

placed in camera and become a part of the confidential record.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 73 FR 38324, July 7, 2008]

§ 210.40 Proposed findings and conclusions and briefs.

At the time a motion for summary determination under § 210.18(a) or a motion for termination under § 210.21(a) is made, or when it is found that a party is in default under § 210.16, or at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in § 210.63), or within a reasonable time thereafter fixed by the administrative law judge, any party may file proposed findings of fact and conclusions of law, together with reasons therefor. When appropriate, briefs in support of the proposed findings of fact and conclusions of law may be filed with the administrative law judge for his consideration. Such proposals and briefs shall be in writing, shall be served upon all parties in accordance with § 210.4(g), and shall contain adequate references to the record and the authorities on which the submitter is relying.

Subpart G—Determinations and Actions Taken

§ 210.41 Termination of investigation.

Except as provided in § 210.21 (b)(2), (c), and (d), an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.45(c). The Commission shall publish in the FEDERAL REGISTER notice of each Commission order that terminates an investigation in its entirety.

[60 FR 53120, Oct. 12, 1995]

§ 210.42 Initial determinations.

(a)(1)(i) *On issues concerning violation of section 337.* Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 no later than four (4) months before the target date set pursuant to § 210.51(a).

(ii) *Recommended determination on issues concerning permanent relief, bonding, and the public interest.* Unless the Commission orders otherwise, within 14 days after issuance of the initial determination on violation of section 337 of the Tariff Act of 1930, the administrative law judge shall issue a recommended determination containing findings of fact and recommendations concerning—

(A) The appropriate remedy in the event that the Commission finds a violation of section 337, and

(B) The amount of the bond to be posted by the respondents during Presidential review of Commission action under section 337(j) of the Tariff Act.

(C) The public interest under sections 337(d)(1) and (f)(1) in investigations where the Commission has ordered the administrative law judge under § 210.50(b)(1) to take evidence with respect to the public interest.

(2) *On certain motions to declassify information.* The decision of the administrative law judge granting a motion to declassify information, in whole or in part, shall be in the form of an initial determination as provided in § 210.20(b).

(b) *On issues concerning temporary relief or forfeiture of temporary relief bonds.* Certification of the record and the disposition of an initial determination concerning a motion for temporary relief are governed by §§ 210.65 and 210.66. The disposition of an initial determination concerning possible forfeiture or return of a complainant's temporary relief bond, in whole or in part, is governed by § 210.70.

(c) *On other matters.* The administrative law judge shall grant the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to § 210.14(b); a motion for a finding of default pursuant to § 210.16; a motion for summary determination pursuant to § 210.18; a motion for intervention pursuant to § 210.19; a motion for termination pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; a motion for forfeiture or return of respondents' bonds pursuant to § 210.50(d); a motion to set a target date exceeding 15

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months pursuant to §210.51(a); or a motion for forfeiture or return of a complainant's temporary relief bond pursuant to §210.70.

(d) *Contents.* The initial determination shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law, or discretion presented in the record; and a statement that, pursuant to §210.42(h), the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to §210.43(a) or the Commission, pursuant to §210.44, orders on its own motion a review of the initial determination or certain issues therein.

(e) *Notice to and advice from other departments and agencies.* Notice of each initial determination granting a motion for termination of an investigation in whole or part on the basis of a consent order or a settlement, licensing, or other agreement pursuant to §210.21 of this part, and notice of such other initial determinations as the Commission may order, shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies 10 days after the service of an initial determination to submit their comments.

(f) *Initial determination made by the administrative law judge.* An initial determination under this section shall be made and filed by the administrative law judge who presided over the investigation, except when that person is unavailable to the Commission and except as provided in §210.20(a).

(g) *Reopening of proceedings by the administrative law judge.* At any time prior to the filing of the initial deter-

mination, the administrative law judge may reopen the proceedings for the reception of additional evidence.

(h) *Effect.* (1) An initial determination filed pursuant to §210.42(a)(2) shall become the determination of the Commission 45 days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(2) An initial determination under §210.42(a)(1)(i) shall become the determination of the Commission 60 days after the date of service of the initial determination, unless the Commission within 60 days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination. The findings and recommendations made by the administrative law judge in the recommended determination issued pursuant to §210.42(a)(1)(ii) will be considered by the Commission in reaching determinations on remedy and bonding by the respondents pursuant to §210.50(a).

(3) An initial determination filed pursuant to §210.42(c) shall become the determination of the Commission 30 days after the date of service of the initial determination, except as provided for in paragraph (h)(5) and paragraph (h)(6) of this section, §210.50(d)(3), and §210.70(c), unless the Commission, within 30 days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

(4) The disposition of an initial determination granting or denying a motion for temporary relief is governed by §210.66.

(5) The disposition of an initial determination concerning possible forfeiture of a complainant's temporary relief bond is governed by §210.70(c).

(6) The disposition of an initial determination filed pursuant to §210.42(c) which grants a motion for summary determination that would terminate the investigation in its entirety if it were

to become the Commission's final determination, shall become the final determination of the Commission 45 days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(i) *Notice of determination.* A notice stating that the Commission's decision on whether to review an initial determination will be issued by the Secretary and served on the parties. Notice of the Commission's decision will be published in the FEDERAL REGISTER if the decision results in termination of the investigation in its entirety, if the Commission deems publication of the notice to be appropriate under § 201.10 of subpart B of this part, or if publication of the notice is required under § 210.49(b) of this subpart or § 210.66(f) of subpart H of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 60 FR 53120, Oct. 12, 1995; 73 FR 38324, July 7, 2008; 76 FR 64809, Oct. 19, 2011]

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) *Filing of the petition.* (1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a)(1) or (c), § 210.50(d)(3) or § 210.70(c) by filing a petition with the Secretary. A petition for review of an initial determination issued under § 210.42(a)(1) must be filed within 12 days after service of the initial determination. A petition for review of an initial determination issued under § 210.42(c) that terminates the investigation in its entirety on summary determination must be filed within 10 business days after service of the initial determination. Petitions for review of all other initial determinations under § 210.42(c) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.50(d)(3) or § 210.70(c) must be filed within 10 days after service of the initial determination.

(2) A party may not petition for review of any issue as to which the party has been found to be in default. Similarly, a party or proposed respondent who did not file a response to the motion addressed in the initial determination may be deemed to have consented to the relief requested and may not petition for review of the issues raised in the motion.

(b) *Content of the petition.* (1) A petition for review filed under this section shall identify the party seeking review and shall specify the issues upon which review of the initial determination is sought, and shall, with respect to each such issue, specify one or more of the following grounds upon which review is sought:

(i) That a finding or conclusion of material fact is clearly erroneous;

(ii) That a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or

(iii) That the determination is one affecting Commission policy.

NOTE TO PARAGRAPH (b)(1): The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy. If a petition filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the petition not to exceed ten pages. Petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits.

(2) Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination (unless the Commission chooses to review the issue on its own initiative under § 210.44).

(3) Any petition designated by the petitioner as a "contingent" petition for review shall be deemed to be a petition under paragraph (a)(1) of this section and shall be processed accordingly. In order to preserve an issue for review by the Commission or the U.S. Court of Appeals for the Federal Circuit that was decided adversely to a party, the issue must be raised in a petition for review, whether or not the Commission's determination on the ultimate