the purposes of §§ 207.100 through 207.120, an individual, partnership, corporation, association, organization, or other entity.

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A).

Professional means an accountant, economist, engineer, or other non-legal specialist who is employed by, or under the direction and control, of a counsel.

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order.

Proprietary information means confidential business information as defined in 19 CFR 201.6(a).

Protective order means an administrative protective order issued by the Commission.

Responsible Secretary means the Secretary of the Section of the Secretariat located in the country in which the final determination under review was made.

Secretariat means the Secretariat established pursuant to Article 30.6 of the USMCA and Article 2002 of the NAFTA, and includes the Secretariat sections located in Canada, the United States, and Mexico.

Service address means the address filed with the Secretariat as the service address for that person, including any electronic mail address submitted with that address.

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review.

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf.

USMCA Act means the United States-Mexico-Canada Implementation Act, Public Law 116-113 (January 29, 2020).

[88 FR 14891, Mar. 10, 2023]

§ 207.92 Procedures for commencing review of final determinations.

(a) *Notice of Intent to Commence Judicial Review.* A Notice of Intent to Commence Judicial Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Binational Panel Rules.

(b) *Request for Panel Review.* A Request for Panel Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Binational Panel Rules.

[88 FR 14892, Mar. 10, 2023]

§ 207.93 Protection of proprietary information during panel and committee proceedings.

(a) *Requests for protective orders.* A request for access to proprietary information pursuant to 19 U.S.C. 1677f(f)(1) shall be made to the Secretary of the Commission.

(b) *Persons authorized to receive proprietary information under protective order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with the regulations in this section and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or an extraordinary challenge committee, any assistant to a member, court reporters and translators;

(2) Counsel and professionals, provided that the counsel or professional does not participate in competitive decision-making, as defined in *US Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984), for the person represented or for any person that would gain a competitive advantage through knowledge of the proprietary information sought;

(3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraph (b) (1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) Are not involved in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person that would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(4) The Secretaries of the United States, Canadian and Mexican sections of the Secretariat and members of their staffs;

(5) Any officer or employee of the United States Government who the United States Trade Representative informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Economía (*Secretaría de Economía*), as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(7) Counsel representing, and other staff providing support to, the investigating authority, the Commission.

(c) *Procedures for obtaining access to proprietary information under protective order*—(1) *Persons who must file an application for release under protective order.* To be permitted access to proprietary information in the administrative record of a determination under panel review, all persons described in paragraphs (b)(1), (2), (4), (5), (6), or (c)(5)(i) of this section shall file an application for a protective order.

(2) *Contents of applications for release under protective order.*

(i) The Commission Secretary shall adopt from time to time forms for sub-

mitting requests for release pursuant to protective order that incorporate the terms of this section. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b)(1), (4), (5), and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW, Washington, DC 20436, or from the website of the Commission Secretary.

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than:

(1) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(2) The person from whom the information was obtained,

(3) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(4) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b)(1), (2), (5), or (6) of this section who has been issued a protective order, if such clerical person has signed and dated an agreement, provided to the Commission Secretary upon request, to be bound by the terms set forth in the application for a protective order of the person who retains or employs him or her (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Section D of Chapter 10 of the USMCA, or Article 1904 of the NAFTA, as applicable;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary,

return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The United States Secretary may retain a single file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and

(E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as corresponding provisions of Canadian and Mexican law on disclosure undertakings concerning proprietary information.

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the United States, Canadian, or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretaria de Economía, as the case may be, has notified the Commission Secretary that such person requires access.

(4) *Filing and service of applications—*
 (i) *Applications of persons described in paragraph (b)(1) of this section.* A person described in paragraph (b)(1) of this section shall submit the completed original of the form to the United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus three (3) copies of the application with the Commission Secretary.

(ii) *Applications of persons described in paragraph (b)(2) of this section—*(A) *Fil-*

ing. A person described in paragraph (b)(2) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall file the completed original of the form (USMCA APO Form C) and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) *Service.* If an applicant files before the deadline for filing notices of appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accordance with the applicable Binational Panel Rules and ECC Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

(iii) *Applications of persons described in paragraph (b)(4) of this section.* A person described in paragraph (b)(4) of this section shall file the original and three (3) copies of the protective order application with the Commission Secretary.

(iv) *Applications of persons described in paragraph (b)(5) of this section.* A person described in paragraph (b)(5) of this section shall file the original and three (3) copies with the Commission Secretary and four (4) copies with the United States Secretary.

(v) *Applications of persons described in paragraph (b)(6) of this section.* A person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the Responsible Secretary. The Responsible Secretary in turn, shall file the original and three (3) copies with the Commission Secretary.

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceedings.* (i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that

contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of USMCA APO Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File the completed original of the form (USMCA APO Form C) and three (3) copies with the Commission Secretary; and

(B) File four (4) copies of the completed USMCA APO Form C with the United States Secretary.

(iii) Any person described in paragraph (c)(5)(i) of this section must submit a new application for a protective order at the commencement of a panel review.

(d) *Issuance of protective orders*—(1) *Applicants described in paragraphs (b)(1), (4), (5), and (6) of this section.* Upon approval of an application of persons described in paragraph (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel proceeding initiated under the NAFTA to whom the Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

(2) *Applicants described in paragraph (b)(2) of this section.* (i) The Commission shall not rule on an application filed by a person described in paragraph (b)(2) until ten (10) days after the request is filed unless there is a compelling need to rule more expeditiously. Any person may file an objection to the applica-

tion within seven (7) days of the application's filing date, stating the specific reasons why the Commission should not grant the application. One (1) copy of the objection shall be served on the applicant and on all persons who were served with the application. Any reply to an objection will be considered if it is filed and served before the Commission Secretary renders a decision. Service of objections and replies shall be made in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Denial of application.* The Commission's Secretary may deny an application by serving a letter notifying the applicant of the decision and the reasons therefor within fourteen (14) days of the receipt of the application. The letter shall advise the applicant of the right to appeal to the Commission. Any appeal must be made within five (5) days of the service of the Commission Secretary's letter.

(iii) *Appeal from denial of an application.* An appeal from a denial of a request must be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Such appeal must be served in accordance with paragraph (c)(4)(ii)(B) of this section. The Commission shall make a final decision granting or denying the appeal within thirty (30) days from the day on which the application was filed with the Commission Secretary.

(iv) *Approval of the application.* If the Commission Secretary does not deny an application pursuant to paragraph (d)(2)(ii) of this section, the Commission shall, by the fifteenth day following the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

(v) *Filing of protective orders.* If a protective order is issued to a person described in paragraph (b)(2) of this section, the person shall immediately file one (1) copy of the protective order with the United States Secretary.

(e) *Retention of protective orders; service list.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance

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with paragraph (b)(6)(ii) of this section. The Secretary shall establish a list of persons authorized to receive proprietary information in a review, including parties whose applications have been granted.

(f) *Filing of amendments to granted applications.* Any person who has been issued a protective order under this section shall:

(1) If a person described in paragraph (b)(1) of this section, submit any amendments to the application for a protective order to the United States Secretary, who shall file the original and three (3) copies with the Commission Secretary;

(2) If a person described in paragraph (b)(2) of this section, file the original and three (3) copies of any amendments to the application with the Commission Secretary and four (4) copies with the United States Secretary; or

(3) If any other person, file the original and three (3) copies of any amendments to the application with the Commission Secretary.

(g) *Modification or revocation of protective orders.* (1) Any person may file with the Commission Secretary a request that a protective order issued under this section be modified or revoked because of changed conditions of fact or law, or on grounds of the public interest. The request shall state the changes desired and include any supporting materials and arguments. The person filing the request shall serve a copy of the request upon the person to whom the protective order was issued.

(2) Any person may file a response to the request within twenty (20) days after it is filed, unless the Commission issues a notice indicating otherwise. After consideration of the request and any responses thereto, the Commission shall take such action as it deems appropriate.

(3) If a request filed under this paragraph alleges that a person is violating the terms of a protective order, the Commission may treat the request as a report of violation under §207.101 of this subpart.

(4) The Commission may also modify or revoke a protective order on its own initiative.

(5) If the Commission revokes, amends or modifies a person's protec-

tive order, it shall provide to the person, the United States Secretary and all participants a copy of the Notice of Revocation, amendment or modification.

[59 FR 5097, Feb. 3, 1994, as amended at 70 FR 8512, Feb. 22, 2005; 88 FR 14892, Mar. 10, 2023]

§ 207.94 Protection of privileged information during panel and committee proceedings.

If a panel or ECC decides that the Commission is required, pursuant to the United States law, to grant access pursuant to a protective order to information for which the Commission has claimed a privilege, any individual to whom the panel or ECC has directed the Commission release information and who is otherwise within the category of individuals eligible to receive proprietary information pursuant to §207.93(b), may file an application for a protective order with the Commission. Upon receipt of such application, the Commission Secretary shall certify to the Commission that a panel or ECC has required the Commission to release such information to specified persons, pursuant to 19 U.S.C. 1677f(f)(1). Twenty-four hours following such certification, the Commission Secretary shall issue a protective order releasing such information to any authorized applicant subject to terms and conditions equivalent to those described in §207.93(c)(2).

[88 FR 14893, Mar. 10, 2023]

PROCEDURES FOR IMPOSING SANCTIONS FOR VIOLATION OF THE PROVISIONS OF A PROTECTIVE ORDER ISSUED DURING PANEL AND COMMITTEE PROCEEDINGS

§ 207.100 Sanctions.

(a) A person, other than a person exempted from this regulation by the provisions of 19 U.S.C. 1677f(f)(4), who is determined under this subpart to have committed a prohibited act, may be subject to one or more of the following sanctions:

(1) A civil penalty not to exceed \$100,000 for each violation, each day of a continuing violation constituting a separate violation;

(2) Debarment from practice in any capacity before the Commission, which