

# U.S. CUSTOMS AND BORDER PROTECTION

## Frequently Asked Questions: Administrative Protective Order



### What is an Administrative Protective Order?

An administrative protective order (APO) is a framework to protect and distribute business confidential information to authorized individuals. In this case, it is a mechanism to allow parties to an EAPA investigation to view business confidential information that is relevant to their case.

Before the APO, parties to an investigation could only view public documents and public versions of documents. After an APO is implemented, authorized individuals can view pertinent business confidential information.

### Why was the APO process created?

CBP is implementing the APO process in response to the U.S. Court of Appeals for the Federal Circuit's decision in *Royal Brush Manufacturing Inc. v. United States*, in which the court held due process requires that parties to an EAPA investigation be provided with access to business confidential information on which CBP relied to make its determination as to evasion. Additionally, the original EAPA regulations did not include any form of APO or mechanism for sharing business confidential information, but EAPA's newly released Final Rule does.

### Who may apply?

An "eligible applicant" must be one of the following: 1) a U.S.-licensed attorney admitted to practice before the bar of a United States state or territory, who represents a party to the investigation, and is not employed as in-house counsel to a party to the investigation; or 2) a non-attorney staff member employed and/or retained by and working under the direction and supervision of a U.S.-licensed attorney who is authorized to receive business confidential information under the APO. **Applicants must represent parties to the investigation in an active investigation/case.**

### How do you apply?

An APO will be issued on day 90 after initiation of an EAPA investigation. EAPA will notify parties to the investigation that an APO is placed on the administrative record and will advise of the application deadline. An eligible applicant must file a letter with CBP that contains:

- 1) a statement, under oath, by the applicant attesting to his/her/their status as an eligible applicant;
- 2) a request for access to business confidential information under the APO;
- 3) an agreement, under oath, to be bound by the terms of the APO; and
- 4) an acknowledgement that a breach of the terms of the APO may subject the authorized recipient to sanctions imposed by CBP and/or other legal authorities.

### How will business confidential information be shared?

All documents and information that are part of the administrative record (including any business confidential information being shared as part of the APO) will be shared through the EAPA Portal (also known as the EAPA Case Management System, or CMS). This is the same portal where you can access all pertinent information regarding the EAPA cases in which you are involved.

### Where can I find more information?

For detailed guidance, please review CBP's Administrative Protective Order Handbook by visiting [Enforce and Protect Act](#) or contact the EAPA team at [epallegations@cbp.dhs.gov](mailto:epallegations@cbp.dhs.gov).

