

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 determination, 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 45 days after the date of service of the initial determination, unless the Commission, within 45 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 recommenda-

tions 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 in paragraph (h)(5) 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).

(i) *Notice of determination.* A notice stating 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.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 60 FR 53120, Oct. 12, 1995]

§ 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 10 days after service of the initial determination. A petition for review of an initial determination issued under § 210.42(c) must be filed within five business days after issuance of the initial

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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 issuance 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.

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.

(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.

(4) A party’s failure to file a petition for review of an initial determination shall constitute abandonment of all issues decided adversely to that party in the initial determination.

(c) *Responses to the petition.* Any party may file a response to a petition for review within five business days after service of the petition, except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted.

(d) *Grant or denial of review.* (1) The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to §210.42(a)(1), §210.50(d)(3) or §210.70(c) within 45 days of the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to §210.42(c) within 30 days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon the petition and response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. A petition will be granted and review will be ordered if it appears that an error or abuse of the type described in paragraph (b)(1) of this section is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks it necessary or appropriate to address.

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. If the notice solicits written submissions from interested persons on the issues of remedy, the public interest, and bonding in addition to announcing the Commission’s decision to grant a petition for review of the initial determination, the notice shall be served by the Secretary on all parties, 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.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 60 FR 53120, Oct. 12, 1995]

§ 210.44 Commission review on its own motion of initial determinations on matters other than temporary relief.

Within the time provided in § 210.43(d)(1), the Commission on its own initiative may order review of an initial determination, or certain issues in the initial determination, when at least one of the participating Commissioners votes for ordering review. A self-initiated Commission review of an initial determination will be ordered if it appears that an error or abuse of the kind described in § 210.43(b)(1) is present or the initial determination raises a policy matter which the Commission thinks is necessary or appropriate to address.

§ 210.45 Review of initial determinations on matters other than temporary relief.

(a) *Briefs and oral argument.* In the event the Commission orders review of an initial determination pertaining to issues other than temporary relief, the parties may be requested to file briefs on the issues under review at a time and of a size and nature specified in the notice of review. The parties, within the time provided for filing the review briefs, may submit a written request for a hearing to present oral argument before the Commission, which the Commission in its discretion may grant or deny. The Commission shall grant the request when at least one of the participating Commissioners votes in favor of granting the request.

(b) *Scope of review.* Only the issues set forth in the notice of review, and all subsidiary issues therein, will be considered by the Commission.

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. The Commis-

sion also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding. If the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the FEDERAL REGISTER.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53120, Oct. 12, 1995]

§ 210.46 Petitions for and sua sponte review of initial determinations on violation of section 337 or temporary relief.

(a) *Violation of section 337.* An initial determination issued under § 210.42(a)(1)(i) on whether respondents have violated section 337 of the Tariff Act of 1930 will be processed as provided in § 210.42(e), (h)(2), and (i) and §§ 210.43 through 210.45. The Commission will issue a notice setting deadlines for written submissions from the parties, other Federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding by the respondents. In those submissions, the parties may assert their arguments concerning the recommended determination issued by the administrative law judge pursuant to § 210.42(a)(ii) on the issues of remedy and bonding by respondents.

(b) *Temporary relief.* Commission action on an initial determination concerning temporary relief is governed by § 210.66.

§ 210.47 Petitions for reconsideration.

Within 14 days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments. Any party desiring to oppose such a petition shall file an answer thereto within five days after service of the petition upon such party. The filing of a petition for reconsideration shall not stay the effective date of the determination