

§ 210.65

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§ 210.65 Certification of the record.

When the administrative law judge issues an initial determination concerning temporary relief pursuant to § 210.66(a), he shall also certify to the Commission the record upon which the initial determination is based.

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

(a) On or before the 70th day after publication of the notice of investigation in an ordinary investigation, or on or before the 120th day after such publication in a “more complicated” investigation, the administrative law judge will issue an initial determination concerning the issues listed in §§ 210.52 and 210.59. If the 70th day or the 120th day is a Saturday, Sunday, or Federal holiday, the initial determination must be received in the Office of the Secretary no later than 12:00 noon on the first business day after the 70-day or 120-day deadline. The initial determination may, but is not required to, address the issues of remedy, the public interest, and bonding by the respondents pursuant under sections 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

(b) If the initial determination on temporary relief is issued on the 70-day or 120-day deadline imposed in paragraph (a) of this section, the initial determination will become the Commission’s determination 20 calendar days after issuance thereof in an ordinary case, and 30 calendar days after issuance in a “more complicated” investigation, unless the Commission modifies, reverses, or sets aside the initial determination in whole or part within that period. If the initial determination on temporary relief is issued before the 70-day or 120-day deadline imposed in paragraph (a) of this section, the Commission will add the extra time to the 20-day or 30-day deadline to which it would otherwise have been held. In computing the deadlines imposed by this paragraph, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the last day of the period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the effective date of the initial determination

shall be extended to the next business day.

(c) The Commission will not modify, reverse, or set aside an initial determination concerning temporary relief unless the Commission finds that a finding of material fact is clearly erroneous, that the initial determination contains an error of law, or that there is a policy matter warranting discussion by the Commission. All parties may file written comments concerning any clear error of material fact, error of law, or policy matter warranting such action by the Commission. Such comments must be limited to 35 pages in an ordinary investigation and 45 pages in a “more complicated” investigation. The comments must be filed no later than seven calendar days after issuance of the initial determination in an ordinary case and 10 calendar days after issuance of the initial determination in a “more complicated” investigation. In computing the aforesaid 7-day and 10-day deadlines, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the initial determination is issued on a Friday, however, the filing deadline for comments shall be measured from the first business day after issuance. If the last day of the filing period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. The parties shall serve their comments on other parties by messenger, overnight delivery, or equivalent means.

(d) Notice of the initial determination shall be served on the other agencies listed in § 210.50(a)(2). Those agencies will be given 10 calendar days from the date of service of the notice to file comments on the initial determination.

(e)(1) Each party may file a response to each set of comments filed by another party. All such reply comments must be filed within 10 calendar days after issuance of the initial determination in an ordinary case and within 14 calendar days after issuance of an initial determination in a “more complicated” investigation. The deadlines for filing reply comments shall be computed in the manner described in paragraph (c) of this section, except that in

no case shall a party have fewer than two calendar days to file reply comments.

(2) Each set of reply comments will be limited to 20 pages in an ordinary investigation and 30 pages in a “more complicated” case.

(f) If the Commission determines to modify, reverse, or set aside the initial determination, the Commission will issue a notice and, if appropriate, a Commission opinion. If the Commission does not modify, reverse, or set aside the administrative law judge’s initial determination within the time provided under paragraph (b) of this section, the initial determination will automatically become the determination of the Commission. Notice of the Commission’s determination concerning the initial determination will be issued on the statutory deadline for determining whether to grant temporary relief, or as soon as possible thereafter, and will be served on the parties. Notice of the determination will be published in the FEDERAL REGISTER if the Commission’s disposition of the initial determination has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. If the Commission determines (either by reversing or modifying the administrative law judge’s initial determination, or by adopting the initial determination) that the complainant must post a bond as a prerequisite to the issuance of temporary relief, the Commission may issue a supplemental notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53121, Oct. 12, 1995; 73 FR 38326, July 7, 2008]

§ 210.67 Remedy, the public interest, and bonding.

The procedure for arriving at the Commission’s determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which respondents’ merchandise will be permitted to enter

the United States during the pendency of any temporary relief order issued by the Commission, is as follows:

(a) While the motion for temporary relief is before the administrative law judge, he may compel discovery on matters relating to remedy, the public interest and bonding (as provided in § 210.61). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in § 210.66(a). Such findings may be superseded, however, by Commission findings on that issue as provided in paragraph (c) of this section.

(b) On the 65th day after institution in an ordinary case or on the 110th day after institution in a “more complicated” investigation, all parties shall file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public interest factors, and bonding by respondents may be provided along with the parties’ submissions. Pursuant to § 210.50(a)(4), interested persons may also file written comments, on the aforesaid dates, concerning the issues of remedy, the public interest, and bonding by the respondents.

(c) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under section 337 (e)(1) and/or (f)(1) of the Tariff Act of 1930, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents’ merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission. In the event that Commission’s findings on the public interest pursuant to this paragraph are inconsistent with findings made by the administrative law judge in the initial determination pursuant to § 210.66(a), the Commission’s findings are controlling.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38326, July 7, 2008]