means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27173 Filed 10–26–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission ("Commission") has issued an annual report on the status of its practice with respect to violations of its administrative protective orders ("APOs") in investigations under title VII of the Tariff Act of 1930, in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII and violations of the Commission's rules including the rule on bracketing business proprietary information ("BPI") (the "24-hour rule"), 19 CFR 207.3(c). This notice provides a summary of investigations completed during calendar year 2009 of breaches in proceedings under title VII and section 337 of the Tariff Act of 1930. In addition, there is a summary of rules violation investigations completed in 2009. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches and rules violations encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Web site (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, section 421 of the Trade Act of 1974, section 337 of the Tariff Act of 1930, and North American Free Trade Agreement (NAFTA) Article 1904.13, 19 U.S.C. 1516a(g)(7)(A), may enter into APOs that permit them, under strict conditions, to obtain access to BPI (title VII) or confidential business information ("CBI") (section 421, sections 201–204, and section 337) of other parties. *See* 19 U.S.C. 1677f; 19 CFR 207.7; 19 CFR 207.100, *et seq.;* 19 U.S.C. 2252(i); 19 U.S.C. 2451a(b)(3); 19 CFR 206.17; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34. The discussion below describes APO breach investigations and rules violation investigations that the Commission has completed during calendar year 2009, including a description of actions taken in response to these breaches and rules violations.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. *See* 56 FR 4846 (February 6, 1991); 57 FR 12335 (April 9, 1992); 58 FR 21991 (April 26, 1993); 59 FR 16834 (April 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006); 72 FR 50119 (August 30, 2007); 73 FR 51843 (September 5, 2008); and 74 FR 54071 (October 21, 2009). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov.*

I. In General

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than —

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: Storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) With all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) If the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) If by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information—To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in investigations other than those under title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's title VII and safeguard rules relating to BPI/CBI is the "24-hour" rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI/CBI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI/CBI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (OGC) prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation." H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100—207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI/CBI. The Commission considers whether there have been prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, and section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. 1677f(g). *See also* 19 U.S.C. 1333(h).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission, the failure to report immediately known violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

In the past several years, the Commission completed APOB investigations that involved members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

The Commission's Secretary has provided clarification to counsel representing parties in investigations relating to global safeguard actions, section 202(b) of the Trade Act of 1974; investigations for relief from market disruption, section 421(b) or (o) of the Trade Act of 1974; and investigations for action in response to trade diversion, section 422(b) of the Trade Act of 1974; and investigations concerning dumping and subsidies under section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 1671–1677n). The clarification concerns the requirement to return or destroy CBI/BPI that was obtained under a Commission APO.

Counsel have been cautioned to be certain that each authorized applicant files within 60 days of the completion of an investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient. This same information is also being added to notifications sent to new APO applicants.

In addition, attorneys who are signatories to the APO representing clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific Investigations

APO Breach Investigations

Case 1: The Commission found that an attorney for the complainant in a section 337 investigation had violated the APO when he provided copies of partially redacted confidential versions of post-hearing briefs of three parties to the section 337 investigation to an attorney with another law firm who was not a signatory to the APO. This attorney in turn provided the briefs to the U.S. Patent and Trademark Office ("PTO"), and, pursuant to PTO service rules, served a copy on another non-signatory attorney. One of the briefs was viewable through the PTO database for approximately two weeks.

The respondent in the section 337 investigation filed a motion requesting that five sanctions be imposed on complainant and complainant's counsel. The Commission denied this motion in its entirety, but issued a private letter of reprimand to the breaching attorney and sent a letter to the General Counsel of the PTO requesting assistance in the destruction or return of documents containing the CBI.

There were several mitigating factors. The breach was inadvertent, as the attorney believed he was submitting the public versions of the parties' briefs. The attorney had requested the public version of the briefs from one paralegal, who asked a paralegal in another of the

firm's offices to retrieve the briefs. That paralegal provided partially redacted versions. However, because the paralegal providing the briefs to the attorney believed they were public versions, she changed the marking from confidential to public without informing the attorney. Consequently, the attorney submitted the partially redacted confidential versions, at least in part, due to a paralegal error. The attorney's firm subsequently provided training and instruction on the proper handling of CBI.

This was also the attorney's first APO breach. Upon learning of his breach, he promptly reported it and initiated corrective action. However, the Commission questioned the sufficiency of the attorney's follow-up attempts to cure the breach. The petition to expunge the briefs from the PTO database was filed 17 months before the public versions of the three briefs were submitted in their place.

The attorney contended that there was no evidence that non-signatories to the APO actually viewed the partially redacted briefs. The Commission found, however, that the briefs were provided to the PTO and PTO personnel are not APO signatories; the briefs were not recovered until more than two years after they were filed with the PTO; and at least one of the briefs could be viewed for two weeks on the PTO Patent Application Informal Retrieval Database, which is connected to the Internet. The Commission therefore presumed the CBI was reviewed by a non-signatory, and found that to be an aggravating factor.

Case 2: A lead attorney and an associate attorney breached the APO when they failed to redact BPI from the public version of an appendix to a brief filed in the Court of International Trade ("CIT"). The law firm informed the CIT and the Commission of the error once it became aware that the appendix contained BPI. The Commission issued a warning letter to the lead attorney and a private letter of reprimand to the associate.

There were several mitigating factors. The breach was inadvertent, and the law firm took relatively prompt action to remedy the breach. In addition, although the appendix was publicly available at the CIT, a CIT investigation showed that only signatories to the Commission APO and law clerks to the CIT judge had accessed the appendix. Thus, no unauthorized person had read the BPI. In addition, the lead attorney did not have a prior breach within the previous two years generally examined by the Commission for purposes of determining sanctions.

With respect to aggravating factors, the associate was found to have breached the APO in another Commission investigation within the previous two years, and was therefore, given a private letter of reprimand in spite of the mitigating circumstances. The Commission found that the lead attorney failed to supervise the associate adequately in the task of preparing the appendix for filing.

Case 3: The Commission found that an associate attorney and an international trade specialist breached the APO when they filed a public version of a prehearing brief that erroneously contained BPI in a title VII five-year review. Both individuals received private letters of reprimand.

The BPI consisted of cumulative data concerning nonsubject imports and combined export numbers for the domestic industry. The release of this information, when combined with other publicly available information on the record, made it possible to calculate the volume of nonsubject imports and estimate two domestic producers' exports during the original title VII investigation.

There were two mitigating factors. The breach was inadvertent, and the individuals involved had not been sanctioned for an APO breach within the past two years.

The parties argued that the Commission itself was partly responsible for the dissemination of the BPI because it distributed the confidential staff prehearing report containing unbracketed BPI to party representatives who were under the APO. However, the Commission found that this was not a mitigating factor because the cover page of the prehearing staff report clearly indicated that only the public version of the report should be used as a guide for confidentiality. The law firm received the public version of the staff report nine days before it filed the public version of its prehearing brief, and had ample time to refer to it and prevent the breach. The Commission also declined to accept the argument of the associate and international trade specialist that the "tight" time frame of sunset reviews justified their failure to properly rely on the public version.

There were also aggravating factors. The Commission staff, and not the law firm, discovered the possible breach. Without information to the contrary presented by the breaching individuals, the Commission presumed that the BPI was read by unauthorized personnel because it had been in the possession of unauthorized parties for over two months.

Case 4: The Commission found that a paralegal breached the APO when he prepared and filed a public version of a brief containing BPI in a title VII investigation without informing any attorneys in his firm. The paralegal was instructed by the supervisory attorney to prepare the confidential version of the brief for filing. The paralegal had extensive experience in Commission investigations and in preparing documents containing confidential information. While the paralegal was preparing the confidential brief, he misread the Commission's rules and believed the public version was also due for filing that day. Because it was late in the day, he immediately prepared the public version and filed it with the confidential version. In so doing, he failed to follow the firm's procedures for handling and filing documents containing BPI and failed to remove all BPI from the public version of the brief. The Commission issued a warning letter to the paralegal. The Commission found that the supervising attorney, whom the paralegal did not inform of his action, was not responsible for the breach.

There were several mitigating factors. The breach was unintentional, the BPI was not read by any person not subject to the APO, the firm moved to remedy the breach expeditiously after being informed of it by the Commission staff, and this was the paralegal's only breach in the prior two years generally examined by the Commission for the purpose of determining sanctions.

There were also aggravating factors. Commission staff, rather than the firm, discovered the breach, and the paralegal failed to follow the firm's procedures requiring attorney review of any filing for BPI.

Case 5: The Commission found that a secretary in a law firm breached the APO by mistakenly sending the confidential version of a title VII brief to an attorney who was opposing the law firm in a different investigation and who was not a signatory to the title VII investigation's APO. The Commission concluded that the firm's attorneys did not breach the APO. The secretary had been given a purely ministerial task of preparing a mailing envelope and, acting on her own, had inadvertently placed the title VII brief in the wrong mailing envelope. The Commission issued a warning letter to the secretary.

There were several mitigating factors. The secretary had no prior breaches within the prior two years generally examined by the Commission for purposes of determining sanctions; the breach was unintentional; relatively prompt action was taken to remedy the breach; and the record in this APOB

investigation suggests that the BPI was not viewed by unauthorized persons.

Case 6: The Commission found that two attorneys breached the APO when they submitted a postconference brief comparing the prices of various firms' imports. The attorneys deliberately declined to bracket a passage providing a description of the degree by which prices reported by one importer were lower than those reported by other importers, on the grounds that Commission Rule 201.6(a)(1) allows parties to make "nonnumerical characterization" of trends in public submissions. In the **Federal Register** notice of final rulemaking for section 201.6(a)(1), the preamble stated that any discussion of the degree or absolute level of a decline or increase was not a "nonnumerical characterization." The Commission concluded that, although the phrases were not literally numerical, they conveyed as much specificity as a strictly numerical characterization. Accordingly, the Commission found that the information in question was BPI and that it should have been bracketed. The attorneys argued that the BPI was information they acquired from their client and not from the questionnaire responses that had been cited in the brief. To support their argument, they cited exhibits that were included with the brief. The Commission found that these exhibits did not support their allegations that the information came from their client. The Commission issued private letters of reprimand to both attorneys.

There were two mitigating factors. Neither attorney had been found to have breached an APO in the two years the Commission typically considers for determining sanctions. In addition, the record showed that the attorneys had responded promptly to the request by the Commission's staff to provide a replacement page for the page containing the unbracketed BPI, although the Commission's Dockets staff never actually received it.

There were also several aggravating factors. First, the Commission found that the breach was not inadvertent. The attorneys were aware of Commission rule 201.6(a)(1), but they made either no effort or an inadequate effort to ascertain the Commission's published interpretation of the regulation, notwithstanding the fact that it was readily available, easily located, and expressly addressed the question of whether the information should be treated as BPI. Instead they adopted their own interpretation of the regulation without consulting the Commission's staff. Thus, they made a conscious decision not to bracket material that was BPI.

Second, the Commission presumed that an individual not subject to the APO read the unbracketed BPI in the public version of the brief. The brief was sent to counsel for the opposing side, who was not subject to the APO. The replacement page was not sent to him until the next day. The attorneys did not address whether the counsel had viewed the BPI even after being specifically asked by the Commission's Secretary. In the absence of any contrary representation by the attorneys, the Commission presumed that opposing counsel read the brief, including the BPI, at the time he received it.

Third, the breach was discovered by the Commission's staff. In addition, although the attorneys initially provided the replacement page promptly, they did not respond to the second request for a replacement page, which was necessitated by the fact that Dockets staff did not receive the original replacement page. The attorneys did respond to the third request.

APO Breach Investigation in Which No Breach Was Found

Case 1: Counsel for respondents in a title VII investigation transmitted to their clients copies of a draft public version of a prehearing brief. The draft brief contained information that had been derived from information in the Commission's prehearing report. In the report, the information was treated as BPI and was bracketed. The Commission determined that counsel did not breach the APO because at the time the brief was prepared, the substance of the material in the draft prehearing brief was available in the public domain.

Rules Violations

Case 1: The Commission found that an attorney violated 19 CFR 207.3(b) by serving a postconference brief in a title VII investigation by first-class mail. The Commission issued a warning letter. There were two mitigating factors: (1) Rhis was the attorney's first rules violation within the prior two years generally examined by the Commission for purposes of determining sanctions, and (2) the violation was unintentional.

Investigation in Which No Rules Violation Was Found

Case 1: An associate and lead attorney filed an *in camera* hearing request in a title VII five year review which did not meet the content requirements of 19 CFR 207.24(d), was not timely filed, and did not provide good cause for the untimeliness as required under 19 CFR 201.14 and 207.24(d). It was also improperly served contrary to 19 CFR 207.3(b). The attorneys filed a second letter s*ee*king leave to file an untimely request and providing the subjects to be covered during the *in camera* session. This letter did not provide the time necessary to cover the subjects and was also improperly filed. Consequently, the Commission rejected the request for the *in camera* session as untimely. After consideration of the attorneys' responses in this rules violation investigation, the Commission determined that they failed to exercise due diligence in filing the two submissions, but decided not to sanction them. This decision was reached after giving consideration to the facts that their actions were not intentional and that no party was prejudiced by their actions. In addition, this was the associate's first appearance before the Commission.

By order of the Commission.

Issued: October 21, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27172 Filed 10–26–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 005–2010]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Notice of a Modification of a System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Federal Bureau of Investigation (FBI), Department of Justice, proposes to modify an existing system of records entitled "Data Integration and Visualization System," JUSTICE/FBI–021, which describes the Data Integration and Visualization System (DIVS), to revise the System Location section to clarify locations where the records may be directly accessed and by whom the records may be directly accessed. A new sentence has been added at the end of the System Location section to reflect this information. This system notice was last published on August 31, 2010 (75 FR 53342).

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. Therefore, please submit any comments by November 26, 2010.