

## §210.17

## 19 CFR Ch. II (4–1–14 Edition)

(2) Any party may file a motion for issuance of, or the administrative law judge may issue on his own initiative, an initial determination finding a party in default for abuse of process under §210.4(c) or failure to make or cooperate in discovery. A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(3) If a proposed respondent has not filed a response to the complaint and notice of investigation pursuant to §210.13 or §210.59(c) of this chapter, the proposed respondent may file a notice of intent to default under this section. The filing of a notice of intent to default does not require the administrative law judge to issue the show-cause order of paragraph (b)(1) of this section. The administrative law judge shall issue an initial determination finding the proposed respondent in default upon the filing of a notice of intent to default. Such default will be treated in the same manner as any default under this section.

(4) A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

(c) *Relief against a respondent in default*—(1) *Types of relief available.* After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, and concluding that the order(s) should still be issued in light of the aforementioned public interest factors.

(2) *General exclusion orders.* In any motion requesting the entry of default

or the termination of the investigation with respect to the last remaining respondent in the investigation, the complainant shall declare whether it is seeking a general exclusion order. The Commission may issue a general exclusion order pursuant to section 337(g)(2) of the Tariff Act of 1930, regardless of the source or importer of the articles concerned, provided that a violation of section 337 of the Tariff Act of 1930 is established by substantial, reliable, and probative evidence and that the other requirements of 19 U.S.C. 1337(d)(2) are satisfied, and only after considering the aforementioned public interest factors and the requirements of §210.50(c).

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 78 FR 23482, Apr. 19, 2013]

### §210.17 Other failure to act and default.

Failures to act other than the defaults listed in §210.16 may provide a basis for the presiding administrative law judge or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to the party who fails to act. Such failures include, but are not limited to:

(a) Failure to respond to a motion that materially alters the scope of the investigation or a related proceeding;

(b) Failure to respond to a motion for temporary relief pursuant to §210.59;

(c) Failure to respond to a motion for summary determination under §210.18;

(d) Failure to appear at a hearing before the administrative law judge after filing a written response to the complaint or motion for temporary relief, or failure to appear at a hearing before the Commission;

(e) Failure to file a brief or other written submission requested by the administrative law judge or the Commission during an investigation or a related proceeding;

(f) Failure to respond to a petition for review of an initial determination, a petition for reconsideration of an initial determination, or an application

for interlocutory review of an administrative law judge's order; and

(g) Failure to participate in temporary relief bond forfeiture proceedings under § 210.70.

(h) *Default by notice.* If a respondent has filed a response to the complaint or notice of investigation under § 210.13 of this chapter, the respondent may still file a notice of intent to default with the presiding administrative law judge at any time before the filing of the final initial determination. The administrative law judge shall issue an initial determination finding the respondent in default upon the filing of a notice of intent to default. Such default will be treated in the same manner as any other failure to act under this section. The filing of a notice of intent to default does not require the administrative law judge to issue an order to show cause as to why the respondent should not be found in default.

The presiding administrative law judge or the Commission may take action under this rule sua sponte or in response to the motion of a party.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 23842, Apr. 19, 2013]

#### § 210.18 Summary determinations.

(a) *Motions for summary determinations.* Any party may move with any necessary supporting affidavits for a summary determination in its favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after 20 days following the date of service of the complaint and notice instituting the investigation. Any other party or a respondent may so move at any time after the date of publication of the notice of investigation in the FEDERAL REGISTER. Any such motion by any party in connection with the issue of permanent relief, however, must be filed at least 60 days before the date fixed for any hearing provided for in § 210.36(a)(1). Notwithstanding any other rule, the deadline for filing summary determinations shall be computed by counting backward at least 60 days including the first calendar day prior to the date the hearing is scheduled to commence. If the end of the 60 day period falls on a weekend or holi-

day, the period extends until the end of the next business day. Under exceptional circumstances and upon motion, the presiding administrative law judge may determine that good cause exists to permit a summary determination motion to be filed out of time.

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may file opposing affidavits within 10 days after service of the motion for summary determination. The administrative law judge may, in his discretion or at the request of any party, set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) *Affidavits.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary determination is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of the opposing party's pleading, but the opposing party's response, by affidavits, answers to interrogatories, or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of fact for the evidentiary hearing under § 210.36(a)(1) or (2). If the opposing party does not so respond, a summary determination, if appropriate, shall be rendered against the opposing party.