

Proposed Amendments to Rule 73.2

Rule 73.2 is amended as follows:

Rule 73.2. Documents in an Action Described in 28 U.S.C. § 1581(c) or (f)

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(b) Alternative Procedure in an Action Described in 28 U.S.C. § 1581(c).

As an alternative to the procedures prescribed in subdivision (a) of this rule in an action described in 28 U.S.C. § 1581(c):

(1) Within 40 days after the date of service of the complaint on the administering authority or the International Trade Commission, the administering authority or the Commission may file with the clerk of the court a certified list of all items described in subdivisions (a)(1) and (a)(2) of this rule, along with a copy of the determination and the facts and conclusions of law on which such determination was based. The Commission must in addition file a copy of its staff report of information received in the investigation. ~~If either agency uses this alternative procedure, it must serve on the parties notice of that fact in conjunction with service of the certified list.~~

(2) The agency must retain the remainder of the record. All parts of the record will be a part of the record on review for all purposes.

(3) At any time, the court may order any part of the record retained by the agency to be filed. A motion by a party to have the agency file a retained part of the record must set forth reasons why the submission of appendices required by Rule 56.2(c) is insufficient to fairly present the relevant portions of the record to the court.

(c) Confidential or Privileged Information in an Action Described in 28 U.S.C. § 1581(c).

(1) In an action described in 28 U.S.C. § 1581(c), any document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested and that is required to be filed with the clerk of the court, must be filed under seal. Any such document, comment, or information must be accompanied by a non-confidential description of the nature of the material being transmitted. For the purposes of this rule and Rule 81(h), the term “confidential information” includes business proprietary information as defined in 19 U.S.C. § 1677f(b).

(2) An attorney or consultant may retain or otherwise have access to business proprietary information in the administrative record in an action described in 28 U.S.C. § 1581(c) if: (i) the attorney or consultant timely files with the court a Business Proprietary Information Certification which must be substantially in the form set forth in Form 17 of the Appendix of Forms making each of the certifications therein required or (ii) the court issues an order granting the attorney or consultant access to such information. On meeting either of these requirements, the attorney or consultant will retain or have access to business proprietary information pursuant to the terms of the ~~Appendix on Access to Business Proprietary Information~~ **Administrative Order No. 02-01**.

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(Added Sept. 30, 2011, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010; Dec. 7, 2010, eff. Jan. 1, 2011; _____, 2012, eff. _____, 2013.)

Advisory Committee Note

As Administrative Order 02-01 directs the agency to follow the alternative procedures in Rule 73.2(b), the requirement for the agency to serve on the parties notice of that fact has been removed. The reference to 19 U.S.C. § 1677f(c) in subpart (c)(1) has been changed to refer instead to 19 U.S.C. § 1677f(b) as the provision describing business proprietary information. Also, the reference in subpart (c)(2) to the Appendix on Access to Business Proprietary Information has been changed to refer instead to Administrative Order No. 02-01, since the former has been eliminated and certain provisions thereof, as necessary, have been moved into the Administrative Order.