Title 19: Customs Duties

CHAPTER II—UNITED STATES INTERNATIONAL TRADE COMMISSION

PART 200—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 *et seq.*, 5 CFR 2638.101 *et seq.*, unless otherwise noted.

Source: 31 FR 2593, Feb. 10, 1966, unless otherwise noted.

Subpart A—General Provisions

§ 200.735-101 Purpose.

The purpose of the regulations in this part is to maintain the highest standards of honesty, integrity, impartiality, and conduct on the part of all employees of the U.S. International Trade Commission and to maintain public confidence that the business of the Commission is being conducted in accordance with such standards.

[31 FR 2593, Feb. 10, 1966, as amended at 46 FR 17542, Mar. 19, 1981]

§ 200.735-102 Definitions.

In this part:

(a) *Commission* means the U.S. International Trade Commission.

(b) *Commissioner* means a Commissioner of the U.S. International Trade Commission.

(c) *Employee* means a Commissioner, employee, or special Government employee of the Commission.

(d) *Executive order* means Executive Order 11222 of May 8, 1965.

(e) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(f) *Special Government employee* means a “special Government employee” as defined in section 202 of Title 18 of the United States Code who is employed by the Commission.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979; 46 FR 17542, Mar. 19, 1981; 56 FR 36726, Aug. 1, 1991]

§ 200.735-103 Counseling service.

(a) The Chairman shall appoint a Designated Agency Ethics Official (DAEO) who serves as liaison to the Office of Government Ethics and who is responsible for carrying

out the Commission's ethics program. The program shall be designed to implement titles II, IV, and V of the Ethics in Government Act of 1978, Executive Order No. 11222, the regulations in this part, and other statutes and regulations applicable to agency ethics matters. The DAEO will be a senior Commission employee with experience demonstrating the ability to review financial disclosure reports and counsel employees with regard to resolving conflicts of interest, review the financial disclosures of Presidential nominees to the Commission prior to confirmation hearings, counsel employees with regard to ethics standards, assist supervisors in implementing the Commission's ethics program, and periodically evaluate the ethics program.

(b) The Chairman shall select an Alternate Agency Ethics Official who will serve as Deputy DAEO to whom any of the DAEO's statutory and regulatory duties may be delegated.

(c) The DAEO shall coordinate and manage the agency's ethics program. The DAEO duties shall consist of:

(1) Liaison with the Office of Government Ethics;

(2) Review of financial disclosure reports, including reports filed by Presidential nominees to the Commission;

(3) Initiation and maintenance of ethics education and training programs;

(4) Monitoring administrative actions and sanctions; and

(5) Implementation of the specific program elements listed in Office of Government Ethics regulations, 5 CFR 738.203(b).

[46 FR 17542, Mar. 19, 1981, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735-104 Disciplinary and other remedial action.

(a) An employee who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any other penalty prescribed by law for the violation. In addition to, or in lieu of, disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of his conflicting interest; or

(3) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Provisions Governing Ethical and Other Conduct and Responsibilities of Employees

§ 200.735-104a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

[32 FR 16210, Nov. 28, 1967]

§ 200.735-105 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are being investigated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions set forth under paragraph (a) of this section shall not apply to:

(1) Solicitations or acceptances based on obvious family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on a field trip, and of ground transportation of nominal value in the course of a field trip, where an employee may properly be in attendance.

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor §200.735–106 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

[32 FR 16210, Nov. 28, 1967, as amended at 46 FR 41036, Aug. 14, 1981]

§ 200.735-106 Outside employment and other activities.

(a) An employee may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment: *Provided,* That no Commissioner shall actively engage in any other business, vocation, or employment than that of serving as a Commissioner (19 U.S.C. 1330(c)). Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment tending to impair the employee's capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee (except a special Government employee) shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Commission gives authorization for the use of nonpublic information (other than information received in confidence) on the basis that the use is in the public interest and would not be in violation of law. In addition, Commissioners shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law.

(2) Participation in the affairs of, or acceptance of, an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[33 FR 8447, June 7, 1968]

§ 200.735-107 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties or responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, or this part.

(c) Pursuant to the authority contained in 18 U.S.C. 208(b), the following types of financial interests are considered too remote or inconsequential to affect a Commission employee's integrity or services and do not constitute a conflict of interest under 18 U.S.C. 208(a):

(1) In widely-held, diversified mutual funds or regulated investment companies, regardless of their value; and

(2) In state or local government bonds, or other noncorporate bonds, regardless of their value.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979]

§ 200.735-108 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property issued to him.

§ 200.735-109 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in §200.735–106(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 200.735-110 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For the purpose of this section a *just financial obligation* means one acknowledged by the employee or reduced to judgment by a court, and *in a proper and timely manner* means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of a dispute between an employee and an alleged creditor, the Commission shall make no determination of the validity or amount of the disputed debt.

§ 200.735-111 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar Commission-approved activities.

§ 200.735-112 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 200.735-113 Miscellaneous statutory provisions.

Each employee shall familiarize himself with each statute that relates to his ethical and other conduct as a Government employee, including the following statutes:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16210, Nov. 28, 1967]

Subpart C—Provisions Governing Statements of Employment and Financial Interests

§ 200.735-114 Employees required to submit statements.

Except as provided in §200.735–114a, the following employees shall submit confidential statements of employment and financial interests:

(a)(1) Employees in grade GS–13 or above under section 5332 of title 5, United States Code, or in comparable or higher positions not subject to that section, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978.

(2) The Director of Personnel shall list all such positions, shall include the listing in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests, and shall furnish copies thereof to the Deputy DAEO and to affected employees.

(3) The Director of Personnel shall update the listing required by paragraph (a)(2) of this section and shall take all other steps required by paragraph (a)(2) as of January 1 and July 1 of each year.

(b)(1) Employees classified below GS–13 under section 5332 of title 5, United States Code, or at a comparable pay level under other authority, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978, who are: (i) Responsible for making a decision or taking an action in regard to Commission contracting or procurement, (ii) responsible for conducting investigative and research activities where the decision to be made or action to be taken could have an economic impact on any non-Federal enterprise, or (iii) responsible for exercising the authority of any supervisory or investigative employee in the absence of such employee.

(2) The Director of Personnel, upon obtaining the advice of the General Counsel, shall be responsible for determining which positions below GS–13 meet the criteria of paragraph (b)(1) of this section. The Director of Personnel shall justify his or her determination in writing and shall submit it to the Office of Personnel Management for its approval. Upon obtaining the approval of the Office of Personnel Management, the Director of Personnel

shall include the listing of these positions in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests and shall furnish copies thereof to the Deputy DAEO and to affected employees.

(3) The Director of Personnel shall evaluate the determination under paragraph (b)(2) of this section as of January 1 and July 1 of each year. When organizational changes or personnel actions indicate that positions should be either added to or taken from the list of positions which the Director of Personnel has determined meet the criteria of paragraph (b)(1) of this section, the Director of Personnel shall make a new determination under paragraph (b)(2) of this section and shall take all other steps required by paragraph (b)(2) immediately upon the implementation of said organizational changes or personnel actions.

[46 FR 17543, Mar. 19, 1981, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735-114a Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraphs (b)(1) or (c)(1) of §200.735–114 of this subpart may be exempted from the reporting requirement of §200.735–114 if the Director of Personnel, upon obtaining the advice of the General Counsel, determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) All determinations made pursuant to paragraph (a) shall be documented in a writing which shall be annexed to the listings required by paragraphs (b)(2) and (c)(2) of §200.735–114 of this subpart. The factual bases and reasons for determinations under paragraphs (a)(1) and (a)(2) of this section shall be specified by the Director of Personnel in said writing. Said writing shall refer to the *position* only and shall not include the name, or other identifying particular, of the incumbent occupying the position.

(c) A statement of employment and financial interests from commissioners is not required by this subpart. Such employees are subject to separate reporting requirements under section 401 of Executive Order 11222 (3 CFR 306 (1964–1965 Comp.)).

[42 FR 59958, Nov. 23, 1977]

§ 200.735-114b Employee complaints on filing requirements.

Any employee who believes that his position has been improperly included under the reporting requirements of §200.735–114 may obtain a review thereof through the Commission's grievance procedures.

[42 FR 59958, Nov. 23, 1977]

§ 200.735-114c Voluntary submission by employees.

Any employee not required to submit a statement of employment and financial interests under the criteria established by §200.735–114 may submit such a statement to the Deputy Counselor in the manner specified in §200.735–116 if he or she so desires.

[42 FR 59958, Nov. 23, 1977]

§ 200.735-115 Forms—Interests not to be reported.

(a) Statements required to be submitted by the provisions of this subpart shall be prepared on forms (the format of which is prescribed by the Office of Government Ethics, Office of Personnel Management) available from the Deputy DAEO.

(b) Employees, GS–15 and below, who are required to file a statement of employment and financial interests under §200.735–114 of this part, need not report to the Deputy DAEO those financial interests specified in §§200.735–107(c) (1) and (2) of this part. Commissioners and Commission employees, GS–16 and above, are required to report the financial interests specified in §§200.735–107(c) (1) and (2) of this part under section 202(a) of the Ethics in Government Act of 1978.

[44 FR 23823, Apr. 23, 1979, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735-116 Time and place for submission of employees' statements.

(a) An employee required to submit such a statement shall submit it not later than:

(1) Ninety days after the effective date of the regulations in this part, if employed on or before that effective date; or

(2) Thirty days after his entrance on duty, but not earlier than ninety days after the effective date, if appointed after the effective date.

(b) Each such statement shall be submitted to the Office of the General Counsel of the Commission and shall be marked “Submitted in Confidence to the Deputy DAEO.”: *Provided,* That the statement of the Deputy DAEO shall be submitted directly to the DAEO.

[31 FR 2593, Feb. 10, 1966, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735-117 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report under this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of title 18, United States Code, or the regulations in this part.

[32 FR 16211, Nov. 28, 1967]

§ 200.735-118 Interests of employees' relatives.

The interest of a spouse, minor child or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, *member of an employee's immediate household* means those blood relations who are residents of the employee's household.

§ 200.735-119 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

§ 200.735-120 Information prohibited.

An employee is not required to submit in a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from, or contracts with, the Government are deemed *business enterprises* and are required to be included in an employee's statement of employment and financial interests.

§ 200.735-121 Confidentiality of employees' statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence. To ensure this confidentiality, the Deputy DAEO is authorized to review and retain the statements. He shall be responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Deputy DAEO may not disclose information from the statement except as the Civil Service Commission or the Chairman of the Tariff Commission may determine for good cause shown.

[32 FR 16211, Nov. 28, 1967, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735-122 Special Government employees.

(a) Except as provided in paragraph (b) of this section, each special Government employee shall submit a statement of employment and financial interests which reports:

(1) All of his employment; and

(2) The financial interests of the special Government employee which the Commission determines are relevant in the light of the duties he is to perform.

(b) The Commission may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when the Commission finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, *consultant* and *expert* have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

(c) A statement of employment and financial interests required to be submitted under this section shall be submitted as provided for employees in §200.735–116. Each special Government employee shall keep his statement current throughout his employment with the Commission by the submission of supplementary statements.

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16211, Nov. 28, 1967]

§ 200.735-123 Effect of employees' and special Government employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees and special Government employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee or special Government employee does not permit him or any other person to participate in a matter which his or the other person's participation in is prohibited by law, order, or regulation.

Subpart D—Provisions for Administrative Enforcement of Postemployment Conflict of Interest Restrictions

Authority: Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1864 (18 U.S.C. 207), as amended by Pub. L. 96–28, 93 Stat. 76 (1979); 45 FR 7402, (1979) (5 CFR part 737).

Source: 45 FR 31988, May 15, 1980, unless otherwise noted.

§ 200.735-124 General.

The procedures in this subpart are established pursuant to subsection 207(j) of title 18, United States Code, for the administrative enforcement of the restrictions on postemployment activities in Title V of the Ethics in Government Act of 1978 (18 U.S.C. 207 (a), (b), and (c)) and implementing regulations published by the Office of Government Ethics (5 CFR part 737). Subsections 207 (a), (b), and (c) of Title 18, United States Code, prohibit certain forms of representational activity or communications by former Commission employees.

§ 200.735-125 Exemption from restrictions.

(a) *Scientific and technological information solicited by the Commission.* Communications of a former Commission employee solely for the purpose of furnishing scientific or technological information solicited by the Commission in the course of its statutory investigations are exempted from the restrictions on postemployment practices.

(b) *Exemption for persons with special qualifications in a technical discipline* —(1) *Applicability.* A former Commission employee may be exempted from the restrictions on postemployment practices if the Chairman, in consultation with the Director, Office of Government Ethics (the Director), executes a certification published in the Federal Register that the former Commission employee has outstanding qualifications in a scientific, technological, or other technical discipline; that the former Commission employee is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former Commission employee's participation.

(2) *Certification authority.* Certification shall be by the Chairman, or in the absence thereof, by the acting head of the Commission. Consultation with the Director shall precede any certification. The exemption is effective upon the execution of the certification. The Secretary shall immediately transmit the certification to the Federal Register for publication.

(c) *Testimony and statement under oath are subject to penalty of perjury* —(1) *Applicability.* A former Commission employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Commission employee. This provision does not, however, allow a former Commission employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c), to testify on behalf of another as an expert witness except (i) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the Commission employee participated, utilizing his or her expertise, or (ii) in any proceeding where it is determined that another expert in the field cannot practically be obtained, that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Commission employee's testimony is required in the interest of justice.

(2) *Statements under penalty of perjury.* A former Commission employee may make any statements required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception

does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 200.735-126 Administrative enforcement proceedings.

The following are basic guidelines for administrative enforcement of restrictions on postemployment activities:

(a) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information does not appear to be frivolous, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. Any investigation or administrative action will be coordinated with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice informs the Commission that it does not intend to initiate criminal prosecution.

(2) Whenever the Chairman has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737), he or she shall initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (b).

(3) The Chairman shall take all necessary steps to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(b) *Notice.* (1) The Chairman shall provide the former Commission employee with notice of an administrative disciplinary proceeding and an opportunity for a hearing.

(2) Notice to the former Commission employee must include—

(i) A statement of allegations and the basis thereof in detail sufficient to enable the former Commission employee to prepare an adequate defense;

(ii) Notification of the right to a hearing;

(iii) An explanation of the method by which a hearing may be requested; and

(iv) A copy of this subpart.

(c) *Examiner.* (1) The presiding official at proceedings under this subpart shall be an individual to whom the Chairman has delegated authority to make a recommended determination (hereinafter referred to as examiner).

(2) An examiner shall be an experienced government attorney of high moral character and sound judgment.

(3) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(d) *Scheduling of hearing.* In setting a hearing date, the examiner shall give due regard to the former Commission employee's need for—

(1) Adequate time to prepare a defense properly, and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

(e) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(1) To be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of the proceeding on request.

(f) *Burden of proof.* In any hearing under this subpart the Commission has the burden of proof and must establish a violation by clear and convincing evidence. The case of the Commission shall be presented by the Office of the General Counsel.

(g) *Recommended determination.* (1) The examiner shall make a recommended determination exclusively on matters of record in the proceeding and shall set forth therein all findings of fact and conclusions of law relevant to the matters at issue. The recommended determination shall be delivered to the parties.

(2) Within ten (10) days of the date of receipt of the recommended determination either party may submit to the Chairman exceptions to the recommended determination and alternative findings of fact and conclusions of law.

(h) *Final administrative decision.* (1) Within forty (40) days of the date of the recommended determination, the Chairman shall make a final administrative decision based solely on the record of the proceedings.

(2) In the event that no hearing is requested, the Chairman shall make a final administrative decision within forty (40) days of the date notice is provided to the former employee and the record of the proceedings shall consist of the statement of allegations

as defined in paragraph (b)(2)(i) and whatever written response the former employee shall provide.

(3) The Chairman shall specify in the final administrative decision the findings of fact and conclusions of law that differ from the recommended determination of the hearing examiner.

(i) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who is found in violation of 18 U.S.C. 207(a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737) after a final administrative decision by—

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years. This prohibition may be enforced by directing Commission employees to refuse to participate in any such appearance or to accept any such communication;

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207(a), (b), or (c) or these regulations may seek judicial review of the administrative determination. Review shall be before the appropriate United States district court.

SUBCHAPTER A—GENERAL

PART 201—RULES OF GENERAL APPLICATION

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

Source: 27 FR 12118, Dec. 7, 1962, unless otherwise noted.

§ 201.0 Seal.

(a) Pursuant to section 331(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1331(g)), the United States International Trade Commission has adopted an official seal, the depiction of which follows:

(b) Custody and certification obligations. The Secretary shall have custody of the seal of the United States International Trade Commission and he, or the Acting Secretary, may

execute under seal any certification required to authenticate any books, records, papers, or other documents as true copies of official records of the United States International Trade Commission.

(Sec. 331(g), Tariff Act of 1930, as amended (19 U.S.C. 1331(g)))

[40 FR 53384, Nov. 18, 1975; 40 FR 55838, Dec. 2, 1975]

§ 201.1 Applicability of part.

This part relates generally to functions and activities of the Commission under various statutes and other legal authority. Rules having special application appear separately in parts 202 through 207, inclusive, and parts 210, 212 and 213, of this chapter. In case of inconsistency between a rule of general application and a rule of special application, the latter is controlling.

[68 FR 32973, June 3, 2003]

Subpart A—Miscellaneous

§ 201.2 Definitions.

As used in this chapter—

(a) *Commission* means the United States International Trade Commission;

(b) *Inspector General* means the Inspector General of the Commission;

(c) *Tariff Act* means the Tariff Act of 1930, 19 U.S.C. 1202–1677j, 1677m–n;

(d) *Trade Expansion Act* means the Trade Expansion Act of 1962, 19 U.S.C. 1801–1991;

(e) *Trade Act* means the Trade Act of 1974, 19 U.S.C. 2101–2487;

(f) *Trade Agreements Act* means the Trade Agreements Act of 1979, Public Law 96–39, 93 Stat. 144;

(g) *Rule* means a section of the Commission Rules of Practice and Procedure (19 CFR chapter II);

(h) *Secretary* means the Secretary of the Commission.

(i) Except for adjudicative investigations under subchapter C of this chapter, *party* means any person who has filed a complaint or petition on the basis of which an investigation has been instituted, or any person whose entry of appearance has been accepted pursuant to §201.11 (a) or (c). Mere participation in an investigation without an accepted entry of appearance does not confer party status.

(j) *Person* means an individual, partnership, corporation, association, or public or private organization.

[56 FR 11922, Mar. 21, 1991, as amended at 60 FR 37336, July 20, 1995; 68 FR 32973, June 3, 2003]

§ 201.3 Commission offices, mailing address, and hours.

(a) *Offices.* The Commission's offices are located in the United States International Trade Commission Building on 500 E Street SW., Washington, DC.

(b) *Mailing address.* All communications to the Commission should be addressed to the "Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436."

(c) *Hours.* The business hours of the Commission are from 8:45 a.m. to 5:15 p.m., eastern standard or daylight savings time, whichever is in effect in Washington, DC. Any document filed with the Secretary of the Commission after 5:15 p.m. will be considered filed the next business day. If filing on that day would be untimely, the filing may not be accepted unless a request is made for acceptance of a late filing for good cause shown pursuant to 201.14(b)(2).

[45 FR 80276, Dec. 4, 1980, as amended at 68 FR 32973, June 3, 2003]

§ 201.3a Missing children information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The Commission's Office of Facilities Management, telephone 202–205–2741, shall be the point of contact for matters related to the implementation of this section.

(b) Missing children information shall be inserted in or affixed to such mailings of Commission monthly calendars, notices, press releases, and other documents as the Commission may direct. Such missing children information shall be obtained exclusively from the National Center for Missing and Exploited Children.

(c) The procedure established in subsection (b) above will result in missing childern information being inserted in an estimated 25 percent of the Commission's penalty mail and will cost an estimated $1,500 for the first year of implementation. The Director of Administration shall make such changes in the procedure as he deems appropriate to maximize the use of missing children information in the Commission's mail.

[51 FR 25195, July 11, 1986, as amended at 68 FR 32974, June 3, 2003]

§ 201.4 Performance of functions.

(a) *Conduct of business.* A majority of the members of the Commission constitutes a quorum. The Commission may meet and exercise its powers at any place, and may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(b) *Alteration or waiver of rules.* Rules in this chapter may be amended, waived, suspended, or revoked by the Commission only. A rule may be waived or suspended only when in the judgment of the Commission there is good and sufficient reason therefor, provided the rule is not a matter of procedure required by law.

(c) *Authority to make decisions.* Authority to interpret the Commission's rules and the laws applying to the Commission, and to make findings, determinations, or other decisions not relating to matters of internal management, is retained in the Commission itself and is not delegated.

(d) Presentation of matter that may come within the purview of other laws. Whenever any party or person, including the Commission staff, has reason to believe that (1) a matter under investigation pursuant to section 337 of the Tariff Act of 1930, or (2) a matter under an investigation pursuant to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), which is causing increased imports may come within the purview of another remedial provision of law not the basis of such investigation, including but not limited to the antidumping provisions (19 U.S.C. 1673 *et seq.*) or the countervailing duty provisions (19 U.S.C. 1671 *et seq.*) of the Tariff Act of 1930, then the party or person may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice. Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

[27 FR 12118, Dec. 7, 1962, as amended at 45 FR 80276, Dec. 4, 1980; 68 FR 32974, June 3, 2003]

§ 201.5 Attendance fees and mileage.

(a) *Deponents and witnesses.* Any person compelled to appear in person to depose or testify in response to a subpoena shall be paid the same fees and mileage as are paid witnesses in the courts of the United States: Provided, that salaried employees of the United States summoned to depose or testify as to matters related to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(b) *Responsibility*. The fees and mileage referred to in this section shall be paid by the party at whose instance deponents or witnesses appear: Provided, that when it is the Commission, one or more Commissioners, or one of its employees at whose instance deponents or witnesses appear, such fees and mileage shall be paid by the Commission.

[41 FR 17710, Apr. 27, 1976]

§ 201.6 Confidential business information.

(a) *Definitions.* (1) *Confidential business information* is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. The term “confidential business information” includes “proprietary information” within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)). Nonnumerical characterizations of numerical confidential business information (e.g., discussion of trends) will be treated as confidential business information only at the request of the submitter for good cause shown.

(2) *Nondisclosable confidential business information* is privileged information, classified information, or specific information (*e.g.,* trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in §206.17 and §207.7 of this chapter.

(b) *Procedure for submitting business information in confidence.* (1) A request for confidential treatment of business information shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(2) In the absence of good cause shown, any request relating to material to be submitted during the course of a hearing shall be submitted at least three (3) working days prior to the commencement of such hearing.

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential business information, under paragraph (a) of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document

(A) Clearly marked on its cover as to the pages on which confidential information can be found;

(B) With information for which confidential treatment is requested clearly identified by means of brackets; and

(C) With information for which nondisclosable confidential treatment is requested clearly identified by means of triple brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by §201.8(d).

(4) The submission of the documents itemized in paragraph (b)(3) of this section will provide the basis for rulings on the confidentiality of submissions, including rulings on the confidentiality of submissions offered to the Commission which have not yet been placed under the possession, control, or custody of the Commission. The submitter has the option of providing the business information for which confidential treatment is sought at the time the documents itemized in paragraph (b)(3) of this section are provided or of withholding them until a ruling on their confidentiality has been issued.

(c) *Identification of business information submitted in confidence.* Business information which a submitter desires to be treated as confidential shall be clearly labeled "confidential business information" when submitted, and shall be segregated from other material being submitted.

(d) *Approval or denial of requests for confidential treatment.* Approval or denial of requests shall be made only by the Secretary or Acting Secretary. An approval or a denial of a request for confidential treatment shall be in writing. A denial shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) *Appeals from denial of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from a denial by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of a denial or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice in writing with the reasons therefor, has been provided the person making the appeal.

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

(f) *Appeals from approval of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from an approval by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street, S.W., Washington, DC 20436, shall show that a copy thereof has been served upon the submitter, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of the approval by the Secretary of a request for confidential treatment or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice, in writing with the reasons therefor, has been provided the person making the appeal.

(g) *Granting confidential status to business information.* Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender within five days of its denial of confidential treatment unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings. After such five day period, the business information deemed not entitled to confidential treatment, and not withdrawn, will be treated as public information.

(h) *Scope of provisions.* The provisions of §§201.6(b) and 201.6 (d) through (g) shall not apply to adjudicative investigations under Subchapter C, Part 210, of the Commission's rules of practice and procedure.

[41 FR 28951, July 14, 1976, as amended at 49 FR 32571, Aug. 15, 1984; 54 FR 13678, Apr. 5, 1989; 61 FR 37827, July 22, 1996; 68 FR 32974, June 3, 2003]

Subpart B—Initiation and Conduct of Investigations

§ 201.7 Investigative authority and initiation of investigations.

(a) *Investigative authority.* In order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings;

(b) *Initiation of investigations.* Investigations may be initiated by the Commission on the Commission's own motion, upon request of the President or the United States Trade Representative, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee of Finance of the Senate, upon resolution of either branch of Congress, or upon application, petition, complaint, or request of private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive Order, or in this chapter.

[44 FR 76476, Dec. 26, 1979, as amended at 63 FR 29351, May 29, 1998]

§ 201.8 Filing of documents.

(a) *Applicability; where to file; date of filing*. This section applies to all Commission proceedings except, notwithstanding any other section of this chapter, those conducted under 19 U.S.C. 1337, which are covered by requirements set out in part 210 of this chapter. Documents shall be *filed at the office* of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in §201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

(b) *Conformity with rules.* Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(c) *Specifications for documents.* Each document filed under this chapter shall be signed, double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except copies of documents prepared for another agency or a court (e.g.

pleadings papers), and single sided. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(d) *Filing.* (1) Except as provided in paragraphs (d)(2) through (6) and (f) of this section, all documents filed with the Commission shall be filed electronically. Completion of filing requires the submission of paper copies by 12 noon, eastern time, on the next business day. A paper copy provided for in this section must be a true copy of the electronic version of the document, i.e., a copy that is identical in all possible respects. All filings shall comply with the procedures set forth in the Commission's Handbook on Filing Procedures, which is available from the Secretary and on the Commission's Electronic Document Information System Web site at https://edis.usitc.gov. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.

(2) Briefs, statements, responses, comments, and requests filed pursuant to §201.12, §201.14, §206.8, §207.15, §207.23, §207.25, §207.28, §207.30, §207.61, §207.62, §207.65, §207.67, or §207.68 of this chapter shall be filed electronically and the requisite number of true paper copies of these documents shall be submitted to the Commission in accordance with the provisions of the applicable section.

(3) Petitions and requests filed under §206.2 or §207.10 of this chapter shall be filed in paper form and exhibits, appendices, and attachments to the documents shall be filed in electronic form on CD-ROM, DVD or other portable electronic media approved by the Secretary in accordance with the provisions of the applicable section.
Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(4) Supplementary material and witness testimony provided for under §201.13, §207.15, or §207.24 of this chapter shall be filed in paper form in accordance with the provisions of the applicable section.

(5) Certain documents filed under §201.4 of this chapter and applications for administrative protective orders filed under §§206.17 and 207.7 of this chapter shall only be filed electronically; no paper copies will be required.

(6) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(7) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(e) *Identification of party filing document.* Each document filed with the Commission for the purpose of initiating any investigation shall show on the first page thereof the name,

address, and telephone number of the party or parties by whom or on whose behalf the document is filed and shall be signed by the party filing the document or by a duly authorized officer, attorney, or agent of such party. (Also, any attorney or agent filing the document shall give his address and telephone number.) The signature of the person signing such a document constitutes a certification that he had read the document, that to the best of his knowledge and belief the statements contained therein are true, and that the person signing the document was duly authorized to sign it.

(f) *Nonconfidential copies*. In the event that confidential treatment of a document is requested under §201.6(b), a nonconfidential version of the document shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked ``nonconfidential'' or ``public inspection.'' The nonconfidential version shall be filed electronically, and four (4) true paper copies shall be submitted on the same business day as this electronic filing, except as provided in §206.8 or §207.3 of this chapter. In the event that confidential treatment is not requested for a document under §201.6(b), the document shall be conspicuously marked ``No confidential version filed,'' and the document shall be filed in accordance with paragraph (d) of this section. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(g) *Cover Sheet.* When making a paper filing, parties must complete the cover sheet on-line at *http://edis.usitc.gov* and print out the cover sheet for submission to the Office of the Secretary with the paper filing. For documents that are filed electronically, parties must complete the cover sheet for such filing on-line at *http://edis.usitc.gov* at the time of the electronic filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of business proprietary information or confidential information under §201.6 and §§206.8, 206.17, 207.3, and 207.7 of this chapter.

[41 FR 17710, Apr. 27, 1976, as amended at 49 FR 32571, Aug. 15, 1984; 56 FR 11922, Mar. 21, 1991; 67 FR 68037, Nov. 8, 2002; 68 FR 32974, June 3, 2003; 76 FR 61937, October 6, 2011]

§ 201.9 Methods employed in obtaining information.

In obtaining information necessary to carry out its functions and duties, the Commission may employ any means authorized by law. In general, the Commission obtains pertinent information from its own files, from other agencies of the Government, through questionnaires and correspondence, through field work by members of the Commission's staff, and from testimony and other information presented at the hearings.

[27 FR 12118, Dec. 7, 1962, as amended at 44 FR 76476, Dec. 26, 1979]

§ 201.10 Public notices.

As appropriate, notice of the receipt of documents properly filed, of the institution of investigations, of public hearings, and of other formal actions of the Commission will be given by publication in the Federal Register. In addition to such publication, a copy of each notice will be posted at the Office of the Secretary to the Commission in Washington, DC, and, as appropriate, copies will be sent to press associations, trade and similar organizations of producers and importers, and others known to have an interest in the subject matter.

[63 FR 29347, May 29, 1998]

§ 201.11 Appearance in an investigation as a party.

(a) *Who may appear as a party.* Any person may apply to appear in an investigation as a party, either in person or by representative, by filing an entry of appearance with the Secretary. Each entry of appearance shall state briefly the nature of the person's reason for participating in the investigation and state the person's intent to file briefs with the Commission regarding the subject matter of the investigation. The Secretary shall promptly determine whether the person submitting the entry of appearance has a proper reason for participating in the investigation. In any investigation conducted under part 207 of this chapter, industrial users, and if the merchandise under investigation is sold at the retail level, representative consumer organizations, will be deemed to have a proper reason for participating in the investigation. If it is found that a person does not have a proper reason for participating in the investigation, that person shall be so notified by the Secretary and shall not be entitled to appear in the investigation as a party. A person found to have a proper reason for participating in the investigation shall be permitted to appear in the investigation as a party, and acceptance of such person's entry of appearance shall be signified by the Secretary's inclusion of such person on the service list established pursuant to paragraph (d) of this section.

(b) *Time for filing.* (1) Except in the case of investigations conducted under part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication of the Commission's notice of investigation in the Federal Register.

(2) In the case of investigations conducted under subpart B of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than seven (7) days after publication of the Commission's notice of investigation in the Federal Register. A party that files a notice of appearance during such time need not file an additional notice of appearance during the portion of the investigation conducted under subpart C of part 207 of this chapter.

(3) Notwithstanding paragraph (b)(2) of this section, a party may file an entry of appearance during the final phase of an investigation conducted under part 207 of this chapter no later than twenty-one (21) days prior to the hearing date listed in the Federal Register notice published pursuant to §207.24(b) of this chapter.

(4) In the case of reviews conducted under subpart F of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication in the Federal Register of the notice of institution described in §207.60(d) of this chapter.

(5) Notwithstanding paragraph (b)(4) of this section, a party may file an entry of appearance in a review conducted under subpart F of part 207 of this chapter within the period specified in the notice issued under §207.62(c) of this chapter. This period shall be at least 45 days.

(c) *Late filing.* Any entry of appearance filed with the Secretary after the filing date established in paragraph (b) of this section shall be referred to the Chairman, or other person designated to conduct the investigation, who shall promptly determine whether to accept such entry for good cause shown by the person desiring to file the notice. The Secretary shall promptly notify the submitter of a decision to deny the entry, or if the entry is accepted, include such person on the service list established pursuant to paragraph (d) of this section.

(d) *Service list.* Upon the expiration of the time for filing notices of appearance established in paragraph (b) of this section, the Secretary shall prepare a service list. The service list shall contain the names and addresses of all persons, or their representatives, who are parties to the investigation pursuant to §201.2(h) and paragraph (a) of this section. Upon the acceptance of a late entry of appearance pursuant to paragraph (c) of this section, the Secretary shall amend the service list to include the name and address of the person whose notice has been accepted and shall promptly forward such notice to all parties to the investigation.

[56 FR 11922, Mar. 21, 1991, as amended at 61 FR 37828, July 22, 1996; 63 FR 30607, June 5, 1998]

§ 201.12 Requests.

Any party to a nonadjudicative investigation may request the Commission to take particular action with respect to that investigation. Such requests shall be made by letter addressed to the Secretary, shall be placed by him in the record, and shall be served on all other parties. Such request shall be filed electronically and two (2) true paper copies shall be submitted on the same business day. The Commission shall take such action or make such response as it deems appropriate.

[47 FR 6189, Feb. 10, 1982, as amended at 76 FR 61937, October 6, 2011]

§ 201.13 Conduct of nonadjudicative hearings.

(a) *In general.* Public hearings are held by the Commission when required by law or, if not required by law, when in the judgment of the Commission there is good and sufficient reason therefor. Public hearings will be held at the time and place specified in notices issued under §201.10. Public hearings are ordinarily held in the Hearing Room of the

International Trade Commission Building, in Washington, DC, but may be held elsewhere at the Commission's discretion.

(b) *Presiding officials* —(1) *Who presides.* Public hearings or conferences in nonadjudicative investigations will be conducted by the Commission or by one or more Commissioners. When the Commission deems it necessary, such hearings will be conducted by one or more designated employees. In all cases the transcript of the testimony at a hearing will be presented for the consideration of the Commission.

(2) *Powers and duties.* The Commission, one or more of the Commissioners, or one or more designated employees shall have all the powers to conduct fair and impartial hearings, to take necessary action to avoid delay in the disposition of proceedings, including the prescription of time allocated to testimony, argument, and questioning, to regulate the course of hearings and the conduct of the parties and their counsel therein, and to maintain order.

(c) *Participation in a hearing* —(1) *Who may participate.* A party may participate in the hearing, either in person or by representative. A nonparty who has testimony or arguments that may aid the Commission's deliberations may also participate, under such conditions as may be established by the presiding officials at the hearing.

(2) *Notices of participation.* Notices of participation in a hearing shall be filed with the Secretary at least three (3) days in advance of the date set for the hearing or two (2) days in advance of the date set in the notice of investigation for a prehearing conference, whichever shall first occur, except that the presiding officials may waive this requirement for good cause. Witnesses on behalf of persons filing notices of participation need not file separate notices.

(d) *Witness list.* Each person who files a notice of participation pursuant to paragraph (c) of this section shall simultaneously file with the Secretary a list of the witnesses he intends to call at the hearing.

(e) *Order of the testimony.* Unless otherwise ordered by the presiding officials, witnesses will give testimony in the order designated by the Secretary to the Commission. Each witness, after being duly sworn, will be permitted to proceed with his or her testimony without interruption except by presiding officials.

(f) *Supplementary material.* A party to the investigation may file with the Secretary supplementary material, other than remarks read into the record, for acceptance into the record. The party shall file any such material with the Secretary at the hearing. Supplementary materials must be marked with the name of the organization submitting it. As used herein, the term *supplementary material* refers to (1) additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position and (2) information not available to a party at the time its prehearing brief was filed.

(g) *Questioning of witnesses.* After completing testimony, a witness may be questioned by any member of the Commission or by its staff. Any participant may, with the permission of the presiding officials, direct questions to the witness, but only for the purpose of assisting the Commission in obtaining relevant and material facts with respect to the subject matter of the investigation.

(h) *Oral argument.* When, in the opinion of the presiding officials, time permits and the nature of the proceedings and the complexity or importance of the questions of fact or law involved warrant, the presiding officials may allow oral argument after conclusion of the testimony in a hearing. The presiding officials will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) *Briefs* —(1) *Parties.* Briefs of the information produced at the hearing and arguments thereon may be presented to the Commission by parties to the investigation. Time to be allowed for submission of briefs will be set after conclusion of testimony and oral argument, if any.

(2) *Nonparties.* Any person who is not a party to an investigation may submit a short statement for the record regarding the subject matter of an investigation.

(j) *Verification of testimony.* Oral or written information submitted at hearings will, upon order of the Commission, be subject to verification from books, papers, and records of the persons submitting the information and from any other available sources.

(k) *Hearing transcripts.* A verbatim transcript of all hearings will be taken. The Commission does not distribute transcripts of the records of such hearings. Any person may inspect the transcript of a hearing at the Commission's office in Washington, DC, or purchase it from the official reporter.

(l) To facilitate the conduct of hearings, parties intending to use easels, audio visual, and similar equipment in the course of hearing presentations should advise the Secretary of their intent to use such equipment at least three (3) working days before the hearing.

(m) *Closed sessions.* (1) Upon a request filed by a party to the investigation no later than seven (7) days prior to the date of the hearing (or three (3) days prior to the date of a conference conducted under §207.15 of this chapter) that

(i) Identifies the subjects to be discussed;

(ii) Specifies the amount of time requested; and

(iii) Justifies the need for a closed session with respect to each subject to be discussed, the Commission (or the Director, as defined in §207.2(c) of this chapter, for a conference under §207.15 of this chapter) may close a portion of a hearing (or conference under §207.15 of this chapter) held in any investigation in order to allow such party to address

confidential business information, as defined in §201.6, during the course of its presentation.

(2) In addition, during each hearing held in an investigation conducted under section 202 of the Trade Act, as amended, or in an investigation under title VII of the Tariff Act as provided in §207.24 of this chapter, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing in order to allow Commissioners to question parties and/or their representatives concerning matters involving confidential business information.

[47 FR 6189, Feb. 10, 1982, as amended at 47 FR 33682, Aug. 4, 1982; 54 FR 13678, Apr. 5, 1989; 59 FR 66722, Dec. 28, 1994; 61 FR 37829, July 22, 1996; 68 FR 32975, June 3, 2003]

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) *Computation of time.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission, or by order of the presiding officer under part 210 of this chapter shall begin with the first business day following the day on which the act or event initiating such period of time shall have occurred. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation. As used in this rule, a Federal legal holiday refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States. In the event of an early or all-day closing of the Commission on a business day, the Secretary is authorized to accept on the next full business day filings due the day of the early or all-day closing, without requiring the granting of an extension of time by the Chairman of the Commission, or such other person designated to conduct the investigation.

(b) *Additional hearings, postponements, continuances, and extensions of time.* (1) Prior to its final determination in any investigation, the Commission may in its discretion for good cause shown grant additional hearings, postponements, or continuances of hearings.

(2) The Chairman of the Commission or such other person as is designated to conduct the investigation shall determine whether to grant for good cause shown extensions of time for performing any act required by or pursuant to the rules contained in this chapter.

(3) A request that the Commission take any of the actions described in this section shall be filed with the Secretary and served on all parties to the investigation. Such request shall be filed.

electronically and two (2) true paper copies shall be submitted on the same business day.

[41 FR 17710, Apr. 27, 1976, as amended at 56 FR 11923, Mar. 21, 1991; 68 FR 32975, June 3, 2003; 76 FR 61937, October 6, 2011]

§ 201.15 Attorneys or agents.

(a) *In general.* No register of attorneys or agents who may practice before the Commission is maintained. No application for admission to practice is required. Any person desiring to appear as attorney or agent before the Commission may be required to show to the satisfaction of the Commission his acceptability in that capacity. Any attorney or agent practicing before the Commission, or desiring so to practice, may for good cause shown be suspended or barred from practicing before the Commission, or have imposed on him such lesser sanctions as the Commission deems appropriate, but only after he has been accorded an opportunity to present his views in the matter.

(b) *Former officers or employees.* No former officer or employee of the Commission who personally and substantially participated in a matter which was pending in any manner or form in the Commission during his employment shall be eligible to appear before the Commission as attorney or agent in connection with such matter. No former officer or employee of the Commission shall be eligible to appear as attorney or agent before the Commission in connection with any matter which was pending in any manner or form in the Commission during his employment, unless he first obtains written consent from the Commission.

[27 FR 12118, Dec. 7, 1962, as amended at 56 FR 11923, Mar. 21, 1991]

§ 201.16 Service of process and other documents.

(a) *By the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a process or other document of the Commission shall be served by anyone duly authorized by the Commission and be effected—

(1) By mailing or delivering a copy of the document to the person to be served, to a member of the partnership to be served, to the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above before the Commission, by mailing or delivering a copy to such attorney; or

(2) By leaving a copy thereof at the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by leaving a copy at the office of such attorney.

(b) *By a party other than the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a document of a party shall be effected:

(1) By mailing or delivering a copy of a nonconfidential version of the document to each party, or, if the party is represented by an attorney before the Commission, by mailing or delivering a nonconfidential version thereof to such attorney; or

(2) By leaving a copy thereof at the principal office of each other party, or, if a party is represented by an attorney before the Commission, by leaving a copy at the office of such attorney.

(3) When service is by mail, it is complete upon mailing of the document.

(4) When service is by mail, it shall be by first class mail, postage prepaid. In the event the addressee is outside the United States, service shall be by first class airmail, postage prepaid.

(c) *Proof of service; certificate.* (1) Each document filed with the Secretary to the Commission by a party in the course of an investigation (as provided in §201.8 of this part) shall be served on each other party to the investigation.

(2) Each document served by a party shall include a certificate of service, setting forth the manner and date of such service. The certificate of service shall be deemed proof of service of the document. In the event a document is not accompanied by a certificate of service, the Secretary shall not accept such document for filing and shall promptly notify the submitter.

(d) *Additional time after service by mail.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served upon it by mail, three (3) calendar days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) calendar days shall be added to the prescribed period.

(e) *Additional time after service by overnight delivery*. Whenever a party or Federal Agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by overnight delivery, one (1) day shall be added to the prescribed period. “Overnight delivery” is defined as delivery by the next business day.

(f) *Electronic Service.* Parties may serve documents by electronic means in all matters before the Commission. Parties may effect such service on any party, unless that party has, upon notice to the Secretary and to all parties, stated that it does not consent to electronic service. If electronic service is used, paragraphs (b), (d), and (e) of this section shall not apply. However, any dispute that arises among parties regarding electronic service must be resolved by the parties themselves, without the Commission's involvement.

(19 U.S.C. 1335 and the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*)

[41 FR 17711, Apr. 27, 1976, as amended at 47 FR 6190, Feb. 10, 1982; 47 FR 33682, Aug. 4, 1982; 49 FR 32571, Aug. 15, 1984; 67 FR 68037, Nov. 8, 2002; 73 FR 38320, July 7, 2008; 76 FR 61937, October 6, 2011]

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

Authority: 19 U.S.C. 1335, 5 U.S.C. 552.

Source: 40 FR 8328, Feb. 27, 1975, unless otherwise noted.

§ 201.17 Procedures for requesting access to records.

(a) *Requests for records.* (1) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and shall indicate clearly in the request, and if the request is in paper form on the envelope, that it is a "Freedom of Information Act Request." A written request may be made either (1) in paper form, or (2) electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

(2) Any request shall reasonably describe the requested record to facilitate location of the record. If the request pertains to a record that is part of the Commission's file in an investigation, the request should identify the investigation by number and name. A clear description of the requested record(s) should reduce the time required by the Commission to locate and disclose releasable responsive record(s) and minimize any applicable search and copying charges.

(3) Except as provided in paragraph (b) of this section, requests will be processed in the order in which they are filed.

(4) Requests for transcripts of hearings should be addressed to the official hearing reporter, the name and address of which can be obtained from the Secretary. A copy of such request shall at the same time be forwarded to the Secretary.

(5) Copies of public Commission reports and other publications can be requested by calling or writing the Publications Office in the Office of the Secretary. Generally, such publications can be obtained more quickly from this office. Certain Commission publications are sold by the Superintendent of Documents, U.S. Government Printing Office, and are available from that agency at the price set by that agency.

(6) A day-to-day, composite record will be kept by the Secretary of each request with the disposition thereof.

(b) *Expedited processing.* (1) Requests for records under paragraph (a)(1) of this section will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within paragraph (b)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within paragraph (b)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the Secretary will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(c) *Public reading room.* The Commission maintains a public reading room in the Office of the Secretary for access to the records that the FOIA requires to be made regularly available for public inspection and copying. Reading room records created by the Commission on or after November 1, 1996, are available electronically. This includes a current subject-matter index of reading room records, which will indicate which records are available electronically.

[63 FR 29347, May 29, 1998, as amended at 68 FR 32975, June 3, 2003]

§ 201.18 Denial of requests, appeals from denial.

(a) Written requests for inspection or copying of records shall be denied only by the Secretary or Acting Secretary, or, for records maintained by the Office of Inspector General, the Inspector General. Denials of written requests shall be in writing, shall specify the reason therefor, and shall advise the person requesting of the right to appeal to

the Commission. Oral requests may be dealt with orally, but if the requester is dissatisfied he shall be asked to put the request in writing.

(b) An appeal from a denial of a request must be received within sixty days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any such appeal shall be in writing, and shall indicate clearly in the appeal, and if the appeal is in paper form on the envelope, that it is a "Freedom of Information Act Appeal." An appeal may be made either in paper form, or electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

(c) Except when expedited treatment is requested and granted, appeals will be decided in the order in which they are filed, but in any case within twenty days (excepting Saturdays, Sundays, and legal holidays) unless an extension, noticed in writing with the reasons therefor, has been provided to the person making the request. Notice of the decision on appeal and the reasons therefor will be made promptly after a decision. Requests for expedited treatment should conform with the requirements in §201.17(c) of this part.

(d) The extensions of time mentioned in paragraph (c) of this section shall be made only for one or more of the following reasons:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single communication; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject-matter interest therein.

(e) The extensions of time mentioned in paragraph (c) of this section shall not exceed ten working days in the aggregate.

[40 FR 8328, Feb. 27, 1975, as amended at 54 FR 13678, Apr. 5, 1989; 60 FR 37336, July 20, 1995; 63 FR 29348, May 29, 1998; 68 FR 32975, June 3, 2003]

§ 201.19 Notification regarding requests for confidential business information.

(a) *In general.* Business information provided to the Commission by a business submitter which the Commission has designated as "confidential business information" will not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section.

(b) *Definitions.* The following definitions are to be used in reference to this section:

Confidential business information means commercial or financial information that has been designated as confidential business information by the Commission under §201.6 of this part.

Submitter means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and federal governments, as well as others who have an administrative relationship with the Commission such as contractors, bidders and vendors.

(c) *Notice to submitters.* Except as provided for in paragraph (e) of this section, the Commission will, to the extent permitted by law, provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its confidential business information whenever required under paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice will describe the nature of the confidential business information requested. The requester will also be notified that notice and opportunity to object to are being provided to a submitter.

(d) *When notice is required.* Notice will be given to a submitter in writing at submitter's last known address whenever:

(1) The information the subject of the FOIA request or appeal has been designated by the Commission as confidential business information; and

(2) The Commission has reason to believe that the information may not be protected from disclosure under FOIA Exemptions 3 or 4.

(e) *Exceptions to notice requirment.* The notice requirements of paragraph (c) of this section will not apply if:

(1) The Commission determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(f) *Opportunity to object to disclosure.* In general, the Commision has 10 working days in which to respond to a FOIA request. Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed at least one working day before the Commission is required

to respond to the FOIA request, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of §201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* The Commission will consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information. Whenever the Commission decides to disclose such information over the objection of a submitter, the Commission will forward to the submitter a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose will be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester will be notified likewise.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information that the Commission has designated as confidential business information, the Commission will promptly notify the submitter at its last known address. For the purpose of this paragraph, the Secretary may assume such address to be that given on the submission.

[54 FR 13678, Apr. 5, 1989, as amended at 68 FR 32975, June 3, 2003]

§ 201.20 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by agency personnel in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. The Secretary will collect all applicable fees. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media as defined in paragraphs (j) (6), (7), and (8) of this section, respectively. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. The secretary may assess fees for time spent searching even if agency personnel fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by agency personnel in salary grades GS–2 through GS–10 in searching for and retrieving a requested record, the fee shall be $4.00. When the time of agency personnel in salary grades GS–11 and above is required, the fee shall be $6.50 for each quarter hour of search and retrieval time spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requester shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $6.50 per quarter hour of time so spent).

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, the Secretary shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, the Secretary shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $6.50.

(ii) Review fees shall be assessed only for the initial record review, i.e., all of the review undertaken when a component analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are

properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), the Secretary shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $25.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search is in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $25.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Secretary determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Secretary that disclosure of the requested information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Secretary shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The

disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution of an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—shall be considered. It will be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Secretary shall not make separate judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Secretary shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Secretary shall consider all commercial interests of the requester (with reference to the definition of *commercial use* in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. The Secretary shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Secretary determines or estimates that the fees to be assessed under this section may amount to more than $25.00, he shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Secretary shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice of the requester pursuant to this paragraph shall offer him the opportunity to confer with agency personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where the Secretary reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. The Secretary may presume that multiple requests of such type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, the Secretary shall aggregate them only where there exists a reasonable basis for determining that said aggregation is warranted, e.g., where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated

(g) *Advance payments.* (1) Where the Secretary estimates that a total fee to be assessed under this section is likely to exceed $250.00, the Secretary may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where the Secretary receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Secretary may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before he begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g) (1) and (2) of this section, the Secretary shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed on work already completed is not an advance payment.

(4) Where the Secretary acts under paragraph (g) (1) or (2) of this section, the administrative time limits described in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the Secretary has received payment of the assessed fee.

(h) *Charging interest.* The Secretary may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by the Secretary, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of the billing. The Secretary shall follow the provisions of the Debt Collection Act of 1982, Pub. L. 97–265 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—i.e., any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriate funds used to pay the costs of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Secretary shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term *direct costs* means those expenditures which the agency actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Secretary shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Secretary shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term *review* refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, e.g., doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term *commercial use* in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The Secretary shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the Secretary otherwise has reasonable cause to doubt a requester's stated use, the Secretary shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term *noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a clear basis for expecting publication through that organization; a publication contract would be the clearest proof, but the Secretary shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where the Secretary elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

[54 FR 13673, Apr. 5, 1989, as amended at 63 FR 29348, May 29, 1998]

§ 201.21 Availability of specific records.

(a) *Records available.* The following information, on request to the Secretary of the Commission, is available for public inspection and copying: (1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by the

agency; and (3) administrative staff manuals and instructions to staff that affect a member of the public. Available information includes, but is not limited to: (i) Applications, petitions, and other formal documents filed with the Commission, (ii) notices to the public concerning Commission matters, (iii) transcripts of testimony taken and exhibits submitted at hearings, (iv) reports to the President, to either or both Houses of Congress, or to Committees of Congress, release of which has been authorized by the President or the legislative body concerned, (v) reports and other documents issued for general distribution. Much of the information described above also is available on the Commission's World Wide Web site. The Commission's home page is at *http://www.usitc.gov.* The Web site also includes information subject to repeated Freedom of Information Act requests. Persons accessing the Web site can find instructions on how to locate Commission information by following the “Freedom of Information Act” link on the home page.

(b) *Records not available.* Information specifically exempted from disclosure by 5 U.S.C. 552(b), including reports to the President, to either or both Houses of Congress, or to Committees of Congress, the release of which has not been authorized by the President or the legislative body concerned, and confidential business data as defined in 18 U.S.C. 1905 and 19 CFR 201.06 are not available to the public.

(c) *Information requested in cases or matters to which the Commission is not a party.* (1) The procedure specified in this section will apply to all demands directed to Commission employees for the production of documents or for testimony that relates in any way to the employees' official duties. These procedures will also apply to demands directed to former employees if the demands seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c)(2) of this section will also apply to demands directed to the agency. For purposes of this section, the term *demand* means any request, order or subpoena for testimony or production of documents; the term *subpoena* means any compulsory process in a case or matter to which the Commission is not a party; the term *nonpublic* includes any material or information which, under §201.21(b), is exempt from availability for public inspection and copying; the term *employee* means any current or former officer or employee of the Commission; the term *documents* means all records, papers or official files, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analysis, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions; the term *case or matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a legal or administrative proceeding in which the Commission is not a named party.

(2) Prior to or simultaneously with a demand to a Commission employee for the production of documents or for testimony concerning matters relating to official duties, the party seeking such production or testimony must serve upon the General Counsel of the Commission an affidavit, or if that is not feasible, then a statement which sets forth the title of the case, the forum, the party's interest in the case, the reasons for the request,

and a showing that the desired testimony or documents are not reasonably available from any other source. Where testimony is sought, the party must also provide a summary of the testimony desired, the intended use of the testimony, and show that Commission records could not be provided and used instead of the requested testimony. A subpoena for testimony from a Commission employee concerning official matters or for the production of documents shall be served in accordance with Rule 45 of the Federal Rules of Civil Procedure and a copy of the subpoena shall be sent to the General Counsel.

(3) Any employee or former employee who is served with a subpoena or other demand shall promptly advise the General Counsel of the service of the subpoena or other demand, the nature of the documents or information sought, and all relevant facts and circumstances.

(4) Absent written authorization from the Chairman of the Commission ("Chairman"), the employee shall respectfully decline to produce the requested documents, to testify, or to otherwise disclose requested information. If a court rules that the demand must be complied with despite the absence of such written authorization, the employee upon whom the demand is made shall respectfully refuse to comply based upon these regulations and *Touhy* v. *Ragan,* 340 U.S. 462 (1951).

(5) The Chairman will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account such factors as the need to conserve employees' time for conducting official business, the need to prevent the expenditure of the United States government's time and money for private purposes, the need to maintain impartiality between private litigants in cases where no substantial governmental interest is involved, and the relevant legal standards for determining whether justification exists for the disclosure of nonpublic information and documents. If the Chairman determines that the subpoenaed documents or information are protected by a privilege or that the Commission has a duty in law or equity to protect such documents or information from disclosure, the General Counsel shall move the court to quash the subpoena or for other appropriate action.

(6) The General Counsel may consult or negotiate with counsel or the party seeking testimony or documents to refine and limit the demand so that compliance is less burdensome, or obtain information necessary to make the determination described in paragraph (c)(5) of this section. Failure of the counsel or party seeking the testimony or documents to cooperate in good faith to enable the General Counsel to make an informed recommendation to the Chairman under paragraph (c)(5) of this section may serve as the basis for a determination not to comply with the demand.

(7) Permission to testify will, in all cases, be limited to the information set forth in the affidavit as described in paragraph (c)(2) of this section, or to such portions thereof as the Chairman deems proper.

(8) If the Chairman authorizes the testimony of an employee, then the General Counsel shall arrange for the taking of the testimony by methods that are least disruptive of the

official duties of the employee. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law. Costs of providing testimony, including transcripts, will be borne by the party requesting the testimony. Such costs shall also include reimbursing the Commission for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges and any necessary travel expenses.

(9) The Secretary in consultation with the General Counsel is further authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the government for the expense of responding to such demand, may include the costs of time expended by Commission employees to process and respond to the demand, attorney time for reviewing the demand and for related legal work in connection with the demand, and expenses generated by equipment used to search for, produce and copy the responsive information. In general, such fees will be assessed at the rates and in the manner specified in §201.20 of this part.

(10) This section does not affect the rights and procedures governing the public access to official documents pursuant to the Freedom of Information Act or the Privacy Act.

(11) This section is intended to provide instructions to Commission employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Commission.

[40 FR 8328, Feb. 27, 1975, as amended at 54 FR 13676, Apr. 5, 1989; 68 FR 32975, June 3, 2003]

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

Source: 63 FR 29348, May 29, 1998, unless otherwise noted.

§ 201.22 Purpose and scope.

This subpart contains the rules that the Commission follows under the Privacy Act of 1974, 5 U.S.C. 552a. The rules in this subpart apply to all records in systems of records maintained by the Commission that are retrieved by an individual's name or other personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Commission.

§ 201.23 Definitions.

For the purpose of these regulations:

(a) The term individual means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term maintain includes maintain, collect, use, or disseminate;

(c) The term record means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(d) The term system of records means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual;

(e) The term Privacy Act Officer refers to the Director, Office of Administration, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, or his or her designee.

§ 201.24 Procedures for requests pertaining to individual records in a records system.

(a) A request by an individual to gain access to his or her record(s) or to any information pertaining to him or her which is contained in a system of records maintained by the Commission shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly both on the envelope and in the letter that it is a Privacy Act request.

(b) In order to facilitate location of requested records, whenever possible, the request of the individual shall name the system(s) of records maintained by the Commission which he or she believes contain records pertaining to him or her, shall reasonably describe the requested records, and identify the time period in which the records were compiled.

(c) The Privacy Act Officer shall acknowledge receipt of a request within ten days (excluding Saturdays, Sundays, and legal public holidays), and wherever practicable, indicate whether or not access can be granted. If access is not to be granted, the requestor shall be notified of the reason in writing.

(d) The Privacy Act Officer, or, the Inspector General, if such records are maintained by the Inspector General, shall ascertain whether the systems of records maintained by the Commission contain records pertaining to the individual, and whether access will be granted. Thereupon the Privacy Act Officer shall:

(1) Notify the individual whether or not the requested record is contained in any system of records maintained by the Commission; and

(2) Notify the individual of the procedures as prescribed in Secs. 201.25 and 201.26 of this part by which the individual may gain access to those records maintained by the Commission which pertain to him or her. Access to the records will be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays).

§ 201.25 Times, places, and requirements for identification of individuals making requests.

(a) If an individual wishes to examine his or her records in person, it shall be the responsibility of the individual requester to arrange an appointment with the Privacy Act Officer for the purpose of inspecting individual records. The time of inspection shall be during the regular office hours of the Commission, 8:45 a.m. to 5:15 p.m., Monday through Friday. The time arranged should be mutually convenient to the requester and to the Commission.

(b) The place where an individual may gain access to records maintained by the Commission which pertain to him or her shall be at the United States International Trade Commission Building, 500 E Street SW., Washington, DC 20436. The Privacy Act Officer shall inform the individual requester of the specific room wherein inspection will take place.

(c) An individual may also request the Privacy Act Officer to provide the individual with a copy of his or her records by certified mail.

(d) An individual who requests to gain access to those records maintained by the Commission which pertain to him or her shall not be granted access to those records without first presenting adequate identification to the Privacy Act Officer. Adequate identification may include, but is not limited to, a government identification card, a driver's license, Medicare card, a birth certificate, or a passport. If requesting records by mail, an individual must provide full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, a requestor may also, at his or her option, include the individual's social security number.

§ 201.26 Disclosure of requested information to individuals.

(a) Once the Privacy Act Officer has made a determination to grant a request for access to individual records, in whole or in part, the Privacy Act Officer shall inform the requesting individual in writing and permit the individual to review the pertinent records and to have a copy made of all or any portion of them. Where redactions due to exemptions pursuant to §201.32 would render such records or portions thereof incomprehensible, the Privacy Act Officer shall furnish an abstract in addition to an actual copy.

(b) An individual has the right to have a person of his or her own choosing accompany him or her to review his or her records. The Privacy Act Officer shall permit a person of the individual requester's choosing to accompany the individual during inspection.

(c) When the individual requests the Privacy Act Officer to permit a person of the individual's choosing to accompany him or her during the inspection of his or her records, the Privacy Act Officer shall require the individual requester to furnish a written statement authorizing discussion of the records in the accompanying person's presence.

(d) The Privacy Act Officer shall take all necessary steps to insure that individual privacy is protected while the individual requester is inspecting his or her records or while those records are being discussed. Only the Privacy Act Officer shall accompany the individual as representative of the Commission during the inspection of the individual's records. The Privacy Act Officer shall be authorized to discuss the pertinent records with the individual.

§ 201.27 Special procedures: Medical records.

(a) While an individual has an unqualified right of access to the records in systems of records maintained by the Commission which pertain to him or her, medical and psychological records merit special treatment because of the possibility that disclosure will have an adverse physical or psychological effect upon the requesting individual. Accordingly, in those instances where an individual is requesting the medical and/or psychological records which pertain to him or her, he or she shall, in his or her Privacy Act request to the Privacy Act Officer as called for in §201.24(a) of this part, specify a physician to whom the medical and/or psychological records may be released.

(b) It shall be the responsibility of the individual requesting medical or psychological records to specify a physician to whom the requested records may be released. If an individual refuses to name a physician and insists on inspecting his or her medical or psychological records in the absence of a doctor's discussion and advice, the individual shall so state in his or her Privacy Act request to the Privacy Act Officer as called for in §201.24(a) of this part and the Privacy Act Officer shall provide access to or transmit such records directly to the individual.

§ 201.28 Requests for correction or amendment of records.

(a) If, upon viewing his or her records, an individual disagrees with a portion thereof or feels sections thereof to be erroneous, the individual may request amendment[s] of the records pertaining to him or her. The individual should request such an amendment in writing and should identify each particular record in question, the system[s] of records wherein the records are located, specify the amendment requested, and specify the reasons why the records are not correct, relevant timely or complete. The individual may submit any documentation that would be helpful. The request for amendment of records shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act request for amendment of records.

(b) Not later than 10 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of a Privacy Act request for amendment of records, the Privacy Act Officer shall acknowledge such receipt in writing. Such a request for amendment will be granted or denied by the Privacy Act Officer or, for records maintained by the Inspector General. If the request is granted, the Privacy Act Officer, or the Inspector General for records maintained by the Inspector General, shall promptly make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete. If, however, the request is denied, the Privacy Act Officer shall inform the

individual of the refusal to amend the record in accordance with the individual's request and give the reason(s) for the refusal. In cases where the Privacy Act Officer or the Inspector General has refused to amend in accordance with an individual's request, he or she also shall advise the individual of the procedures under §201.30 of this part for the individual to request a review of that refusal by the full Commission or by an officer designated by the Commission.

§ 201.29 Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures.

(a) It is the policy of the Commission not to disclose, except as permitted under 5 U.S.C. 552a(b), any record which is contained in any system of records maintained by the Commission to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) Except for disclosures either to officers and employees of the Commission, or to contractor employees who, in the Inspector General's or the Privacy Act Officer's judgment, as appropriate, are acting as federal employees, who have a need for the record in the performance of their duties, and any disclosure required by 5 U.S.C. 552, the Privacy Act Officer shall keep an accurate accounting of:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency under paragraph (a) of this section; and

(2) The name or address of the person or agency to whom the disclosure is made.

(c) The Privacy Act Officer shall retain the accounting required by paragraph (b) of this section for at least five years or the life of the record, whichever is longer, after such disclosure.

(d) Except for disclosures made to other agencies for civil or criminal law enforcement purposes pursuant to 5 U.S.C. 552a(b)(7), the Privacy Act Officer shall make any accounting made under paragraph (b) of this section available to the individual named in the record at the individual's request.

(e) An individual requesting an accounting of disclosure of his or her records should make the request in writing to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The request should identify each particular record in question and, whenever possible, the system[s] of records wherein the requested records are located, and clearly indicate both on the envelope and in the letter that it is a Privacy Act request for an accounting of disclosure of records.

(f) Where the Commission has provided any person or other agency with an individual record and such accounting as required by paragraph (b) of this section has been made, the Privacy Act Officer shall inform all such persons or other agencies of any correction, amendment, or notation of dispute concerning said record.

§ 201.30 Commission review of requests for access to records, for correction or amendment to records, and for accounting of record disclosures.

(a) The individual who disagrees with the refusal of the Privacy Act Officer or the Inspector General for access to a record, to amend a record, or to obtain an accounting of any record disclosure, may request a review of such refusal by the Commission within 60 days of receipt of the denial of his or her request. A request for review of such a refusal should be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act review request.

(b) Not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the Commission receives a request for review of the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, the Commission shall complete such a review and make a final determination thereof unless, for good cause shown, the Commission extends the 30-day period.

(c) After the individual's request has been reviewed by the Commission, if the Commission agrees with the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, in accordance with the individual's request, the Commission shall:

(1) Notify the individual in writing of the Commission's decision;

(2) For requests to amend or correct records, advise the individual that he or she has the right to file a concise statement of disagreement with the Commission which sets forth his or her reasons for disagreement with the refusal of the Commission to grant the individual's request; and

(3) Notify the individual of his or her legal right, if any, to judicial review of the Commission's final determination.

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement regarding an amendment of an individual's record, the Privacy Act Officer, or, for records maintained by the Inspector General, the Inspector General, shall clearly note any portion of the record which is disputed and shall provide copies of the statement and, if the Commission deems it appropriate, copies of a concise statement of the reasons of the Commission for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 201.31 Fees and employee conduct.

(a) The Commission shall not charge any fee for the cost of searching for and reviewing an individual's records.

(b) Reproduction, duplication or copying of records by the Commission shall be at the rate of $0.10 per page. There shall be no charge, however, when the total amount does not exceed $25.00.

(c) The Privacy Act Officer shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and periodically instruct each such person with respect to such rules and the requirements of the Privacy Act including the penalties for noncompliance.

[63 FR 29348, May 29, 1998, as amended at 68 FR 32975, June 3, 2003]

§ 201.32 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k)(2), and in order to protect the effectiveness of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records contained in the system titled Office of Inspector General Investigative Files (General), insofar as they include investigatory material compiled for law enforcement purposes, shall be exempt from this subpart and from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act. However, if any individual is denied any right, privilege, or benefit to which he is otherwise entitled to under Federal law due to the maintenance of this material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to government investigators under an express promise that the identity of the source would be held in confidence.

(b) Pursuant to 5 U.S.C. 552a(j)(2), and in order to protect the confidentiality and integrity of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, records maintained in the Office of Inspector General Investigative Files (Criminal), insofar as they contain information pertaining to the enforcement of criminal laws, shall be exempt from this subpart and from the Privacy Act, except that subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) shall still apply to these records.

(c) Pursuant to 5 U.S.C. 552a(k)(1), (5) and (6), records contained in the system entitled “Personnel Security Investigative Files” have been exempted from subsections (c)(3), (d), (e)(1), (e)(1)(G) through (I) and (f) of the Privacy Act. Pursuant to section 552a(k)(1) of the Privacy Act, the Commission exempts records that contain properly classified information that pertains to national defense or foreign policy and is obtained from other systems of records or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d). All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is also exempted because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, Federal contracts or access to

classified information. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should an individual request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source. All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is also exempt because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

Subpart E—Opening Commission Meetings to Public Observation Pursuant to 5 U.S.C. 552b

Authority: 5 U.S.C. 552b; 19 U.S.C. 1335.

Source: 42 FR 11243, Feb. 28, 1977, unless otherwise noted.

§ 201.33 Purpose and scope.

(a) Consistent with the principle that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government, it is the purpose of this subpart to open the meetings of the United States International Trade Commission to public observation while protecting the rights of individuals and the ability of the Commission to carry out its statutory functions and responsibilities. These regulations are promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act (5 U.S.C. 552b(g)), and specifically implement sections (b) through (f) of said act (5 U.S.C. 552(b) through (f)).

(b) Public access to documents being considered at Commission meetings may be obtained by access to the public files of the Commission or, where documents are not in said public files, shall be obtained in the manner set forth in subpart C of this part (§§201.17 through 201.21).

(c) Unless otherwise provided by the public notices as described in §201.35 of this subpart, public observation of Commission meetings does not encompass public participation in the deliberations at such meetings.

§ 201.34 Definitions.

For the purpose of this subpart:

(a)(1) Except as hereinafter provided, the term *meeting* means the deliberations of at least the number of individual Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(2) The consideration by individual Commissioners of business which is circulated sequentially in writing (circulation by “action jacket”) is not considered a meeting under paragraph (a)(1) of this section because circulation by action jacket does not determine or result in the joint conduct or disposition of Commission business until ratification thereof by formal vote of the Commissioners in a meeting as defined by paragraph (a)(1) of this section, although action proposed by action jacket may be taken before or after formal ratification thereof by vote at a Commission meeting.

(3) Conference telephone calls among the Commissioners are considered meetings as defined by paragraph (a)(1) of this section if they involve the number of Commissioners requisite for Commission action.

(4) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to call a meeting at a date earlier than the requisite public notice period as specified in §201.35 of this subpart are not considered to constitute a meeting or portion of a meeting as defined by paragraph (a)(1) of this section.

(5) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to close a portion or portions of a meeting or series of meetings pursuant to §201.36 of this subpart are not considered to constitute a meeting or portion of a meeting within the meaning of paragraph (a)(1) of this section.

(6) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to change the subject matter of a publicly announced meeting, or to change the determination of the Commission to open or close a meeting, or portion thereof, to the public, following a public notice, as permitted under §201.37(b) of this subpart, are not considered to constitute a meeting or portion of a meeting under paragraph (a)(1) of this section.

(b) The terms *Secretary* and *General Counsel* mean the Secretary and General Counsel of the Commission and their respective designees within their respective offices.

§ 201.35 Notices to the public.

(a) At least seven (7) days before each Commission meeting the Commission shall issue a public notice which:

(1) States the time and place of the meeting;

(2) Lists the subjects or agenda items to be discussed at the meeting;

(3) States whether the meeting or portion thereof is to be open or closed to public observation; and

(4) Gives the name and business phone number of the Secretary to the Commission.

(b) When the Commission has voted to close any portion of any meeting in accordance with §201.36 of this subpart, the notice referred to in paragraph (a) of this section shall also include, or be amended to include, if already issued, (1) A list of the persons reasonably expected to be present at such closed portion or portions of the meeting, (2) A corresponding list of the affiliations of those persons reasonably expected to be present, (3) A written copy of the vote of each Commissioner on whether or not the portion or portions of the meeting or series of meetings should be closed to public observation, (4) A full, written explanation of the Commission's action in closing the portion or portions of the meeting or series of meetings, and (5) A copy of the certification of the General Counsel, called for by §201.39 of this subpart, that such portion or portions of the meeting or series of meetings were properly closed to the public by the Commission. When a vote to close a portion or portions of a meeting in accordance with §201.36 of this subpart or a vote to change the subject matter of a meeting or to change a determination to open or close a meeting, or portion thereof, to the public in accordance with §201.37(b) of this subpart fails for lack of a majority of the entire membership of the Commission, the vote shall also be published as part of the notice required by paragraph (a) of this section.

(c)(1) The 7-day period for public notice provided for in paragraph (a) of this section shall not apply when a majority of the entire membership of the Commission determines by recorded vote that Commission business requires that a particular meeting be called with less than 7 days' notice and that no earlier announcement of such meeting was possible.

(2) When the Commission has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for by paragraph (a) of this section with respect to a particular meeting, the Commission shall issue the public notice required by paragraph (a) of this section at the earliest practicable time.

(3) When the Commission not only has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for in paragraph (a) of this section with respect to a particular meeting, but also has voted to close a portion or portions of such meeting in accordance with §201.36 of this subpart, the public notice required by paragraph (c)(2) of this section shall also include, or be amended to include, if already issued, those items specified in paragraph (b) of this section.

(d)(1) When the Commission has changed the time or place of a publicly announced meeting by acting under §201.37(a) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to reflect such changed time or place.

(2) When the Commission has changed the subject matter of a meeting or its determination to open or close a meeting, or portion thereof, to the public following a public notice by acting under §201.37(b) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to (i) Include a statement affirming that Commission business required the change in subject matter and that no

earlier announcement of such change was possible and (ii) Indicate the change in subject matter and the vote of each Commissioner upon such change.

(e)(1) The Secretary shall issue the public notices required by this section and such amendments thereto as are appropriate to the specific meeting to which they pertain.

(2) The Secretary (i) Shall promptly post the public notices referred to in paragraph (e)(1) of this section on bulletin boards outside the Office of the Secretary to the Commission, (ii) Shall make copies thereof available to interested members of the public, including mailing copies thereof through a mailing list of those persons desiring to receive such notices and distributing copies to the press, whether of specialized or general readership, and (iii) Shall immediately submit said public notices to the Federal Register for publication.

(3) The Office of the Secretary shall respond to all questions from the public concerning the agendas of Commission meetings. Persons desiring to receive copies of notices of Commission meetings should contact the Office of the Secretary and request to be placed on the mailing list.

[42 FR 11243, Feb. 28, 1977, as amended at 58 FR 64121, Dec. 6, 1993]

§ 201.36 Closing a portion or portions of a meeting or a series of meetings.

(a) Every meeting of the Commission shall be open to public observation except when the Commission properly determines in the manner specified in paragraph (d) of this section that a portion or portions of a Commission meeting shall be closed to the public for the specific reasons enumerated in paragraph (b) of this section.

(b) The Commission may close a portion or portions of a Commission meeting only when it determines that public disclosure of information to be discussed at such meeting is likely to:

(1) Disclose matters that are (i) Specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act), provided that such statute (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law-enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or to an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, or (iv) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law-enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national-security intelligence investigation, confidential information furnished only by the confidential source;

(8)(i) Disclose information the premature disclosure of which would, in those instances where the Commission regulates commodities, be likely to lead to significant financial speculation in such commodities;

(ii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action except (A) When the Commission has already disclosed to the public the content or nature of its proposed action or (B) when the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(9) Specifically concern: (i) The Commission's issuance of a subpoena, (ii) the Commission's participation in a civil action or proceeding, or (iii) the initiation, conduct, or disposition by the Commission of a particular case of formal Commission adjudication under 19 U.S.C. 1337 pursuant to the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(c)(1) When the Commission has determined that one or more of the specific reasons enumerated in paragraph (b) of this section for closing a portion or portions of a Commission meeting is applicable to the subject matter or matters to be discussed, the Commission shall consider whether or not the public interest requires that such portion or portions of the meeting be open to public observation.

(2) In making the public-interest determination under paragraph (c)(1) of this section, the Commission shall consider whether public disclosure would (i) Interfere with the Commission's carrying out its statutory responsibilities, (ii) Conflict with the individual right of privacy under the Privacy Act of 1974 (5 U.S.C. 552a), or (iii) Place the Commission in violation of any other applicable provision of law, in addition to any other factors which it deems to be relevant to the particular meeting in question.

(d)(1) Action by the Commission to close a portion or portions of a meeting for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section

shall be taken only when a majority of the entire membership of the Commission has voted to take such action.

(2) A single recorded vote of the Commission shall be taken with respect to: (i) Each Commission meeting of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section, or (ii) any information which the Commission proposes to withhold from the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section. No proxy votes are permissible.

(e)(1) Action by the Commission to close a series of meetings of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section may be taken by a single recorded vote of the Commission to close such portion or portions of the series. No proxy votes are permissible.

(2) A series of meetings may be closed pursuant to paragraph (e)(1) of this section so long as each meeting in such series: (i) Involves the same particular matters and (ii) is scheduled to be held no more than 30 days after the initial meeting in such series.

(f) When the Commission (i) Has voted to close a portion or portions of a meeting in accordance with paragraph (d) of this section or (ii) has voted to close a portion or portions of a series of meetings in accordance with paragraph (e) of this section, the public notices referred to in paragraph (a) or (c)(2) of §201.35 shall be issued or amended in accordance with paragraph (b) or (c)(3) of §201.35 at the earliest practicable time, but no later than one (1) working day following such vote.

§ 201.37 Changing the time, place, subject matter, or determination to open or close a meeting following a public notice.

(a) The time or place of a Commission meeting may be changed following a public announcement required by §201.35 only if the Commission publicly announces such change or changes at the earliest practicable time by issuing an appropriate amendment to the public notice as required by §201.35.

(b) The subject matter or matters of a Commission meeting or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following a public announcement required by §201.35 only if: (i) A majority of the entire membership of the Commission determines by recorded vote that Commission business so requires and that no earlier announcement of the change was possible and (ii) the Commission publicly announces such change in subject matter or such change in the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public and the vote of each Commissioner upon such change or changes in a subsequent amendment of the public notice required by §201.35.

§ 201.38 Requests by interested persons that the Commission close a portion of a Commission meeting.

(a) Whenever any person whose interests may be directly affected by a portion of a Commission meeting requests that the Commission close such portion to the public for any of the specific reasons enumerated in paragraphs (b) (5), (6), or (7) of §201.36, the Commission, upon the request of any one of the Commissioners, shall take a vote in the manner specified in §201.36 of this subpart on whether or not to close such portion of the meeting.

(b) When the Commission votes on a request to close a portion of a meeting under paragraph (a) of this section in the manner specified in §201.36(d), a public notice as required by paragraphs (a) and (b) of §201.35 shall be issued.

§ 201.39 General Counsel's certification of Commission action in closing a meeting or a series of meetings.

Before a Commission meeting may be closed for the specific reasons enumerated in paragraphs (b) (1) through (9) of §201.36, the General Counsel (i) Shall, in the related public notice, certify that in his or her opinion the meeting may be closed to the public and (ii) Shall state each applicable exemptive provision of paragraphs (b) (1) through (9) of §201.36.

§ 201.40 Records-retention requirements.

(a) The Secretary shall maintain a copy of the certification by the General Counsel required by §201.39 for each Commission meeting of which a portion or portions are closed to the public pursuant to a vote under §201.36(d).

(b) The Secretary shall also maintain a copy of a statement from the presiding officer of each Commission meeting or portion thereof which was closed to the public for the specific reasons enumerated in paragraphs (b) (1) through (9) of §201.36(b) setting forth (i) The time and place of the closed meeting, or portion thereof, and (ii) A list of the persons present thereat.

(c) The Secretary shall also maintain a complete transcript or electronic recording of the proceedings of each Commission meeting or portion of a meeting, whether open to public observation or closed to the public. The Secretary shall also maintain a complete transcript or electronic recording of all deliberations conducted under paragraphs (a) (4), (5), and (6) of §201.34 of this subpart.

(d) Where portions of a Commission meeting are closed for the reasons contained in paragraphs (b) (8)(A) or (9) of §201.36, the Commission preserves the option to maintain detailed minutes of such portions. Such detailed minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(e) The retention period for the records required by paragraphs (a), (b), (c), and (d) of this section shall be for a period of at least two (2) years after the particular Commission meeting, or until one (1) year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

(f) The requirements of paragraphs (c) and (d) of this section shall not affect or supplant the existing duty of the Secretary to maintain permanent minutes of each Commission meeting. The Secretary shall also maintain permanent minutes of all deliberations conducted under paragraphs (a) (4), (5), and (6) of §201.34 of this subpart.

§ 201.41 Public inspection and copying of records; applicable fees.

(a) The Secretary shall promptly make available to interested members of the public the transcript or electronic recording of the discussion of any item on the agenda of a Commission meeting or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Secretary determines to contain information which may be withheld for reasons specified in paragraphs (b) (1) through (9) of §201.36. The determination of the Secretary shall be in conformity with a prior vote of the Commission under §201.36(d) to close a portion or portions of a meeting.

(b) Public inspection of electronic recordings, transcripts, or minutes of Commission meetings shall take place at the United States International Trade Commission, 500 E Street SW., Washington, DC 20436. A room is designated by the Office of the Secretary and tape recorders with earphones are provided by the Commission for public-inspection purposes when proceedings are recorded on tape.

(c)(1) The Secretary shall provide any person with copies of transcripts, minutes of Commission meetings, or transcriptions of electronic recordings of Commission meetings, which disclose the identity of each speaker, at the actual cost of transcription or duplication.

(2) The Secretary shall not include items of discussion or testimony determined by the Secretary to contain information which may be withheld from the public for the reasons specified in paragraphs (b) (1) through (9) of §201.36 in the copies furnished to the public in accordance with paragraph (c)(1) of this section. The determination of the Secretary shall be in conformity with a prior vote of the Commission under §201.36(d) to close a portion or portions of a meeting.

Subpart F—National Security Information

Authority: Sec. 335, 72 Stat. 680, sec. 401, 76 Stat. 902; 19 U.S.C. 1335, 1802; E.O. 12356.

Source: 48 FR 5898, Feb. 9, 1983, unless otherwise noted.

§ 201.42 Purpose and scope.

The following regulation supplements Executive Order 12356, National Security Information, April 2, 1982, as it applies to the Commission.

§ 201.43 Program.

The Director of Administration is designated as the official of the Commission who is responsible for implementation and oversight of information security programs and procedures, including ensuring conformity with the provisions of Executive Order No. 12356. He shall chair a committee, composed of himself and representatives of the offices of the Secretary, General Counsel, Executive Liaison and Special Adviser for Trade Agreements, and Operations, that will act on all suggestions and complaints with respect to the Commission's administration of the program. All questions, suggestions, and complaints regarding all elements of the information security program shall be directed to the Director of Administration.

§ 201.44 Procedures.

(a) *Mandatory declassification review.* (1) Requests for declassification and release of national security information in the custody of the Commission shall be directed to the Secretary. Requests must reasonably describe the information that is desired to be declassified. All requests for declassification submitted pursuant to the Freedom of Information Act shall be processed in accordance with the provisions of that act and the applicable regulations of the Commission (19 CFR 201.17 through 201.21).

(2) Because the Commission does not have original classification authority and national security information in its custody has been classified by another Federal agency, the Secretary shall refer all requests for mandatory declassification review of classified information to the originating Federal agency along with his recommendations. Following consultation with the originating agency, the Secretary will notify the requestor of the referral.

(b) *Safeguarding.* All classified materials shall be delivered to the addressee or his designee immediately upon receipt at the Commission. In the event that the addressee or his designee is not available to receive the materials, they shall be delivered to the Secretary and secured, unopened, in a combination safe located in his office until the addressee or his designee is available. Under no circumstances shall classified materials that cannot be delivered to the addressee or his designee be stored other than in a GSA approved safe. Access to classified materials at the Commission shall be limited to officers and employees of the Commission on the basis of a favorable determination of trustworthiness on the basis of appropriate personnel security investigations and a need for access in the performance of official duties.

(c) *Reproduction.* “Top Secret” documents may not be reproduced without the consent of the originating agency unless otherwise marked by that agency. Documents that have been classified “Secret” or “Confidential” with special dissemination orders may not be reproduced without the permission of the Executive Liaison and Special Adviser for Trade Agreements, and are subject to any limitations imposed by the originator.

Reproduced copies shall be subject to the same controls as the original document. The Executive Liaison and Special Adviser for Trade Agreements shall establish a system of recording the number and distribution of copies reproduced from the original documents. Reproduction for the purposes of mandatory review shall not be restricted.

(d) *Storage.* All classified material shall be stored in GSA-approved combination safes located at the Commission. The combinations shall be changed as required by section 2001.43(b) of Information Security Oversight Office Directive No. 1. The combinations shall be known only by those employees possessing an appropriate security clearance who have need for access in the performance of official duties.

(e) *Employee education.* The Director of Administration shall establish for all employees who have been granted a security clearance an information security education program that will advise them of the handling, reproduction, and storage procedures for these materials. The education program will also enable employees to familiarize themselves with the Order and applicable directives of the Information Security Oversight Office. New employees will be instructed in these procedures as they enter employment with the Commission.

(f) *Agency terminology.* The use of the terms “Top Secret”, “Secret”, and “Confidential” shall be limited to material classified for national security purposes.

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

Authority: 29 U.S.C. 794.

Source: 51 FR 4575, 4579, Feb. 5, 1986, unless otherwise noted.

§ 201.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 201.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 201.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by §201.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4575, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 201.104-201.109 [Reserved]

§ 201.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 201.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 201.112-201.129 [Reserved]

§ 201.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 201.131-201.139 [Reserved]

§ 201.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 201.141-201.148 [Reserved]

§ 201.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §201.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 201.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §201.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4575, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 201.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 201.152-201.159 [Reserved]

§ 201.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §201.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 201.161-201.169 [Reserved]

§ 201.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director,

Office of Equal Employment Opportunity, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §201.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4575, 4579, Feb. 5, 1986, as amended at 51 FR 4576, Feb. 5, 1986; 68 FR 32975, June 3, 2003]

§§ 201.171-201.999 [Reserved]

Subpart H—Debt Collection

Authority: 19 U.S.C. 1335; 5 U.S.C. 5514(b)(1); 31 U.S.C. 3716(b); 31 U.S.C. 3720A(b)(4); 31 CFR chapter IX; 26 CFR 301.6402–6(b).

Source: 62 FR 38019, July 16, 1997, unless otherwise noted.

§ 201.201 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this section, the following definitions shall apply to this subpart.

(a) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of Government, including government corporations.

(b) *Certification* means a written statement received by a paying agency from a creditor agency that requests the paying agency to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

(c) *Chairman* means the Chairman of the Commission.

(d) *Compromise* means the settlement or forgiveness of a debt.

(e) *Creditor agency* means an agency of the Federal government to which the debt is owed.

(f) *Director* means the Director, Office of Finance of the Commission or an official designated to act on the Director's behalf.

(g) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld. The Commission shall allow the following deductions in determining the amount of disposable pay that is subject to salary offset:

(1) Federal employment taxes;

(2) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(3) Fines and forfeiture ordered by a court-martial or by a commanding officer;

(4) Amounts deducted for Medicare;

(5) Federal, state, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(6) Health insurance premiums;

(7) Normal retirement contributions, including employee contributions to the Thrift Savings Plan;

(8) Normal life insurance premiums (e.g., Serviceman's Group Life Insurance and “Basic Life” Federal Employee's Group Life Insurance premiums), not including amounts deducted for supplementary coverage.

(h) *Employee* means a current employee of the Commission or other agency, including a current member of the Armed Forces or a Reserve of the Armed Forces of the United States.

(i) *Federal Claims Collection Standards (FCCS)* means standards published at 31 CFR chapter IX.

(j) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and for rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairman when the Commission is the creditor agency but may be an administrative law judge.

(k) *Notice of Intent to Offset* or *Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity stating that the debtor is indebted to the creditor agency and apprising the debtor of certain procedural rights.

(l) *Notice of Salary Offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(m) *Office of Finance* means the Office of Finance of the Commission.

(n) *Paying agency* means the agency of the Federal government that employs the individual who owes a debt to an agency of the Federal government. In some cases, the Commission may be both the creditor agency and the paying agency.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.202 Purpose and scope of salary and administrative offset rules.

(a) *Purpose.* The purpose of sections 201.201 through 201.207 is to implement 5 U.S.C. 5514, 31 U.S.C. 3716, and 31 U.S.C. 3720A which authorize the collection by salary offset, administrative offset, or tax refund offset of debts owed by persons, organizations, or entities to the Federal government. Generally, however, a debt may not be collected by such means if it has been outstanding for more than ten years after the agency's right to collect the debt first accrued. These proposed regulations are consistent with the Office of Personnel Management regulations on salary offset, codified at 5 CFR Part 550, subpart K, and with regulations on administrative offset codified at 31 CFR part 901.

(b) *Scope.* (1) Sections 201.201 through 201.207 establish agency procedures for the collection of certain debts owed the Government.

(2) Sections 201.201 through 201.207 apply to collections by the Commission from:

(i) Federal employees who are indebted to the Commission;

(ii) Employees of the Commission who are indebted to other agencies; and

(iii) Other persons, organizations, or entities that are indebted to the Commission.

(3) Sections 201.201 through 201.207 do not apply:

(i) To debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(ii) To a situation to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies; or

(iii) In any case where collection of a debt is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 4108).

(4) Nothing in Sections 201.201 through 201.207 precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*), namely, 31 CFR chapter IX.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.203 Delegation of authority.

Authority to conduct the following activities is hereby delegated to the Director:

(a) Initiate and effectuate the administrative collection process;

(b) Accept or reject compromise offers and suspend or terminate collection actions where the claim does not exceed $100,000 or such higher amount as the Chairman may from time to time prescribe, exclusive of interest, administrative costs, and penalties as provided herein, as set forth in 31 U.S.C. 3711(a)(2);

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts;

(d) Use offset procedures to effectuate collection; and

(e) Take any other action necessary to facilitate and augment collection in accordance with the policies contained herein and as otherwise provided by law.

§ 201.204 Salary offset.

(a) *Notice requirements before offset where the Commission is the creditor agency.* Deductions under the authority of 5 U.S.C. 5514 will not be made unless the Commission provides the employee with a written Notice of Intent to Offset a minimum of 30 calendar days before salary offset is initiated. The Notice of Intent shall state:

(1) That the Director has reviewed the records relating to the claim and has determined that a debt is owed;

(2) The Director's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount of the debt and the facts giving rise to the debt;

(4) A repayment schedule that includes the amount, frequency, proposed beginning date, and duration of the intended deductions;

(5) The opportunity for the employee to propose an alternative written schedule for the voluntary repayment of the debt, in lieu of offset, on terms acceptable to the Commission. The employee shall include a justification in the request for the alternative schedule. The schedule shall be agreed to and signed by both the employee and the Director;

(6) An explanation of the Commission's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(7) The employee's right to inspect and copy all records of the Commission not exempt from disclosure pertaining to the debt claimed or to receive copies of such records if the debtor is unable personally to inspect the records, due to geographical or other constraints;

(8) The name, address, and telephone number of the Director to whom requests for access to records relating to the debt must be sent;

(9) The employee's right to a hearing conducted by an impartial hearing official (an administrative law judge or other hearing official not under the supervision or control of the Chairman) with respect to the existence and amount of the debt claimed or the

repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a request is filed by the employee as prescribed in paragraph (c)(1) of this section;

(10) The name, address, and telephone number of the Director to whom a proposal for voluntary repayment must be sent and who may be contacted concerning procedures for requesting a hearing;

(11) The method and deadline for requesting a hearing;

(12) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings;

(13) The name and address of the office to which the request should be sent;

(14) That the Commission will initiate certification procedures to implement a salary offset not less than 30 days from the date of receipt of the Notice of Intent to Offset, unless the employee files a timely request for a hearing;

(15) That a final decision on whether a hearing will be held (if one is requested) will be issued at the earliest practical date;

(16) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3733, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(17) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(18) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee; and

(19) That proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) *Review of Commission records related to the debt.* (1) An employee who desires to inspect or copy Commission records related to a debt owed to the Commission must send

a letter to the Director as designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of the Director within 15 calendar days after the employee's receipt of the Notice of Intent.

(2) In response to a timely request submitted by the debtor, the Director will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If the employee is unable personally to inspect the records, due to geographical or other constraints, the Director shall arrange to send copies of such records to the employee.

(c) *Opportunity for a hearing where the Commission is the creditor agency* —(1) *Request for a hearing.* (i) An employee who requests a hearing on the existence or amount of the debt held by the Commission or on the offset schedule proposed by the Commission must send such request to the Director. The request for a hearing must be received by the Director on or before the 15th calendar day following receipt by the employee of the notice.

(ii) The employee must specify whether an oral hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone. The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position.

(2) *Failure to timely submit.* If the employee files a request for hearing after the expiration of the 15-calendar-day period provided for in paragraph (c)(1) of this section, the Director may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) *Obtaining the services of a hearing official.* (i) When the debtor is not a Commission employee and the Commission cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, the Commission may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

(ii) When the debtor is a Commission employee, the Commission may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(4) *Procedure* —(i) *Notice.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by examination of

documents, the employee shall be notified within 30 calendar days that he or she should submit evidence and arguments in writing to the hearing official.

(ii) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing need not be an adversarial adjudication, and rules of evidence need not apply. Witnesses who testify in oral hearings shall do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

(iii) *Documentary hearing.* If the hearing official determines that an oral hearing is not necessary, he or she shall make the determination based upon a review of the written record.

(iv) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(5) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon all evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request was received by the Commission, unless the hearing was delayed at the request of the employee, in which case the 60 day decision period shall be extended by the number of days by which the hearing was postponed. The decision of the hearing official shall be final.

(6) *Content of decision.* The written decision shall include:

(i) A summary of the facts concerning the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(7) *Failure to appear.* If, in the absence of good cause shown (e.g., illness), the employee or the representative of the Commission fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of this new hearing.

(d) *Certification where the Commission is the creditor agency.* (1) The Director shall issue a certification in all cases where:

(i) The hearing official determines that a debt exists; or

(ii) The employee admits the existence and amount of the debt, for example, by failing to request a hearing.

(2) The certification must be in writing and must state:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the Government's right to collect the debt first accrued;

(iv) That the Commission's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(v) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;

(vi) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period; and

(vii) The date the employee was notified of the debt, the action(s) taken pursuant to the Commission's regulations, and the dates such actions were taken.

(e) *Voluntary repayment agreements as alternative to salary offset where the Commission is the creditor agency.* (1) In response to a Notice of Intent, an employee may propose to repay the debt in accordance with scheduled installment payments. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall set forth a proposed repayment schedule. Any proposal under paragraph (e) of this section must be received by the Director within 15 calendar days after receipt of the Notice of Intent.

(2) In response to a timely proposal by the debtor, the Director shall notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the discretion of the Director to accept, reject, or propose to the debtor a modification of the proposed repayment agreement.

(3) If the Director decides that the proposed repayment agreement is unacceptable, the employee shall have 15 calendar days from the date he or she received notice of the decision in which to file a request for a hearing.

(4) If the Director decides that the proposed repayment agreement is acceptable or the debtor agrees to a modification proposed by the Director, the agreement shall be put in writing and signed by both the employee and the Director.

(f) *Special review where the Commission is the creditor agency.* (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Director of the amount of the salary offset or voluntary payment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.

(2) In determining whether, as a result of materially changed circumstances, an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit to the Director a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(i) Income from all sources;

(ii) Assets;

(iii) Liabilities;

(iv) Number of dependents;

(v) Expenses for food, housing, clothing, and transportation;

(vi) Medical expenses; and

(vii) Exceptional expenses, if any.

(3) If the employee requests a special review under paragraph (f) of this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in extreme financial hardship to the employee.

(4) The Director shall evaluate the statement and supporting documents and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee. The Director shall notify the employee in writing within 30 calendar days of such determination, including, if appropriate, his or her acceptance of a revised offset or payment schedule.

(5) If the special review results in a revised offset or repayment schedule, the Director shall provide a new certification to the paying agency.

(g) *Notice of salary offset where the Commission is the paying agency.* (1) Upon issuance of a proper certification by the Director (for debts owed to the Commission) or upon

receipt of a proper certification from another creditor agency, the Office of Finance shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(i) Of the certification that has been issued by the Director or received from another creditor agency;

(ii) Of the amount of the debt and of the deductions to be made; and

(iii) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(2) The Office of Finance shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

(h) *Procedures for salary offset where the Commission is the paying agency* —(1) *Generally.* (i) The Director shall coordinate salary deductions under this section.

(ii) The Director shall determine the amount of an employee's disposable pay and the amount of the salary offset subject to the requirements in this paragraph.

(iii) Deductions shall begin the pay period following the issuance of the certification by the Director or the receipt by the Office of Finance of the certification from another agency or as soon thereafter as possible.

(2) *Types of collection* —(i) *Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay, such debt ordinarily will be collected in one lump-sum payment.

(ii) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. The installment payment should normally be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $50 should be accepted only in the most unusual circumstances.

(iii) Lump-sum deductions from final check. In order to liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 and 5 U.S.C. 5514(a)(1) from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

(iv) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from the Commission, and the balance of the debt cannot be liquidated by offset of the final salary check, the Commission, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind to the former employee to collect the balance of the debt.

(3) Multiple debts. Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the Office of Finance may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(4) *Order of precedence for recovery of debts owed the Government.* (i) For Commission employees, subject to paragraph (h)(3) of this section and (paragraph (h)(4)(ii) of this section, offsets to recover debts owed the United States Government shall be made from disposable pay in the following order of precedence:

(A) Indebtedness due the Commission;

(B) Indebtedness due other agencies.

(ii) In the event that a debt to the Commission is certified while an employee is subject to salary offset to repay another agency, the Office of Finance may, at its discretion, determine whether the debt to the Commission should be repaid before the debt to the other agency, repaid simultaneously, or repaid after the debt to the other agency.

(iii) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section, as provided in 5 U.S.C. 5514(d).

(i) *Coordinating salary offset with other agencies* —(1) *Responsibility of the Commission as the creditor agency.* (i) The Director shall be responsible for:

(A) Arranging for a hearing upon proper request by a Federal employee;

(B) Preparing the Notice of Intent to Offset consistent with the requirements of paragraph (a) of this section;

(C) Obtaining hearing officials from other agencies pursuant to paragraph (c)(3) of this section; and

(D) Ensuring that each certification of debt is sent to a paying agency pursuant to paragraph (d)(2) of this section.

(ii) Upon completion of the procedures established in paragraphs (a) through (f) of this section, the Director shall submit a certified debt claim and an installment agreement or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(iii) If the employee is in the process of separating from Government employment, the Commission shall submit its debt claim to the employee's paying agency for collection by lump-sum deduction from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to the Commission and to the employee.

(iv) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Commission may, unless otherwise prohibited, request that money due and payable to the employee from the Federal Government be administratively offset to collect the debt.

(v) When an employee transfers to another paying agency, the Commission shall not repeat the procedures described in paragraphs (a) through (f) of this section in order to resume collecting the debt. Instead, the Commission shall review the debt upon receiving the former paying agency's notice of the employee's transfer and shall ensure that collection is resumed by the new paying agency.

(2) *Responsibility of the Commission as the paying agency* —(i) *Complete claim.* When the Commission receives a certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. Deductions shall be scheduled to begin at the next officially established pay interval or as otherwise provided for in the certification.

(ii) *Incomplete claim.* When the Commission receives an incomplete certification of debt from a creditor agency, the Commission shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

(iii) *Review.* The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(iv) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to the Commission, the employee transfers to an agency outside the Commission before the debt is collected in full, the Commission must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If the Commission is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in the Office of Personnel Management's regulation (5 CFR part 550) have been fully met.

(j) Interest, Penalties, and Administrative Costs. Where the Commission is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR 901.9.

(k) *Refunds.* (1) Where the Commission is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(i) The debt is compromised or otherwise found not to be owing to the United States; or

(ii) An administrative or judicial order directs the Commission to make a refund.

(2) Unless required by law or contract, refunds under this paragraph (k) shall not bear interest.

(l) *Request from a creditor agency for the services of a hearing official.* (1) The Commission may provide a hearing official upon request of the creditor agency when the debtor is employed by the Commission and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) The Commission may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(3) The Director shall arrange for qualified personnel to serve as hearing officials.

(4) Services rendered under this paragraph (l) shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

(m) *Non-waiver of rights by payments.* A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor may have under any statute, regulation, or contract except as otherwise provided by law or contract.

(n) Exception to due process procedures. The procedures set forth in this section shall not apply to adjustments described in 5 U.S.C. 5514(a)(3) and 5 CFR 550.1104(c).

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.205 Salary adjustments.

Any negative adjustment to pay arising out of an employee's election of coverage, or a change in coverage, under a Federal benefits program requiring periodic deductions from pay shall not be considered collection of a “debt” for the purposes of this section if the amount to be recovered was accumulated over four pay periods or less. In such cases, the Commission need not comply with §201.204, but it will provide a clear and concise

statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

§ 201.206 Administrative offset.

(a) *Collection.* The Director may collect a claim pursuant to 31 U.S.C. 3716 from a person, organization, or entity other than an agency of the United States Government by administrative offset of monies payable by the Government. Collection by administrative offset shall be undertaken where the claim is certain in amount, where offset is feasible and desirable and not otherwise prohibited, where the applicable statute of limitations has not expired, and where the offset is in the best interest of the United States.

(b) *Offset prior to completion of procedures.* Prior to the completion of the procedures described in paragraph (c) of this section, the Commission may effect offset if:

(1) Failure to offset would substantially prejudice the Commission's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of the procedures described in paragraph (c) of this section. Such prior offsetting shall be followed promptly by the completion of the procedures described in paragraph (c) of this section.

(c) *Debtor's rights.* (1) Unless the procedures described in paragraph (b) of this section are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(i) Written notification of the nature and amount of the claim, the intention of the Director to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(ii) An opportunity to inspect and copy the records of the Commission not exempt from disclosure with respect to the claim;

(iii) An opportunity to have the Commission's determination of indebtedness reviewed by the Director. Any request for review by the debtor shall be in writing and be submitted to the Commission within 30 calendar days of the date of the notice of the offset. The Director may waive the time limit for requesting review for good cause shown by the debtor. The Commission shall provide the debtor with a reasonable opportunity for an oral hearing when:

(A) An applicable statute authorizes or requires the Commission to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(B) The debtor requests reconsideration of the debt and the Commission determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Commission shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this section, the Commission shall nevertheless accord the debtor a “paper hearing,” (i.e., the Commission will make its determination on the request for waiver or reconsideration based upon a review of the written record); and

(iv) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of the Commission.

(2) If the procedures described in paragraph (b) of this section are employed, the procedures described in this paragraph shall be effected after offset.

(d) *Interest.* Pursuant to 31 U.S.C. 3717 and 31 CFR 901.9, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States. The Commission is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

(e) *Refunds.* Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(f) *Requests for offset to other Federal agencies.* The Director may request that a debt owed to the Commission be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Commission, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the Commission has complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 CFR part 901 with respect to providing the debtor with due process.

(g) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR part 901, including providing any required hearing or review.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case and that such offset would not otherwise be contrary to law.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.207 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund

(a) Unless otherwise prohibited by law, the Commission may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debt owed to the Commission by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Commission shall include a written certification that:

(1) The debtor owes the Commission a debt, including the amount of the debt;

(2) The Commission has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Commission has complied with the requirements of 31 CFR 901.3, including any required hearing or review.

(c) Once the Commission decides to request administrative offset under paragraph (a) of this section, it shall make the request as soon as practical after completion of the applicable procedures. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the Commission shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.208 Tax refund offset.

(a) *Scope.* The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due.

(b) *Definitions* —(1) *Debt.* Debt means money owed by an individual, organization or entity from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs, and all other similar sources. A debt becomes eligible for tax refund offset procedures if:

(i) It cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1);

(ii) The debt is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a); and

(iii) The requirements of this section are otherwise satisfied.

(2) *Dispute.* A dispute is a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the judgment has been satisfied or stayed.

(3) *Notice.* Notice means the information sent to the debtor pursuant to §201.208(d). The date of the notice is the date shown on the notice letter as its date of issuance.

(4) *Past due.* All judgment debts are past due for purposes of this section. Such debts remain past due until paid in full.

(c) The Commission may refer any past due, legally enforceable non-judgment debt of an individual, organization or entity to Treasury for offset if the Commission's or the referring agency's rights of action accrued more than three months but less than ten years before the offset is made. Debts reduced to judgment may be referred at any time. Debts in amounts lower than $25.00 are not subject to referral.

(d) The Commission will provide the debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5) or from information regarding the debt maintained by the Commission. The notice sent to the debtor will state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) The Commission intends to refer the debt to Treasury for offset from tax refunds that may be due to the taxpayer;

(3) The Commission intends to provide information concerning the delinquent debt exceeding $100 to a consumer reporting bureau unless such debt has already been disclosed; and

(4) The debtor has 65 calendar days from the date of notice in which to present evidence that all or part of the debt is not past due, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, if a judgment debt, that the debt has been satisfied, or stayed, before the debt is reported to a consumer reporting agency, if applicable, and referred to Treasury for offset from tax refunds.

(e) If the debtor neither pays the amount due nor presents evidence that the amount is not past due or is satisfied or stayed, the Commission will report the debt to a consumer reporting agency at the end of the notice period, if applicable, and refer the debt to Treasury for offset from the taxpayer's federal tax refund. The Commission shall certify to Treasury that reasonable efforts have been made by the Commission to obtain payment of such debt.

(f) A debtor may request a review by the Commission if the debtor believes that all or part of the debt is not past due or is not legally enforceable, or, in the case of a judgment debt, that the debt has been stayed or the amount satisfied, as follows:

(1) The debtor must send a written request for review to the Director at the address provided in the notice.

(2) The request must state the amount disputed and the reasons why the debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or, if a judgment debt, has been satisfied or stayed.

(3) The request must include any documents that the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) If the debtor wishes to inspect records establishing the nature and amount of the debt, the debtor must make a written request to the Director for an opportunity for such an inspection. The office holding the relevant records not exempt from disclosure shall make

them available for inspection during normal business hours within one week from the date of receipt of the request.

(5) The request for review and any additional information submitted pursuant to the request must be received by the Director at the address stated in the notice within 65 calendar days of the date of issuance of the notice.

(6) The Commission will review disputes and shall consider its records and any documentation and arguments submitted by the debtor. The Commission's decision to refer to Treasury any disputed portion of the debt shall be made by the Chairman. The Commission shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(7) If the evidence presented by the debtor is considered by a non-Commission agent or other entities or persons acting on the Commission's behalf, the debtor will be accorded at least 30 calendar days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the Commission of any unresolved dispute.

(8) Any debt that previously has been reviewed pursuant to this section or any other section of this subpart, or that has been reduced to a judgment, may not be disputed except on the grounds of payments made or events occurring subsequent to the previous review or judgment.

(g) The Commission will notify Treasury of any change in the amount due promptly after receipt of payments or notice of other reductions.

(h) In the event that more than one debt is owed, the tax refund offset procedure will be applied in the order in which the debts became past due.

SUBCHAPTER B—NONADJUDICATIVE INVESTIGATIONS

PART 202—INVESTIGATIONS OF COSTS OF PRODUCTION

Authority: Sec. 335, 72 Stat. 680; 19 U.S.C. 1335.

Source: 27 FR 12120, Dec. 7, 1962, unless otherwise noted.

§ 202.1 Applicability of part.

This part 202 applies specifically to investigations under section 366 of the Tariff Act (19 U.S.C. 1336).[1] For other applicable rules see part 201 of this chapter.

[1] Section 336(a) of the Tariff Act provides in part that “(1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the Commission there is good and sufficient reason therefor, upon application of any interested party, [the commission] shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article”. (19 U.S.C. 1336.) The provisions of section 336 of the Tariff Act may not

be applied to any article with respect to the importation of which into the United States a foreign trade agreement has been concluded under the Trade Agreements Act of 1934, as amended, or the Trade Expansion Act. (19 U.S.C. 1352(a)).

§ 202.2 Applications.

(a) *Who may file.* Applications for an investigation to which this part 202 relates may be filed by any firm, association of firms, or corporation engaged in the production of a domestic article, or by any duly authorized representative of the foregoing.

(b) *Requirements for applications.* In addition to conforming with the requirements of §201.8 of this chapter, applications under this part 202 shall include the following: (1) A clear statement that they are requests for investigations for the purposes of section 336; (2) the name or description of the article concerning which an investigation is sought; (3) a reference to the tariff provision or provisions applicable to such article; and (4) a statement indicating whether an increase or a decrease in the rate of duty is sought.

(c) *Supporting information.* The applicant must file with his application such supporting information as may be in his possession. As far as practicable, information of the following character should be furnished:

(1) Comparability of the domestic and foreign articles and the degree of competition between them.

(2) Trend in recent years of (i) domestic production, (ii) domestic sales, (iii) imports, (iv) costs of production, and (v) prices.

(3) Evidence of difference between domestic and foreign costs of production of the articles involved.

(4) Areas of greatest competition between the imported and domestic products and the principal market or markets in the United States.

(5) Other relevant factors that constitute, in the opinion of the applicant, an advantage or disadvantage in competition, and any other information which the applicant believes the Commission should consider.

§ 202.3 Preliminary inquiry.

Upon the receipt of an application properly filed, the Commission will make a preliminary inquiry for the purpose of determining whether there is good and sufficient reason for a full investigation. If such determination is in the affirmative, a full investigation will be instituted.

§ 202.4 Public hearing.

A public hearing will be held in connection with each full investigation to which this part 202 relates.

§ 202.5 Type of information to be developed at hearing.

Without excluding other factors, but with a view to assisting parties interested to present information necessary for the formulation of findings required by the statute, the Commission will expect attention in the hearing to be concentrated upon facts relating to:

(a) The degree of competition between the foreign and domestic articles in the markets of the United States.

(b) The degree of likeness or similarity between grades, classes, and price groups of the American product and the imported article.

(c) Costs of production and importation. Statements of average cost of production, domestic and, so far as known, foreign, may be submitted subject to verification and review in the Commission's investigation. Such statements should include not only the direct costs for materials and labor, commonly termed prime cost, but also indirect costs such as indirect labor, overhead factory expenses, fixed charges, the portion of general and administrative expense chargeable to manufacture, imputed interest on investment equity, and transportation to markets. For the foreign product the expenses (other than duties) incident to importation are also important. Any information which may be available bearing on the general levels of domestic and foreign costs of production, the differentials between particular elements of domestic and foreign costs, and the extent to which invoice or wholesale prices are reliable evidence of foreign costs, will be pertinent.

(d) Other significant advantages or disadvantages in competition.

§ 202.6 Reports.

After the completion of its investigation, the Commission will incorporate its findings in a report, and the report will be transmitted to the President.

PART 204—INVESTIGATIONS OF EFFECTS OF IMPORTS ON AGRICULTURAL PROGRAMS

Authority: 19 U.S.C. 1335.

Source: 27 FR 12121, Dec. 7, 1962, unless otherwise noted.

§ 204.1 Applicability of part.

This part 204 applies specifically to investigations under section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).[1] For other applicable rules see part 201 of this chapter.

[1] Section 22 provides in part as follows:

"(a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with * * * any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

* * * * *

"(d) After investigation, report, finding and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section." (7 U.S.C. 624.)

Regulations of the President are set forth in Executive Order 7233 of November 23, 1935.

[27 FR 12121, Dec. 7, 1962, as amended at 68 FR 32977, June 3, 2003]

§ 204.2 Investigations.

The Commission will make an investigation for the purposes of section 22(a) of the Agricultural Adjustment Act, as amended, only upon request of the President.[2]

[2] Applications for investigations for the purposes of section 22 of this Agricultural Adjustment Act, as amended, must be filed with the Secretary of Agriculture (Executive Order 7233).

[27 FR 12121, Dec. 7, 1962, as amended at 68 FR 32977, June 3, 2003]

§ 204.3 Public hearings.

A public hearing will be held in connection with each investigation to which this part 204 relates. The Foreign Agricultural Service of the U.S. Department of Agriculture may have a representative or representatives at each hearing who shall have the privilege of examining witnesses.

§ 204.4 Supplemental investigations.

An investigation for the purposes of section 22(d) of the Agricultural Adjustment Act, as amended, will be made upon request of the President, or upon the Commission's own motion when in its judgment there is good and sufficient reason therefor. A public hearing will be held in connection with each such supplemental investigation.

§ 204.5 Reports.

ompletion of its investigation, the Commission will transmit to the President a report of the results thereof, including its findings and recommendations based thereon, and a statement of the steps taken in the investigation, together with a transcript of the evidence submitted at the hearing. A copy of such report will be transmitted to the Secretary of Agriculture.

[49 FR 32571, Aug. 15, 1984]

PART 205—INVESTIGATIONS TO DETERMINE THE PROBABLE ECONOMIC EFFECT ON THE ECONOMY OF THE UNITED STATES OF PROPOSED MODIFICATIONS OF DUTIES OR OF ANY BARRIER TO (OR OTHER DISTORTION OF) INTERNATIONAL TRADE OR OF TAKING RETALIATORY ACTIONS TO OBTAIN THE ELIMINATION OF UNJUSTIFIABLE OR UNREASONABLE FOREIGN ACTS OR POLICIES WHICH RESTRICT U.S. COMMERCE

Authority: Sec. 335, Tariff Act of 1930 (72 Stat. 680; 19 U.S.C. 1335); sec. 603, Trade Act of 1974 (88 Stat. 2073); (19 U.S.C. 2482).

Source: 42 FR 40426, Aug. 10, 1977, unless otherwise noted.

§ 205.1 Applicability of part.

This part 205 applies to functions and duties of the Commission under sections 131, 301(e)(3), and 503(a) of the Trade Act of 1974. For other applicable rules, see part 201 of this chapter.

Subpart A—Investigations To Determine the Probable Economic Effect of Modifications of United States Duties or of Any Barrier to (or Other Distortion of) International Trade on Domestic Industries and on Consumers

§ 205.2 Applicability of subpart.

This subpart A of part 205 applies to investigations for the purposes of section 131(a)–(b), 131(c), and 503 of the Trade Act of 1974. For other applicable rules, see part 201 of this chapter.

§ 205.3 Investigations under sections 131 and 503 of the Trade Act of 1974.

(a) *Purpose of investigations* —(1) *Sections 131(a)–(b) and 503(a).* Upon the receipt of a list of articles from the President or from the United States Trade Representative as provided in section 131(a) or 503(a), and in Executive Order No. 11846, as amended, which may be considered for modification of United States duties, or as eligible articles for duty-free treatment under the generalized system of preferences, respectively, the Commission shall initiate an investigation to obtain information pertinent to the fomulation of its advice to the President under section 131(b) with respect to such articles to assist him in making an informed judgment as to the impact which might be caused by such duty modifications or duty-free treatment on U.S. manufacturing, agriculture, mining, fishing, labor, and consumers, including whether any reductions in rates of duty should take place over a period longer than the minimum periods provided by section 109(a) of the Trade Act of 1974 (88 Stat. 1985; 19 U.S.C. 2119).

(2) *Section 131(c).* Upon the receipt of a request from the President or from the United States Trade Representative as provided in section 131(c) and in Executive Order No. 11846, as amended, to assist him in his determination of whether to enter into any trade agreement under section 102, the Commission shall institute an investigation to obtain information pertinent to the formulation of its views with respect to the probable economic effects of modifications of any barrier to (or other distortion of) international trade on domestic industries and purchasers and on prices and quantities of articles in the United States.

(b) *Institution and notice of investigation.* An investigation to which this subpart A relates will be instituted promptly after the receipt from the President or the United States Trade Representative of (1) a list of articles which may be considered for duty modifications or duty-free treatment, or (2) a request for an investigation and report concerning the probable economic effects of modifications of any barrier to (or other distortion of) international trade.

(c) *Hearings.* Public hearings will be held in connection with every investigation to which this subpart A relates. For other applicable rules, see §201.11 of this chapter.

(d) *Report to the President.* After the completion of its investigation, the Commission will incorporate its advice or views in a report which together with hearing transcripts, briefs and other information will be transmitted to the President through the United States Trade Representative.

[42 FR 40426, Aug. 10, 1977, as amended at 63 FR 29351, May 29, 1998]

§ 205.4 [Reserved]

Subpart B—Investigations Concerning the Probable Impact on the Economy of the United States of the President's Taking Retaliatory Action To Obtain the Elimination of Unjustifiable or Unreasonable Foreign Acts or Policies Which Restrict U.S. Commerce

§ 205.5 Applicability of subpart.

This subpart B of part 205 applies to investigations for the purpose of section 301(e)(3) of the Trade Act of 1974. For other applicable rules, see part 201 of this chapter.

§ 205.6 Investigations under section 301(e)(3) of the Trade Act of 1974.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission is to provide the President with its views pursuant to section 301(e)(3) as to the probable impact on the economy of the United States of imposing retaliatory restrictions on imports into the United States from countries or foreign instrumentalities which maintain restrictions against U.S. exports.

(b) *Institution and notice of investigation.* An investigation to which this subpart B relates will be instituted promptly after the receipt from the President of a request for the views of the Commission with regard to the matters indicated in paragraph (a) of this section.

(c) *Public hearings.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford interested parties opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested party who believes that a public hearing should be held may, within thirty (30) days after the date of publication in the Federal Register of the notice of investigation, submit a request in writing to the Secretary of the Commission that a public hearing be held, stating the reasons for such request.

(d) *Written statements.* Any interested party may submit to the Commission a written statement of information pertinent to the subject matter of such investigation not later than thirty (30) days after a notice of investigation under paragraph (b) of this section is published in the Federal Register.If a public hearing is held in the investigation, a statement may be received in lieu of or in addition to appearance at the hearing. Statements shall conform with the requirements for documents set forth in §§201.6 and 201.8 of this chapter.

(e) *Report to the President.* After the completion of its investigation, the Commission will incorporate its views in a report which will be transmitted promptly to the President.

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

Authority: 19 U.S.C. 1335, 2251–2254, 2451–2451a, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

Source: 59 FR 5091, Feb. 3, 1994, unless otherwise noted.

§ 206.1 Applicability of part.

This part 206 applies specifically to functions and duties of the Commission under sections 201–202, 204, 406, and 421–422 of the Trade Act of 1974, as amended (19 U.S.C. 2251, 2252, 2254, 2436, 2451–2451a) (hereinafter Trade Act), and sections 301–318 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3351 et seq.) (hereinafter NAFTA Implementation Act). Subpart A of this part sets forth rules generally applicable to investigations conducted under these provisions; for other rules of general application, see part 201 of this chapter. Subpart B of this part sets forth rules specifically applicable to petitions and investigations under section 202 of the Trade Act; subpart C sets forth rules specifically applicable to requests and investigations under section 312(c) of the NAFTA Implementation Act; subpart D sets forth rules specifically applicable to petitions and investigations under section 302 of the NAFTA Implementation Act; and subpart E sets forth rules specifically applicable to petitions and investigations under section 406 or 421 of the Trade Act. Subpart F of this part sets forth

rules applicable to functions and duties under section 204 of the Trade Act. Subpart G sets forth rules applicable to functions and duties under section 422 of the Trade Act.

[67 FR 8190, Feb. 22, 2002]

Subpart A—General

Source: 60 FR 10, Jan. 3, 1995, unless otherwise noted.

§ 206.2 Identification of type of petition or request.

An investigation under this part 206 may be commenced on the basis of a petition, request, resolution, or motion as provided in section 202(a)(1), 204(c)(1), 406(a)(1), 421(b) or (o), or 422(b) of the Trade Act of 1974 or section 302(a)(1) or 312(c)(1) of the North American Free Trade Agreement Implementation Act. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this part 206 shall state clearly on the first page thereof ``This is a [petition or request] under section [202, 204(c), 406, 421(b) or (o), or 422(b) of the Trade Act of 1974, or section 302 or 312(c) of the North American Free Trade Agreement Implementation Act] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission." A paper original and eight (8) true paper copies of a petition, request, resolution, or motion shall be filed. One copy of any exhibits, appendices, and attachments to the document shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary.

[67 FR 8190, Feb. 22, 2002, as amended at 76 FR 61937, October 6, 2011]

§ 206.3 Institution of investigations; publication of notice; and availability for public inspection.

(a) *Institution of investigation and publication of notice.* Except as provided in §206.15(b), the Commission, after receipt of a petition or request under Part 206, properly filed, will promptly institute an appropriate investigation and publish notice thereof in the Federal Register. The Commission also will institute an investigation and publish a notice following receipt of a resolution or on the Commission's own motion under part 206.

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, limits on page lengths for posthearing briefs, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information. The Commission will provide the same sort of information in its notice when the investigation was instituted following receipt of a resolution or on the Commission's own motion.

(c) *Availability for public inspection.* The Commission will promptly make each petition, request, resolution, or Commission motion available for public inspection (with the exception of confidential business information).

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002; 68 FR 32977, June 3, 2003]

§ 206.4 Notification of other agencies.

For each investigation subject to provisions of part 206, the Commission will transmit copies of the petition, request, resolution, or Commission motion as required by the relevant statute, along with a copy of the notice of investigation.

[67 FR 8190, Feb. 22, 2002]

§ 206.5 Public hearing.

(a) *Investigations under subpart B of this part.* A public hearing on the question of injury and a second public hearing on remedy (if necessary) will be held in connection with each investigation instituted under Subpart B of this Part after reasonable notice thereof has been caused to be published in the Federal Register. A hearing on remedy is not necessary if the Commission has made a negative determination on the question of injury.

(b) *Investigations under subpart C, D, E, or G of this part.* A public hearing on the subject of injury and remedy will be held in connection with each investigation instituted under subpart C or D of this part or section 406(a) of the Trade Act and subpart E of this part, after reasonable notice thereof has been published in the Federal Register. The Commission also will conduct a public hearing in each investigation instituted under section 421(b) or (o) of the Trade Act and subpart E of this part or section 422(b) of the Act and subpart G. The Federal Register notice announcing the institution of such an investigation will list the date, time, and location of the hearing, the subjects to be addressed, and the procedures to be followed.

(c) *Investigations under subpart F of this part.* A public hearing on the subject of whether an action taken under section 203 of the Trade Act of 1974 should be extended will be held in connection with each investigation instituted under subpart F of this part after reasonable notice thereof has been published in the Federal Register.

(d) *Opportunity to appear and to cross-question.* All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted in the case of an investigation under section 202(b) of the Trade Act of 1974, and to be heard at such hearings. All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to cross-question interested parties making presentations at the hearing.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.6 Report to the President.

(a) *In general.* The Commission will include in its report to the President the following:

(1) The determination made and an explanation of the basis for the determination;

(2) If the determination is affirmative—or in the case of an investigation under section 421(b) or 422(b) of the Trade Act, if the President or the United States Trade Representative may consider the Commission's determination to be affirmative under section 421(e) or (i)(1) or section 422(e)(1) of the Act—to the extent appropriate, the recommendations for action and an explanation of the basis for each recommendation;

(3) Any dissenting or separate views by members of the Commission regarding the determination and any recommendations;

(b) *Additional findings and information.* (1) In the case of a determination made under section 202(b) of the Trade Act, the Commission will also include in its report the following:

(i) The findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry;

(ii) A copy of the adjustment plan, if any, submitted by the petitioner;

(iii) Commitments submitted and information obtained by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition;

(iv) A description of the short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, other domestic industries, and consumers; and

(v) A description of the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and communities where production facilities of such industry are located, and other domestic industries.

(2) In the case of a determination made under section 302(b) of the NAFTA Implementation Act, the Commission will also include in its report the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

(3) In the case of a determination made under section 421(b) or 422(b) of the Trade Act, the Commission will also include in its report a description of—

(i) The short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) The short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.7 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* Except as provided for in §206.17, in the case of an investigation under subpart B, C, D, F, or G of this part or an investigation under section 422 of the Trade Act and subpart E of this part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of §201.6 of this chapter unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President and the Trade Representative; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.8 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with §201.8 of this chapter, serve a copy of the public version of such document on all

other parties to the investigation in the manner prescribed in §201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in §206.17(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under §206.17(a)(4), an application under §206.17(a) is approved. When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in §201.11 of this chapter or the administrative protective order list provided for in §206.17, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding §201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

(c) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including §201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file and, if the submitter is a party, serve the confidential version of the document on the deadline and may file and serve the nonconfidential version of the document no later than one business day after the deadline for filing the document. The confidential version shall enclose all confidential business information in brackets and have the following warning marked on every page: “Bracketing of CBI not final for one business day after date of filing.” The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as the nonconfidential version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time as the nonconfidential version is filed. No changes to the document other than bracketing and deletion of confidential business information are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

(d) Briefs. All briefs filed in proceedings subject to this part shall be filed electronically, and eight (8) true paper copies shall be filed on the same business day.

[59 FR 5091, Feb. 3, 1994, as amended at 68 FR 32977, June 3, 2003; 76 FR 61937, October 6, 2011]

Subpart B—Investigations Relating to Global Safeguard Actions

Source: 60 FR 12, Jan. 3, 1995, unless otherwise noted.

§ 206.11 Applicability of subpart.

This subpart B applies specifically to investigations under section 202(b) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.12 Definitions applicable to subpart B of this part.

For the purposes of this Subpart, the following terms have the meanings hereby assigned to them:

(a) *Adjustment plan* means a plan to facilitate positive adjustment to import competition submitted by a petitioner to the Commission and USTR either with the petition or at any time within 120 days after the date of filing of the petition.

(b) *Commitment* means commitments that a firm in the domestic industry, a certified or recognized union or group of workers in the domestic industry, a local community, a trade association representing the domestic industry, or any other person or group of persons submits to the Commission regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.13 Who may file a petition.

A petition under this Subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article like or directly competitive with a foreign article that is allegedly being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 206.14 Contents of petition.

A petition under this Subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product.* In addition, such petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Imports from NAFTA countries.* Quantitative data indicating the share of imports accounted for by imports from each NAFTA country (Canada and Mexico), and petitioner's view on the extent to which imports from such NAFTA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

(j) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

§ 206.15 Institution of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, the Commission, after receipt of a petition under this Subpart B, properly filed, will promptly institute an appropriate investigation and will cause a notice thereof to be published in the Federal Register.

(b) *Exceptions* —(1) *Reinvestigation within one (1) year.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 202 of the Trade Act with respect to the same subject matter as a previous investigation under section 202 unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) *Articles subject to prior action.* No new investigation will be made under section 202 of the Trade Act with respect to an article that is or has been the subject of an action under section 203(a) (3)(A), (B), (C), or (E) of the Trade Act if the last day on which the President could take action under section 203 of the Trade Act in the new investigation is a date earlier than that permitted under section 203(e)(7) of the Trade Act.

(3) *Articles subject to the Textiles Agreement.* No investigation will be made under section 202 of the Trade Act with respect to an article that is the subject of the WTO Agreement on Textiles and Clothing unless the United States has integrated the article into GATT 1994 and the Secretary of Commerce has published notice to such effect in the Federal Register.

(4) *Perishable agricultural product.* An entity of the type described in §206.13 that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

§ 206.16 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.,* all confidential business information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the

Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term “confidential business information” is defined in §201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to §201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(D) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in “competitive decisionmaking” includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(iii) For purposes of this §206.17, the term *interested party* means:

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of an article which is the subject of an investigation under this section or a trade or business association a majority of the members of which are producers, exporters, or importers of such article;

(B) The government of a country in which such article is produced or manufactured;

(C) A manufacturer, producer, or wholesaler in the United States of a like or directly competitive article;

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale of a like or directly competitive article in the United States;

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a like or directly competitive article in the United States; and

(F) An association, a majority of whose members is composed of interested parties described in paragraphs (a)(3)(iii) (C), (D), or (E) of this section with respect to a like or directly competitive article.

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific confidential business information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute confidential business information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release confidential business information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph along with adequate personal identification.

(b) *Administrative protective order*. The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the confidential business information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the confidential business information was obtained,

(iii) A person whose application for access to confidential business information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decisionmaking on behalf of an interested party which is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such confidential business information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such confidential business information was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such confidential business information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing confidential business information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing confidential business information with a cover sheet identifying the materials as containing confidential business information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing confidential business information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to confidential business information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other

actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of

(i) The date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) The completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred and that further investigation is warranted, then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service.* (1) Any party filing written submissions which include confidential business information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in §206.8(c), a nonconfidential version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular confidential business information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of §206.8(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Confidential business information in submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

(g) *Exemption from disclosure* —(1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this Subpart B, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in §201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with §201.6 of this chapter and §206.8(c), with the specific

information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: “CBI exempted from disclosure under APO enclosed in triple brackets.” The other two versions shall conform to and be filed in accordance with the requirements of §201.6 of this chapter and §206.8(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

[60 FR 12, Jan. 3, 1995, as amended at 68 FR 32977, June 3, 2003; 70 FR 8511, Feb. 22, 2005; 76 FR 61937, October 6, 2011]

§ 206.18 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be, except that—

(1) If the Commission determines before the 100th day that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days; or

(2) If critical circumstances are alleged, the Commission will make its determination within 120 days after completion of its investigation with respect to critical circumstances. The Commission will make its report to the President at the earliest practicable time, but not later than 180 days (240 days if critical circumstances are alleged) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

§ 206.19 Public report.

Upon making a report to the President of the results of an investigation to which this Subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

Subpart C—Investigations Relating to a Surge in Imports From a NAFTA Country

§ 206.21 Applicability of subpart.

This subpart C applies specifically to investigations under section 312(c) of the NAFTA Implementation Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.22 Definition applicable to subpart C.

For the purposes of this subpart, the term *surge* means a significant increase in imports over the trend for a recent representative base period.

§ 206.23 Who may file a request.

If the President, under section 312(b) of the NAFTA Implementation Act, has excluded imports from a NAFTA country or countries from an action under chapter 1 of title II of the Trade Act of 1974, any entity that is representative of an industry for which such action is being taken may request the Commission to conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action.

§ 206.24 Contents of request.

The request for an investigation shall include the following information:

(a) The identity of the entity submitting the request; a description of the relief action the effectiveness of which is allegedly being undermined; and a description of the imported article, identifying the United States tariff provision under which it is classified, and the name of the country or countries from which the surge in imports is alleged to be coming;

(b) The information required in §206.14(b) of this subpart concerning representativeness of the entity filing the request;

(c) Data concerning imports from the NAFTA country or countries that form the basis of requestor's claim that a surge in imports has occurred;

(d) Information supporting the claim that such surge in imports undermines the effectiveness of the relief action.

§ 206.25 Time for reporting.

The Commission will submit the findings of its investigation to the President no later than 30 days after the request is received.

§ 206.26 Public report.

Upon making a report to the President of the results of an investigation to which this subpart C relates, the Commission will make such report public (with the exception of any confidential business information) and cause a summary thereof to be published in the Federal Register.

Subpart D—Investigations Relating to Bilateral Safeguard Actions

§ 206.31 Applicability of subpart.

This subpart D applies specifically to investigations under section 302(b) of the NAFTA Implementation Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.32 Definitions applicable to subpart D.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) *Critical circumstances* mean such circumstances as are described in section 202(b)(3)(B) of the Trade Act;

(b) *Perishable agricultural product* means any agricultural article or citrus product, including livestock, which is the subject of monitoring pursuant to section 202(d) of the Trade Act.

§ 206.33 Who may file a petition.

(a) *In general.* A petition under this subpart D may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article that is like or directly competitive with a Canadian or Mexican article that is allegedly, as a result of the reduction or elimination of a duty provided for under the North American Free Trade Agreement, being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article alone constitute a substantial cause of serious injury, or (except in the case of a Canadian article) a threat of serious injury, to such domestic industry.

(b) *Perishable agricultural product.* An entity of the type described in paragraph (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to imports of such product from Canada or Mexico only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

(c) The President is authorized to provide import relief with respect to an article from Canada or Mexico during the period provided for in section 305(a) of the NAFTA Implementation Act; the President may provide relief after the expiration of this period,

but only if the Government of Canada or Mexico, as the case may be, consents to such provision (see section 305(b) of the NAFTA Implementation Act).

§ 206.34 Contents of petition.

A petition under this Subpart D shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under the North American Free Trade Agreement, a Canadian or Mexican article, as the case may be, is being imported into the United States in such increased quantities (in absolute terms) and under such conditions so that imports of the article, alone, constitute a substantial cause of serious injury, or (except in the case of a Canadian article) a threat of serious injury, to the domestic industry producing an article that is like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product.* In addition, such petition shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years that form the basis of the claim that the Canadian or Mexican article concerned is being imported in increased quantities in absolute terms;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports of the Canadian or Mexican article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

[60 FR 16, Jan. 3, 1995]

§ 206.35 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days after the date on which the investigation is initiated. The Commission will make its report to the President no later than 30 days after the date on which its determination is made.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

[60 FR 17, Jan. 3, 1995]

§ 206.36 Public report.

Upon making a report to the President of the results of an investigation to which this subpart D relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

Subpart E—Investigations for Relief From Market Disruption

§ 206.41 Applicability of subpart.

This subpart E applies specifically to investigations under section 406(a) or 421(b) or (o) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

[59 FR 5091, Feb. 3, 1994, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.42 Who may file a petition.

(a) A petition under section 406(a) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article with respect to which there are imports of a like or directly competitive article which is the product of a Communist country, which imports, allegedly, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry.

(b) A petition under section 421(b) or (o) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

[67 FR 8191, Feb. 22, 2002]

§ 206.43 Contents of a petition under section 406(a) of the Trade Act.

A petition for relief under section 406(a) of the Trade Act shall include specific information in support of the claim that imports of an article that are the product of a Communist country which are like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry. In addition, such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that imports from a Communist country of an article like or directly competitive with the article produced by the domestic industry concerned are increasing rapidly, either absolutely or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, data indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets;

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (e) of this section; information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles; evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns; and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought.

[59 FR 5091, Feb. 3, 1994, as amended at 67 FR 8191, Feb. 22, 2002]

§ 206.44 Contents of a petition under section 421(b) or (o) of the Trade Act.

(a) *Petitions under section 421(b).* (1) A petition for relief under section 421(b) of the Trade Act shall provide specific information in support of the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. In addition, such petition shall include the information described in paragraphs (b) through (j) of this section. The petition shall provide the information required by this paragraph and paragraphs (b) through (j) of this section to the extent that such information is reasonably available to the petitioner with due diligence.

(2) If the petition fails to provide any item of information specified in paragraphs (b) through (j) of this section, the petition shall include a certification that such information was not reasonably available to the petitioner.

(b) *Product description.* Each petition shall include the name and description of the imported product concerned, specifying the United States tariff provision under which such product is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic product concerned.

(c) *Representativeness.* Each petition shall include:

(1) The names and street addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition, the locations of the establishments in which each such firm produces the domestic product, and the telephone number and contact person(s) for each such firm;

(2) The percentage of domestic production of the like or directly competitive domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and street addresses of all other producers of the domestic product known to the petitioner, and the telephone number and contact person(s) for each such producer.

(d) *Import data.* Each petition shall include import data for at least each of the most recent 5 full years which form the basis of the claim that imports from the People's Republic of China of a product like or directly competitive with the product produced by the domestic industry concerned are increasing rapidly, either absolutely or relatively.

(e) *Domestic production data.* Each petition shall include data on total U.S. production of the domestic product for each full year for which data are provided pursuant to paragraph (d) of this section.

(f) *Data showing injury and/or threat of injury.* Each petition shall include the following quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, information, including data on production, capacity, capacity utilization, shipments, net sales, profits, employment, productivity, inventories, and expenditures on capital and research and development, indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) Declines in sales or market share, increases in inventory (whether maintained by domestic producers, importers, wholesalers, retailers, or producers or exporters in the People's Republic of China), and/or a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(iv) Data regarding productive capacity in the People's Republic of China, any unused productive capacity, and any potential for product shifting in the People's Republic of China.

(g) *Cause of injury.* Each petition shall enumerate and describe the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (f) of this section. The petition shall provide information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles. The petition shall also include a statement regarding the extent to which increased imports, either actual or relative, of the imported product are believed to be such a cause, supported by pertinent data.

(h) *Critical circumstances.* If the petition alleges that critical circumstances exist within the meaning of section 421(i)(1) of the Trade Act, the petition shall provide detailed information supporting that claim as well as detailed information demonstrating that delay in taking action under section 421 of the Act would cause damage to the relevant domestic industry that would be difficult to repair.

(i) *Relief sought and purpose thereof.* The petition shall include a statement describing the import relief sought under section 421(i)(4) and/or section 421(a) of the Trade Act and the purpose thereof.

(j) *Additional information.* The petition shall include:

(1) The names of all U.S. importers and all producers in China of the subject merchandise known to petitioner, and the street address, telephone and fax number, and primary contact person(s) for each such importer and producer in China;

(2) A detailed description of each product for which the petitioner requests the Commission to seek pricing information in its questionnaires, and an explanation of why the petitioner believes the Commission should collect pricing information for each such product;

(3) For each domestic producer represented by petitioner, the company names of its 10 largest purchasers, and the street address, telephone number, and primary contact person(s) for each such purchaser;

(4) For each allegation of lost sales and/or lost revenues, supporting information with regard to each such alleged loss, including the name of the company represented by petitioner that lost the sale or revenue, the name of the company that captured the sale or whose competition resulted in lost revenue (including company street address, company contact person, and telephone and fax numbers for each contact person), the date and total value of the lost sale or lost revenue, and the total quantity of product involved (by weight or number of units).

(k) *Petitions under section 421(o).* A petition under section 421(o) of the Trade Act shall include evidence of representativeness, as described in paragraph (b) of this section, as well as specific information in support of the claim that action under section 421 of the Act continues to be necessary to prevent or remedy market disruption. The information provided in support of that claim should take into account factors such as those specified in paragraphs (c) through (g) of this section. To comply with this paragraph, the petition should contain all relevant information that is reasonably available to the petitioner with due diligence.

[67 FR 8191, Feb. 22, 2002, as amended at 68 FR 65167, Nov. 19, 2003]

§ 206.44a Special rules for conducting investigations under section 421(b) of the Trade Act.

(a) *Service of the petition.* (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under §206.17(a)(4) of this part, he or she approves an application under §206.17(a)(2) of this part pursuant to §206.47. When practicable, this notification shall be made by facsimile transmission. The petitioner shall then serve a copy of the petition, including all confidential business information, on the approved lead authorized applicants in accord with §206.17(f) within 2 calendar days of the time notification is made by the Secretary.

(ii) Upon establishment and issuance of the service list, the petitioner shall serve the lead authorized applicants enumerated on the list established by the Secretary pursuant to §206.17(a)(4) that have not been served pursuant to paragraph (a)(1)(i) of this section within 2 calendar days of the establishment and issuance of the Secretary's list.

(2) As the Secretary adds new authorized applicants to the service list described in paragraph (a)(1) of this section, the Secretary shall notify the petitioner and issue an amended list, and the petitioner shall serve new lead authorized applicants with a copy of the petition in the same manner as under paragraph (a)(1)(i) of this section.

(3) The petitioner shall serve a copy of the non-confidential version of the petition on those persons enumerated on the list established by the Secretary pursuant to §201.11(d) of this chapter within 2 calendar days of the establishment and issuance of the Secretary's

list, and on any additional persons within 2 calendar days of receiving notification from the Secretary of an amended list.

(4) The petitioner shall attest service of the petition by filing a certificate of service with the Commission.

(b) *Comment on information.* The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief. Comments shall concern only such information, and shall not exceed 15 pages of textual material, double-spaced and on single-sided stationery measuring 81/2×11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. New factual information and arguments based on that information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed. The record shall close on the date such comments are due, except with respect to changes in bracketing of confidential business information permitted by §206.8(c) of this part.

[68 FR 65168, Nov. 19, 2003]

§ 206.45 Time for reporting.

(a) In an investigation under section 406(a) of the Trade Act, the Commission will make its report to the President at the earliest practical time, but not later than 3 months after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) In an investigation under section 421(b) of the Trade Act, the Commission will transmit to the President and the United States Trade Representative its determination at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting provisional relief under section 421(i) of the Act) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted. The Commission will transmit its report to the President and the Trade Representative no later than 20 days after the transmittal of the determination.

(c) In an investigation under section 421(b) of the Trade Act in which the petition requests provisional relief under section 421(i) of the Act, the Commission will transmit to the President and the Trade Representative its determination and report with respect to section 421(i) of the Act no later than 45 days after the petition is filed.

(d) In an investigation under section 421(o) of the Trade Act, the Commission shall transmit to the President a report on its investigation and determination not later than 60 days before the action under section 421(m) of the Trade Act is to terminate.

(e) *Date of filing.* Any petition under this subpart E that is filed after 12:00 noon shall be deemed to be filed on the next business day.

[67 FR 8192, Feb. 22, 2002, as amended at 70 FR 8511, Feb. 22, 2005]

§ 206.46 Public report.

Upon making a report to the President of the results of an investigation to which this subpart E relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

[59 FR 5091, Feb. 3, 1994. Redesignated at 67 FR 8191, Feb. 22, 2002]

§ 206.47 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 421(b) or (o) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of §206.17.

[67 FR 8192, Feb. 22, 2002]

Subpart F—Monitoring; Advice As to Effect of Extension, Reduction, Modification, or Termination of Relief Action

Source: 60 FR 10, Jan. 3, 1995, unless otherwise noted.

§ 206.51 Applicability of subpart.

This subpart F applies specifically to investigations under section 204 of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.52 Monitoring.

(a) *In general.* As long as any import relief imposed by the President pursuant to section 203 of the Trade Act remains in effect, the Commission will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the industry to make a positive adjustment to import competition.

(b) *Reports.* Whenever the initial period of import relief, or any extension thereof, exceeds three (3) years, the Commission will submit a report on the results of such monitoring to the President and the Congress. Such report will be submitted not later than the date which is the mid-point of the initial period of import relief, or any extension thereof. In the course of preparing each such report, the Commission will hold a hearing at which interested persons will be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(c) Limited disclosure of certain confidential business information under administrative protective order. Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in §206.17. The provisions in paragraphs (d) and (e) of §206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

[60 FR 10, Jan. 3, 1995, as amended at 66 FR 32218, June 14, 2001]

§ 206.53 Investigations to advise the President as to the probable economic effect of reduction, modification, or termination of action.

Upon the request of the President, the Commission will conduct an investigation for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 203 of the Trade Act which is under consideration.

§ 206.54 Investigations with respect to extension of action.

(a) *Institution of investigations.* Upon the request of the President, or upon petition on behalf of the industry concerned, the Commission will investigate to determine whether an action taken under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(b) *Who may file a petition.* A petition under this §206.54 may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of the industry producing the domestic article concerned in the investigation of the Commission which resulted in the imposition by the President of the import relief action.

(c) *Time for filing.* Any petition filed on behalf of an industry for a determination under this §206.54 must be filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 203 of the Trade Act is to terminate.

(d) *Contents of petition.* A petition under this §206.54 shall include the following information, to the extent that such information is publicly available from governmental

or other sources, or best estimates and the basis therefor if such information is not available:

(1) *Identification of relief action.* An identification of the action under section 203, or portion of such action, for which a determination under this §206.54 is sought;

(2) *Representativeness.* (i) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(ii) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(iii) The names and locations of all other producers of the domestic article known to the petitioner;

(3) *Import data.* Import data on the foreign article concerned for each full year since action was taken under section 203 of the Trade Act, starting with the year in which action was taken;

(4) *Domestic production data.* Data on total U.S. production of the domestic article concerned for each year for which data are provided pursuant to paragraph (d)(3) of this section;

(5) *Efforts to adjust.* Specific information in support of the claim that action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is making a positive adjustment to import competition.

(e) *Limited disclosure of certain confidential business information under administrative protective order.* Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in §206.17. The provisions in paragraphs (d) and (e) of §206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

(f) *Time for reporting.* The Commission will make its report to the President at the earliest practical time, but not later than 60 days before the action under section 203 of the Trade Act is to terminate, unless the President specifies a different date.

(g) *Public report.* Upon making a report to the President of the results of an investigation to which this §206.54 relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

§ 206.55 Investigations to evaluate the effectiveness of relief.

(a) *Investigation.* After any action taken under section 203 has terminated, the Commission will conduct an investigation for the purpose of evaluating the effectiveness of the relief action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Trade Act.

(b) *Hearing.* In the course of such investigation, the Commission will hold a hearing at which interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

(c) *Time for reporting.* The Commission will submit its report to the President and to the Congress by no later than the 180th day after the day on which the action terminated.

Subpart G—Investigations For Action in Response to Trade Diversion; Reviews of Action Taken

Source: 67 FR 8192, Feb. 22, 2002, unless otherwise noted.

§ 206.61 Applicability of subpart.

The provisions of this subpart G apply to investigations under section 422(b) and/or reviews under section 422(j) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.62 Who may file a petition.

A petition for an investigation under section 422(b) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

§ 206.63 Contents of petition.

A petition under section 422(b) of the Trade Act shall include specific information in support of the claim that an action described in section 422(c) of the Trade Act has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States. To comply with that requirement and the requirements in paragraphs (a) through (f) of this section, the petition shall include all relevant information that is

reasonably available to the petitioner with due diligence. The petition shall include the following information:

(a) *Product description.* The name and description of the imported product concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the domestic product concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic product is produced;

(2) The percentage of domestic production of the domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and locations of all other producers of the domestic product known to the petitioner;

(c) *Description of the action.* A description of the action or actions, as defined in section 422(c) of the Trade Act, that allegedly has caused or threatens to cause a significant diversion of trade into the domestic market of the United States;

(d) *Trade diversion data.* (1) The actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(2) The actual or imminent increase in volume of such imports into the United States;

(3) The nature and extent of the action taken or proposed by the WTO member concerned;

(4) The extent of exports from the People's Republic of China to that WTO member and to the United States;

(5) The actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(6) The actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(7) Cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(8) Conditions of demand and supply in the United States market for the products at issue;

(e) *Import data.* Any import data available to the petitioner that will aid the Commission in examining, pursuant to section 422(d)(2) of the Trade Act, the changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in section 422(a) of the Act; and

(f) *Relief sought and purpose thereof.* A statement describing the import relief sought under section 422(h) of the Trade Act and the purpose thereof.

§ 206.64 Institution of investigation or review; publication of notice; and availability for public inspection.

(a) Paragraphs (a) and (b) in §206.3 govern the institution of an investigation under section 422(b) of the Act and the publication of a Federal Register notice concerning the investigation. Following receipt of notification that the WTO member or members involved have notified the Committee on Safeguards of the WTO of a modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in section 422(a) of the Act, the Commission will promptly conduct a review under section 422(j) of the Act regarding the continued need for action taken under section 422(h) of the Act. The Commission also will publish notice of the review in the Federal Register.

(b) The Commission will make available for public inspection the notification document that prompted a review under paragraph (a) of this section, excluding any confidential business information in the document. Paragraph (c) in §206.3 governs the availability for public inspection of a petition, request, resolution, or motion that prompted the Commission to institute an investigation under section 422(b) of the Act.

§ 206.65 Public hearing.

Public hearings in investigations under section 422(b) of the Act are provided for in §206.5(b).

§ 206.66 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 422(b) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of §206.17.

§ 206.67 Time for determination and report.

(a) In an investigation under section 422(b) of the Trade Act, the Commission will transmit its determination under that section of the Act to the President and the Trade Representative at the earliest practical time, but not later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted,

as the case may be. The Commission shall issue and transmit its report on the determination not later than 10 days after the determination is issued.

(b) In a review under section 422(j) of the Trade Act, the Commission will report its determination to the President not later than 60 days after the notification described in that section of the Act.

§ 206.68 Public report.

Upon making a report to the President of the results of an investigation under section 422(b) or a review under section 422(j) of the Trade Act, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the Federal Register.

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

Source: 44 FR 76468, Dec. 26, 1979, unless otherwise noted.

§ 207.1 Applicability of part.

Part 207 applies to proceedings of the Commission under section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 1671–1677n) (the Act), other than investigations under section 783 (19 U.S.C. 1677n), which will be conducted pursuant to procedures specified by the Office of the United States Trade Representative.

[61 FR 37829, July 22, 1996]

Subpart A—General Provisions

Source: 56 FR 11923, Mar. 21, 1991, unless otherwise noted.

§ 207.2 Definitions applicable to part 207.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) The term *the Act* means: The Tariff Act of 1930, as amended.

(b) The term *administering authority* means: The Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under section 303 or title VII of the Act is transferred by law.

(c) The term *Director* means: The incumbent Commission Director or Acting Director, Office of Operations, or, in the absence of either, a person designated by the Director.

(d) The term *ex parte meeting* means: Any communication between

(1) Any interested party or other person providing factual information in connection with an investigation, and

(2) Any Commissioner, or member of a Commissioner's staff, in which less than all parties participate, and which is not a hearing or conference for which an opportunity to participate is given to the parties.

(e) The term *injury* means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of imports into the United States of subject merchandise which is found by the administering authority to be subsidized, or sold, or likely to be sold, at less than its fair value.

(f) The term *record* means:

(1) All information presented to or obtained by the Commission during the course of an investigation, including completed questionnaires, any information obtained from the administering authority, written communications from any person filed with the Secretary, staff reports, all governmental memoranda pertaining to the case, and the record of ex parte meetings required to be kept pursuant to section 777(a)(3) of the Act; and

(2) A copy of all Commission orders and determinations, all transcripts or records of conferences or hearings, and all notices published in the Federal Register concerning the investigation.

(g) The term *coalition or trade association* as used in an investigation referred to in section 771(9)(G) of the Act means a coalition or trade association which is representative of domestic processors, domestic processors and producers, or domestic processors and growers.

[44 FR 76468, Dec. 26, 1979, as amended at 60 FR 21, Jan. 3, 1995]

§ 207.3 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with §201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in §201.16 of this chapter. If a document is filed before the Secretary's issuance of the

service list provided for in §201.11 of this chapter or the administrative protective order list provided for in §207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding §201.16 of this chapter, petitions, briefs, requests to close a portion of the hearing, comments on requests to close a portion of the hearing, and testimony filed by parties pursuant to §§207.10, 207.15, 207.23, 207.24, 207.25, 207.65, 207.66, and 207.67, shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

(c) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including §201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes business proprietary information in the document, the submitter is to file and, if the submitter is a party, serve the business proprietary version of the document on the deadline and may file and serve the nonbusiness proprietary version of the document no later than one business day after the deadline for filing the document. The business proprietary version shall enclose all business proprietary information in brackets and have the following warning marked on every page: “Bracketing of BPI not final for one business day after date of filing.” The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes, including typographical changes, to the document other than bracketing and deletion of business proprietary information are permitted after the deadline unless an extension of time is granted to file an amended document pursuant to §201.14(b)(2) of this chapter. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

[44 FR 76468, Dec. 26, 1979, as amended at 61 FR 37829, July 22, 1996; 63 FR 30607, June 5, 1998; 70 FR 8511, Feb. 22, 2005]

§ 207.4 The record.

(a) *Maintenance of the record.* The Secretary shall maintain the record of each investigation conducted by the Commission pursuant to title VII of the Act. The record shall be maintained contemporaneously with each actual filing in the record. It shall be divided into public and nonpublic sections. The Secretary shall also maintain a contemporaneous index of all materials filed in the record. All material properly filed

with the Secretary shall be placed in the record. The Commission need not consider in its determinations or include in the record any material that is not filed with the Secretary. All material which is placed in the record shall be maintained in the public record, with the exception of material which is privileged, or which is business proprietary information submitted in accordance with §201.6 of this chapter. Privileged and business proprietary material shall be maintained in the nonpublic record.

(b) *Audits.* The Commission may in its discretion verify information received in the course of an investigation. To the extent a verification results in new or different information, the Commission shall place such information on the record.

(c) *Materials provided by the administering authority.* Materials received by the Commission from the administering authority shall be placed on the Commission's record and shall be designated by the Commission as public or nonpublic in conformity with the applicable designation of the administering authority. Any requests to the Commission either to permit access to such materials or to release such materials shall be referred to the administering authority for its advice.

[44 FR 76468, Dec. 26, 1979, as amended at 61 FR 37829, July 22, 1996]

§ 207.5 Ex parte meetings.

There shall be included in the record of each investigation a record of ex parte meetings as required by section 777(a)(3) of the Act. The record of each ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted.

§ 207.6 [Reserved]

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.*, all business proprietary information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except nondisclosable confidential business information) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term “business proprietary information” has the same meaning as the term “confidential business information” as defined in §201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed

application shall be filed electronically. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to §201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, or the deadline for filing submissions in a remanded investigation, and shall not be served with business proprietary information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(D) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in “competitive decisionmaking” includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in the preliminary phase of an investigation, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30)

days from the filing of the information, or ten (10) days in the preliminary phase of an investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the U.S. Court of International Trade under section 777(c)(2) of the Act.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute business proprietary information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release business proprietary information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph along with adequate personal identification.

(iv) An authorized applicant granted access to business proprietary information in the preliminary phase of an investigation may, subject to paragraph (c) of this section, retain such business proprietary information during any final phase of that investigation, provided that the authorized applicant has not lost his authorized applicant status (*e.g.*, by terminating his representation of an interested party who is a party). When retaining business proprietary information pursuant to this paragraph, the authorized applicant need not file a new application in the final phase of the investigation.

(b) *Administrative protective order*. The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the business proprietary information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the business proprietary information was obtained,

(iii) A person whose application for access to business proprietary information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by the authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision making for an interested party which is a party to the investigation; and who have signed a statement in a form

approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such business proprietary information solely for the purposes of representing an interested party in the Commission investigation then in progress or during judicial or other review of such Commission investigation;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such business proprietary information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such business proprietary information was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such business proprietary information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing business proprietary information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing business proprietary information with a cover sheet identifying the materials as containing business proprietary information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing business proprietary information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or

destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of the date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care, or the completion of an investigation conducted under subpart B or C of this part, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred and that further investigation is warranted, the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service.* (1) Any party filing written submissions which include business proprietary information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in §207.3, a nonbusiness proprietary version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) If a party's request under paragraph (g) of this section is granted, the Secretary shall accept the nondisclosable confidential business information into the record. The party shall serve the submission containing such information in accordance with the requirements of §207.3(b) and paragraph (f)(1) of this section, with the information redacted from the copies served.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be dealt with as required by §207.3(c).

(g) *Exemption from disclosure* —(1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under §207.10, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in §201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.,* trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. The request will be

granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all business proprietary information, bracketed in accordance with §201.6 of this chapter and §207.3. The other two versions shall conform to and be filed in accordance with the requirements of §201.6 of this chapter and §207.3, except that the specific information as to which exemption from disclosure was granted shall be redacted from the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. The requester may file the submission in question without that information, in accordance with the requirements of §207.3.

[44 FR 76468, Dec. 26, 1979, as amended at 59 FR 66723, Dec. 28, 1994; 61 FR 37829, July 22, 1996; 68 FR 32978, June 3, 2003; 70 FR 8512, Feb. 22, 2005; 76 FR 61937, October 6, 2011]

§ 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Any questionnaire issued by the Commission in connection with any investigation under title VII of the Act may be issued as a subpoena and subscribed by a Commissioner, after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may:

(a) Use the facts otherwise available in making its determination;

(b) Seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333;

(c) Make inferences adverse to such person's position, if such person is an interested party that has failed to cooperate by not acting to the best of its ability to comply with a request for information; and

(d) Take such other actions as necessary to obtain needed information.

[61 FR 37831, July 22, 1996]

Subpart B—Preliminary Determinations

Source: 56 FR 11927, Mar. 21, 1991, unless otherwise noted.

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. A paper original and eight (8) true paper copies of a petition shall be filed. One copy of all exhibits, appendices, and attachments to the petition shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary. If the petition complies with the provisions of §207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, eastern time, the petition shall be deemed filed on the next business day. The Secretary shall notify the administering authority of that date. Notwithstanding §201.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance..

(b) *Service of the petition.* (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under §207.7(a)(4), he or she approves an application under §207.7(a). When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with §207.3(b) within two (2) calendar days of the time notification is made by the Secretary.

(ii) The petitioner shall serve persons enumerated on the list established by the Secretary pursuant to §207.7(a)(4) that have not been served pursuant to paragraph (b)(1)(i) of this section within two (2) calendar days of the establishment of the Secretary's list.

(2) A copy of the petition omitting business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant

to §201.11(d) of this chapter within two (2) calendar days of the establishment of the Secretary's list.

(3) Service of the petition shall be attested by filing a certificate of service with the Commission.

(c) *Amendments and withdrawals; critical circumstances.* (1) Any amendment or withdrawal of a petition shall be filed on the same day with both the Secretary and the administering authority, without regard to whether the requester seeks action only by one agency.

(2) When not made in the petition, any allegations of critical circumstances under section 703 or section 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. Critical circumstances allegations, whether made in the petition or in an amendment thereto, shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

[61 FR 37831, July 22, 1996, as amended at 70 FR 8512, Feb. 22, 2005; 76 FR 61937, October 6, 2011]

§ 207.11 Contents of petition.

(a) The petition shall be signed by the petitioner or its duly authorized officer, attorney, or agent, and shall set forth the name, address, and telephone number of the petitioner and any such officer, attorney, or agent, and the names of all representatives of petitioner who will appear in the investigation.

(b)(1) The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or section 731(a) of the Act and contain information reasonably available to the petitioner supporting the allegations.

(2) The petition shall also include the following specific information, to the extent reasonably available to the petitioner:

(i) Identification of the domestic like product(s) proposed by petitioner;

(ii) A listing of all U.S. producers of the proposed domestic like product(s), including a street address, phone number, and contact person(s) for each producer;

(iii) A listing of all U.S. importers of the subject merchandise, including street addresses and phone numbers for each importer;

(iv) Identification of each product on which the petitioner requests the Commission to seek pricing information in its questionnaires; and

(v) A listing of all sales or revenues lost by each petitioning firm by reason of the subject merchandise during the three years preceding filing of the petition.

(3) The petition shall contain a certification that each item of information specified in paragraph (b)(2) of this section that the petition does not include was not reasonably available to the petitioner.

(4) Petitioners are also advised to refer to the administering authority's regulations concerning the contents of petitions.

[61 FR 37831, July 22, 1996]

§ 207.12 Notice of preliminary phase of investigation.

Upon receipt by the Commission of a petition under §207.10 or receipt of notice that the administering authority has commenced an investigation under section 702(a) or section 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering authority, institute an investigation and commence the preliminary phase of the investigation under section 703(a) or section 733(a) of the Act and shall publish a notice to that effect in the Federal Register.

[61 FR 37832, July 22, 1996]

§ 207.13 Cooperation with administering authority; preliminary phase of investigation.

Subsequent to institution of an investigation pursuant to section 207.12, the Director shall conduct such investigation as the Director deems appropriate. Information adduced in the investigation shall be placed on the record. The Director shall cooperate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition. Notwithstanding §§201.11(c) and 201.14(b) of this chapter, late filings in the preliminary phase of an investigation shall be referred to the Director, who shall determine whether to accept such filing for good cause shown by the person making the filing.

[61 FR 37832, July 22, 1996]

§ 207.14 Negative petition determination.

Upon receipt by the Commission of notice from the administering authority under section 702(d) or section 732(d) of the Act that the administering authority has made a negative petition determination under section 702(c)(3) or section 732(c)(3) of the Act, the investigation begun pursuant to §207.12 shall terminate. All persons who have received requests for information from the Director shall be notified of the termination.

[61 FR 37832, July 22, 1996]

§ 207.15 Written briefs and conference.

Each party may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation. Briefs shall be signed, shall include a table of contents, and shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, and shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day (on paper measuring 8.5 x 11 inches, double-spaced and single-sided). Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for the filing of briefs. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission's staff. If he deems it appropriate, the Director shall hold a conference. The conference, if any, shall be held in accordance with the procedures in §201.13 of this chapter, except that in connection with its presentation a party may provide written witness testimony at the conference; if written testimony is provided, eight (8) true paper copies shall be submitted. The Director may request the appearance of witnesses, take testimony, and administer oaths.

[61 FR 37832, July 22, 1996, as amended at 76 FR 61937, October 6, 2011]

§ 207.16 [Reserved]

§ 207.17 Staff report.

Prior to the Commission's preliminary determination, the Director shall submit to the Commission a staff report. A public version of the staff report shall be made available to the public after the Commission's preliminary determination and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under §207.7.

§ 207.18 Notice of preliminary determination.

Whenever the Commission makes a preliminary determination, the Secretary shall serve copies of the determination and a public version of the staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish a notice of such determination in the Federal Register. If the Commission's determination is negative, or that imports are negligible, the investigation shall be terminated. If the Commission's determination is affirmative, the notice shall announce commencement of the final phase of the investigation.

[61 FR 37832, July 22, 1996]

Subpart C—Final Determinations, Short Life Cycle Products

Source: 56 FR 11928, Mar. 21, 1991, unless otherwise noted.

§ 207.20 Investigative activity following preliminary determination.

(a) If the Commission's preliminary determination is affirmative, the Director shall continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or section 733(b) of the Act.

(b) The Director shall circulate draft questionnaires for the final phase of an investigation to parties to the investigation for comment. Any party desiring to comment on draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director.

[61 FR 37832, July 22, 1996]

§ 207.21 Final phase notice of scheduling.

(a) Notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act and notice from the administering authority of an affirmative final determination under section 705(a) or section 735(a) of the Act shall be deemed to occur on the date on which the transmittal letter of such determination is received by the Secretary from the administering authority or the date on which notice of such determination is published in the Federal Register, whichever shall first occur.

(b) Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act or, if the administering authority's preliminary determination is negative, notice of an affirmative final determination under section 705(a) or section 735(a) of the Act, the Commission shall publish in the Federal Register a Final Phase Notice of Scheduling.

(c) If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as the Director deems appropriate pending a final determination by the administering authority under section 705(a) or section 735(a) of the Act.

(d) Upon receipt by the Commission of notice from the administering authority of its final negative determination under section 705(a) or section 735(a) of the Act, the corresponding Commission investigation shall be terminated.

[61 FR 37832, July 22, 1996]

§ 207.22 Prehearing and final staff reports.

(a) *Prehearing staff report.* The Director shall prepare and place in the record, prior to the hearing, a prehearing staff report containing information concerning the subject matter of the investigation. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under §207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's final determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under section 207.7.

[56 FR 11927, Mar. 21, 1991, as amended at 60 FR 22, Jan. 3, 1995. Redesignated at 61 FR 37832, July 22, 1996]

§ 207.23 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents and shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for filing of prehearing briefs.

[70 FR 8512, Feb. 22, 2005, as amended at 76 FR 61937, October 6, 2011]

§ 207.24 Hearing.

(a) *In general.* The Commission shall hold a hearing concerning an investigation before making a final determination under section 705(b) or section 735(b) of the Act.

(b) *Procedures.* Any hearing shall be conducted after notice published in the Federal Register. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in §207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding §201.13(f) of this chapter, in connection with its presentation, a party may provide written witness testimony at the hearing; if written testimony is provided, eight (8) true paper copies shall be submitted. In the case of testimony to be presented at a closed session held in response to a request under §207.24(d), confidential and non-confidential versions shall be filed in accordance with §207.3. Any person not a party may make a brief oral statement of information pertinent to the investigation.

(c) *Hearing transcripts* —(1) *In general.* A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) *Revision of transcripts.* Within ten (10) days of the completion of a hearing, but in any event at least one (1) day prior to the date for disclosure of information set pursuant to §207.30(a), any person who testified at the hearing may submit proposed revisions to the transcript of his or her testimony to the Secretary. No substantive revisions shall be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, the Secretary shall incorporate the revision into a revised transcript.

(d) *Closed sessions.* Upon a request filed by a party to the investigation no later than seven (7) business days prior to the date of the hearing that identifies the subjects to be discussed, specifies the amount of time requested, and justifies the need for a closed session with respect to each subject to be discussed, the Commission may close a portion of a hearing to persons not authorized under §207.7 to have access to business proprietary information in order to allow such party to address business proprietary information during the course of its presentation. If any party wishes to comment on the request to close a portion of the hearing, such comments must be filed within two (2) business days after the filing of the request. In addition, during each hearing held in an investigation conducted under section 705(b) or section 735(b) of the Act, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing to persons not authorized under §207.7 to have access to business proprietary information in order to allow Commissioners to question parties and/ or their representatives concerning matters involving business proprietary information.

[61 FR 37832, July 22, 1996, as amended at 70 FR 8512, Feb. 22, 2005; 76 FR 61937, October 6, 2011]

§ 207.25 Posthearing briefs.

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

[61 FR 37833, July 22, 1996, as amended at 76 FR 61937, October 6, 2011]

§ 207.26 Statements by nonparties.

Any person other than a party may submit a brief written statement of information pertinent to the investigation within the time specified for the filing of posthearing briefs.

[56 FR 11928, Mar. 21, 1991. Redesignated at 61 FR 37832, July 22, 1996]

§ 207.27 Short life cycle products.

(a) An eligible domestic entity may file a petition to establish a product category for short life cycle merchandise which has been the subject of two or more affirmative dumping determinations. The Commission shall within thirty (30) days of the filing of the petition determine its sufficiency. If the petition is found to be sufficient, the Commission shall institute a proceeding to establish a product category and publish a notice of institution in the Federal Register. Upon request of an interested person filed within fifteen (15) days after publication of the notice of institution, the Commission shall conduct a hearing which shall be transcribed. The Commission's determination concerning the scope of the product category into which to classify the short life cycle merchandise identified by the petition shall be issued no later than ninety (90) days after the filing of the petition.

(b) The Commission may on its own initiative and at any time modify the scope of a product category established in a proceeding pursuant to paragraph (a) of this section. Ninety (90) days prior to such modification, the Commission shall publish a notice of proposed modification in the Federal Register. Upon request of an interested party filed within fifteen (15) days after publication of the notice of proposed modification, the Commission shall conduct a hearing which shall be transcribed. Written submissions concerning the proposed modification shall be accepted if filed no later than sixty (60) days after publication of the notice of proposed modification.

[56 FR 11928, Mar. 21, 1991. Redesignated at 61 FR 37832, July 22, 1996]

§ 207.28 Anticircumvention.

Prior to providing advice to the administering authority pursuant to section 781(e)(3) of the Act, the Commission shall publish in the Federal Register a notice that such advice is contemplated. Any person may file one written submission concerning the matter described in the notice no later than fourteen (14) days after publication of the notice. Such a statement shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. The statement shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, when printed out on paper measuring 8.5 x 11 inches. The Commission shall by notice provide for additional statements as it deems necessary.

[56 FR 11928, Mar. 21, 1991. Redesignated at 61 FR 37832, July 22, 1996; as amended at 76 FR 61937, October 6, 2011]

§ 207.29 Publication of notice of determination.

Whenever the Commission makes a final determination, the Secretary shall serve copies of the determination and the nonbusiness proprietary version of the final staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish notice of such determination in the Federal Register.

[61 FR 37833, July 22, 1996]

§ 207.30 Comment on information.

(a) In any final phase of an investigation under section 705 or section 735 of the Act, the Commission shall specify a date on which it will disclose to all parties to the investigation all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to §207.7. The date on which disclosure is made will occur after the filing of posthearing briefs pursuant to §207.25.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to §207.25. A comment shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by §207.3(c).

[61 FR 37833, July 22, 1996, as amended at 76 FR 61937, October 6, 2011]

Subpart D—Terminated, Suspended, and Continued Investigations, Investigations to Review Negotiated Agreements, and Investigations To Review Outstanding Determinations

Source: 56 FR 11929, Mar. 21, 1991, unless otherwise noted.

§ 207.40 Termination and suspension of investigation.

(a) An investigation under title VII may be terminated by the Commission by giving notice in the Federal Register to all parties to the investigation, upon withdrawal of the petition by the petitioner, or upon issuance of a final negative determination or termination of its investigation by the administering authority under section 303, 705 or 735 of the Act. The Commission may not terminate an investigation upon withdrawal of

the petition by the petitioner, however, before a determination is made by the administering authority under section 702(c), 703(b), 732(c) or 733(b) of the Act.

(b) Upon receipt of notice of suspension of an investigation by the administering authority under section 704 (b) or (c) or 734(b), (c), or (1), of the Act, the Secretary shall issue a notice of suspension of the Commission investigation. Such suspension shall not prevent the Director from conducting such other investigative activities as he deems appropriate with respect to the subject matter of the suspended investigation.

(c) *Resumption of suspended investigation* —(1) *Purpose.* If the administering authority determines pursuant to section 704(i) or 734(i) of the Act to resume a suspended investigation and so notifies the Commission of its determination, and in the event that the suspended investigation was not terminated, the Commission shall resume the investigation.

(2) *Procedures.* The procedures set forth in subpart C shall apply to all investigations instituted under this section.

[56 FR 11927, Mar. 21, 1991, as amended at 60 FR 22, Jan. 3, 1995]

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

If the administering authority determines to suspend an investigation upon acceptance of an agreement to eliminate the injurious effect of subsidized imports or imports sold at less than fair value, the Commission shall, upon petition, initiate an investigation to determine whether the injurious effect of imports of the merchandise which was the subject of the suspended investigation is eliminated completely by the agreement. Petitions may be filed by a party to the investigation which is an interested party described in paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act. Investigations under this section shall be completed within seventy five (75) days of their initiation.

§ 207.42 Investigation continued upon request.

Upon receipt of advice from the administering authority that it has received a request for the continuation of a suspended investigation pursuant to section 704(g) or 734(g) of the Act, the Commission shall continue the investigation. The procedures set forth in subparts B and C of this part, including applicable time limitations, shall apply to all continued investigations within this rule.

§ 207.43 [Reserved]

§ 207.44 Consolidation of investigations.

The Commission may, when appropriate, consolidate continued investigations under section 704(g) or section 734(g) of the Act with investigations to review agreements for the elimination of injury under section 704(h) or section 734(h) of the Act.

§ 207.45 Investigation to review outstanding determination.

(a) *Request for review.* Any person may file with the Commission a request for the institution of a review investigation under section 751(b) of the Act. The person making the request shall also promptly serve copies of the request on the parties to the original investigation upon which the review is to be based. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission.

(b) *Notice of receipt of a request.* Upon the receipt of a properly filed and sufficient request for a review investigation, the Secretary shall publish a notice of having received such a request in the Federal Register inviting public comment on the question of whether the Commission should institute a review investigation. Persons shall have at least thirty (30) days from the date of publication in the Federal Register within which to submit comments to the Commission.

(c) *Institution of an investigation.* Within thirty (30) days after the close of the period for public comments following publication of the receipt of a request, the Commission shall determine whether the request shows changed circumstances sufficient to warrant a review and, if so, shall institute a review investigation. The Commission may also institute a review investigation on its own initiative. The review investigation shall be instituted by notice published in the Federal Register and shall be completed within one hundred twenty (120) days of the date of such publication. If the Commission determines that a request does not show changed circumstances sufficient to warrant a review, the request shall be dismissed and a notice of the dismissal published in the Federal Register stating the reasons therefor.

(d) *Conduct of review investigation.* The procedures set forth in subpart C of part 207 shall apply to all investigations instituted under this section.

[56 FR 11929, Mar. 21, 1991, as amended at 63 FR 30607, June 5, 1998]

§ 207.46 Investigations concerning certain countervailing duty orders.

(a) *Definitions.* For purposes of this section:

(1) *Requesting party* means an interested party described in section 771(9) (C), (D), (E), (F), or (G) of the Act.

(2) *Order* means a countervailing duty order issued under section 303 of the Act as to which the requirement of an affirmative determination of material injury under section 303(a)(2) of the Act was not applicable at the time such order was issued.

(3) *WTO Agreement* means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(b) *Request for review.* A requesting party may file with the Commission a request for an investigation under section 753 of the Act within the time period established by section 753(a)(3) of the Act. The request should contain the following information:

(1) A description and identification of the relevant domestic like product, the industry in the United States producing that product that is likely to be materially injured by reason of imports of the subject merchandise if the Order is revoked, and each individual member of that industry.

(2) Information reasonably available to the requesting party concerning the names and addresses of all known enterprises believed to be manufacturing, producing, exporting, or importing the subject merchandise;

(3) Information reasonably available to the requesting party documenting that the industry described in paragraph (b)(1) of this section is likely to be materially injured by reason of subject imports if the Order is revoked, including:

(i) Information concerning the capacity, production, sales, market share, inventories, employment, wages, productivity, profits, ability to raise capital, and development and production efforts of the industry described in paragraph (b)(1) of this section.

(ii) Information concerning current and projected production capacity in the exporting country of the subject merchandise, inventories of the subject merchandise, and the existence of barriers to the importation of such merchandise into countries other than the United States.

(4) Information concerning any scope and anticircumvention rulings issued by the administering authority with respect to the Order.

(c) *Initiation of Investigation.* (1) Upon the receipt of a timely filed request for a section 753 investigation satisfying the requirements of paragraph (b) of this section, the Secretary shall publish a notice of initiation of such investigation in the Federal Register.

(2) Subject to paragraph (c)(3) of this section, a section 753 investigation shall be completed within one year of the date of publication of the notice of initiation of such investigation in the Federal Register.

(3) The Commission may take more than one year to complete section 753 investigations for which requests for investigations are received within one year after the date on which the WTO Agreement enters into force with respect to the United States. All such investigations must be completed within four years of that date, however. In determining whether to extend the completion date for a section 753 investigation, the Commission shall consult with the administering authority. Grounds for extending completion include,

but are not limited to, the desire to conduct investigations involving the same or similar domestic industries and domestic like products on a simultaneous basis, and the desire to efficiently manage the Commission's caseload.

(d) *Conduct of Investigations.* The procedures set forth in subparts A and C of this part shall apply to all investigations initiated under this section.

(e) *When No Request for Review Is Filed.* When there has been no properly filed and sufficient request for a section 753 investigation of an Order, the Commission shall notify the administering authority that a negative determination has been made under section 753(a) of the Act with respect to that Order.

(f) *Pending and Suspended Section 303 Investigations.* If, on the data on which a country becomes a signatory to the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act, there is a section 303 countervailing duty investigation in progress or suspended with respect to that country's merchandise for which the requirement of a material injury determination under section 303(a)(2) of the Act was not applicable at the time the investigation was initiated, the Commission shall commence an investigation pursuant to the provisions of section 753(c) of the Act with respect to pending investigations and suspended investigations to which section 704(i)(1)(B) of the Act applies.

(g) *Request for simultaneous section 751(c) review.* (1) A requesting party who requests a section 753 review may at the same time request from the Commission and the administering authority a review under section 751(c) of the Act of a countervailing or antidumping duty order involving the same or comparable subject merchandise.

(2) Should the administering authority, after consulting with the Commission, determine to initiate a section 751(c) review, the Commission shall conduct a consolidated review under sections 751(c) and 753 of the Act of the orders involving the same or comparable subject merchandise. Any such consolidated review shall be conducted under the applicable procedures set forth in subparts A and F of this part.

(3) Should the administering authority, after consulting with the Commission, determine not to initiate a section 751(c) review, the Commission will consider the request for a section 753 review pursuant to the procedures established in this section.

[60 FR 23, Jan. 3, 1995, as amended at 63 FR 30607, June 5, 1998]

Subpart E—Judicial Review

Source: 56 FR 11930, Mar. 21, 1991, unless otherwise noted.

§ 207.50 Judicial review.

(a) *In general.* Persons entitled to judicial review under section 516A of the Act may seek review in the U.S. Court of International Trade.

(b) *Transmittal of record.* In the event a Commission determination is appealed to the U.S. Court of International Trade under section 516A, a copy of the record in the investigation before the Commission, as such record is defined in §207.2(f), or a certified list of all items therein, shall be transmitted to the court by the Secretary in accordance with the rules of the court.

(c) *Service of process.* The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 516A of the Act.

§ 207.51 Judicial review of denial of application for disclosure of certain business proprietary information under administrative protective order.

(a) *In general.* Persons entitled to judicial review under section 777(c)(2) of the Commission determination not to disclose business proprietary information may apply to the U.S. Court of International Trade for an order directing the Commission to make the information involved available.

(b) *Transmittal of record.* In the event a court order is sought under section 777(c)(2) requiring the Commission to disclose business proprietary information, the Secretary shall within 20 days after service of a summons and complaint upon the Commission transmit to the court under seal the business proprietary information involved along with pertinent parts of the record.

(c) *Pertinent parts of the record.* The pertinent parts of the record shall consist of:

(1) The application for Commission disclosure together with any documents filed in support thereof or in opposition thereto.

(2) Any Government memoranda relating to the Commission's determination, and

(3) The Commission's action on the application.

(d) *Service of process.* The Commission's General Counsel shall be the Commission's agent for service of process in cases under section 777(c)(2) of the Act.

Subpart F—Five-Year Reviews

Source: 63 FR 30608, June 5, 1998, unless otherwise noted.

§ 207.60 Definitions.

For purposes of this subpart:

(a) The term *five-year review* means a five-year review conducted pursuant to section 751(c) of the Act. The provisions of part 201 of this chapter and subpart A of this part pertaining to “investigations” are generally applicable to five-year reviews, unless superseded by a provision in this subpart of more specific application.

(b) The term *expedited review* means a five-year review conducted by the Commission pursuant to section 751(c)(3)(B) of the Act.

(c) The term *full review* means a five-year review that has not been expedited by the Commission or terminated pursuant to section 751(c)(3) of the Act.

(d) The term *notice of institution* shall refer to the notice of institution of five-year review that the Commission shall publish in the Federal Register requesting that interested parties provide information to the Commission upon initiation of a five-year review.

§ 207.61 Responses to notice of institution.

(a) *When Information Must Be Filed* . Responses to the notice of institution shall be submitted to the Commission no later than 30 days after its publication in the Federal Register.

(b) *Information to be filed with the Secretary.* The notice of institution shall direct each interested party to make a filing pursuant to §§201.6, 201.8 and 207.3 of this chapter containing the following:

(1) A statement expressing its willingness to participate in the review by providing information requested by the Commission;

(2) A statement regarding the likely effects of revocation of the order(s) or termination of the suspended investigation(s) under review;

(3) Such information or industry data as the Commission may specify in the notice of institution.

(c) *When requested information cannot be supplied.* Any interested party that cannot furnish the information requested by the notice of institution in the requested form and manner shall, promptly after issuance of the notice, notify the Commission, provide a full explanation of why it cannot furnish the requested information, and indicate alternative forms in which it can provide equivalent information. The Commission may modify its requests to the extent necessary to avoid posing an unreasonable burden on that party.

(d) *Submissions by persons other than interested parties.* Any person who is not an interested party may submit to the Commission, in a filing satisfying the requirements of §201.8 of this chapter, information relevant to the Commission's review no later than 50 days after publication of the notice of institution in the Federal Register.

(e) A document filed under this section shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day.

[44 FR 76468, Dec. 26, 1979, as amended at 74 FR 2849, Jan. 16, 2009; 76 FR 61937, October 6, 2011]

§ 207.62 Rulings on adequacy and nature of Commission review.

(a) *Basis for rulings on adequacy.* The Commission will assess the adequacy of aggregate interested party responses to the notice of institution with respect to each order or suspension agreement under review and, where the underlying affirmative Commission determination found multiple domestic like products, on the basis of each domestic like product.

(b) *Comments to the Commission.* (1) Comments to the Commission concerning whether the Commission should conduct an expedited review may be submitted by:

(i) Any interested party that is a party to the five-year review and that has responded to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the five-year review.

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall not exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 x 11 inches. Comments containing new factual information shall be disregarded.

(c) *Notice of scheduling of full review.* If the Commission concludes that interested parties' responses to the notice of institution are adequate, or otherwise determines that a full review should proceed, investigative activities pertaining to that review will continue. The Commission will publish in the Federal Register a notice of scheduling pertaining to subsequent procedures in the review.

(d) *Procedures for expedited reviews.* (1) If the Commission concludes that interested parties' responses to the notice of institution are inadequate, it may decide to conduct an expedited review. In that event, the Commission shall direct the Secretary to issue a notice stating that the Commission has decided to conduct an expedited review and inviting those parties to the review described in paragraph (d)(2) of this section to file written comments with the Secretary on what determination the Commission should reach in the review. The date on which such comments must be filed will be specified in the notice to be issued by the Secretary. Comments containing new factual information shall be disregarded.

(2) The following parties may file the comments described in paragraph (d)(1) of this section:

(i) Any interested party that is a party to the five-year review and that has filed an adequate response to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the five-year review.

(3) Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review within the time specified for the filing of written comments.

(4) The Director shall prepare and place in the record, prior to the date on which the comments described in paragraph (d)(1) of this section must be filed, a staff report containing information concerning the subject matter of the review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under §207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(e) *Use of facts available.* The Commission's determination in an expedited review will be based on the facts available, in accordance with section 776 of the Act.

[63 FR 30608, June 5, 1998, as amended at 68 FR 32978, June 3, 2003; 76 FR 61937, October 6, 2011]

§ 207.63 Circulation of draft questionnaires.

(a) The Director shall circulate draft questionnaires to the parties for comment in each full review.

(b) Any party desiring to comment on the draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new information should be presented at this time. The Commission will disregard subsequent requests for collection of new information absent a showing that there is a compelling need for the information and that the information could not have been requested in the comments on the draft questionnaires.

§ 207.64 Staff reports.

(a) *Prehearing staff report.* The Director shall prepare and place in the record, prior to the hearing, a prehearing staff report containing information concerning the subject matter of the five-year review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under §207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. The Director shall place the final staff report in the record. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under §207.7.

[63 FR 30608, June 5, 1998, as amended at 68 FR 32978, June 3, 2003]

§ 207.65 Prehearing briefs.

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. A prehearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted (on paper measuring 8.5 x 11 inches and single-sided) on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination.

[63 FR 30608, June 5, 1998, as amended at 68 FR 32978, June 3, 2003; 76 FR 61937, October 6, 2011]

§ 207.66 Hearing.

(a) *In general.* The Commission shall hold a hearing in each full review. The date of the hearing shall be specified in the scheduling notice.

(b) *Procedures.* Hearing procedures in five-year reviews will conform to those for final phase antidumping and countervailing duty investigations set forth in §207.24.

§ 207.67 Posthearing briefs and statements.

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

(b) *Statements from nonparties.* Any person other than a party may submit a brief written statement of information pertinent to the review within the time specified for the filing of posthearing briefs.

[63 FR 30608, June 5, 1998, as amended at 76 FR 61937, October 6, 2011]

§ 207.68 Final comments on information.

(a) The Commission shall specify a date after the filing of posthearing briefs on which it will disclose to all parties to the five-year review all information it has obtained on which

the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to §207.7.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to §207.67. Comments shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by §207.3(c).

[63 FR 30608, June 5, 1998, as amended at 76 FR 61937, October 6, 2011]

§ 207.69 Publication of determinations.

Whenever the Commission makes a determination concluding a five-year review, the Secretary shall serve copies of the determination and, when applicable, the nonbusiness proprietary version of the final staff report on all parties to the review, and on the administering authority. The Secretary shall publish notice of such determination in the Federal Register.

Subpart G—Implementing Regulations for the North American Free Trade Agreement

Authority: Sec. 777(d) of the Tariff Act of 1930 (19 U.S.C. 1677f (d); secs. 402(g), 405 of the North American Free Trade Agreement Implementation Act (107 Stat. 2057, Pub. L. 103–182, Dec. 8, 1993).

Source: 59 FR 5097, Feb. 3, 1994, unless otherwise noted.

§ 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Article 1904 of the North American Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the North American Free Trade Agreement Implementation Act (19 U.S.C. 1516a and 1677f). These regulations are authorized by section 402(g) of the North American Free Trade Agreement Implementation Act and 19 U.S.C. 1335.

§ 207.91 Definitions.

As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under section 310(f) of title 5 of the United States Code to conduct proceedings under this part in accordance with section 554 of title 5 of the United States Code;

Agreement means the North American Free Trade Agreement entered into among Canada, the United States of America and the United Mexican States ("Mexico"); or, with respect to binational panel proceedings between Canada and the United States underway as of the date of enactment of the Agreement, or any binational panel proceedings that may proceed between the United States and Canada following any withdrawal from the Agreement by the United States or Canada, the United States-Canada Free Trade Agreement entered into between the Government of Canada and the Government of the United States of America, effective as of January 1, 1989;

Article 1904 Rules means the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America, Canada and Mexico pursuant to the Agreement, or where applicable under the Agreement, the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Charged party means a person who is charged by the Commission with committing a prohibited act under 19 U.S.C. 1677f(f)(3);

Clerical person means a person such as a paralegal, secretary, or law clerk who is employed or retained by and under the direction and control of an authorized applicant;

Commission means the United States International Trade Commission;

Commission Secretary means the Secretary to the Commission;

Complaint means the complaint referred to in the Article 1904 Rules;

Counsel means persons described in the definition of *counsel of record* in Rule 3 of the Article 1904 Rules or the ECC Rules, and counsel for an interested person who plans to file a timely complaint or notice of appearance in the panel review.

Date of Service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, but if a deadline falls on a weekend or United States federal holiday, it shall be extended to the next working day;

Extraordinary challenge committee means the committee established pursuant to Annex 1904.13 of the Agreement to review decisions of a panel or conduct of a panelist;

ECC Rules means the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America, Canada and Mexico, or where applicable, the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

Final determination, means “final determination” under Article 1911 of the Agreement;

Free Trade Area Country means the “free trade area country” as defined in 19 U.S.C. 1516a(f)(10);

Investigative attorney means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under 19 CFR 207.100 *et seq.*

Mexican Secretary means the Secretary of the Mexican section of the Secretariat and includes any persons authorized to act on the Secretary's behalf;

NAFTA Act means the North American Free Trade Agreement Implementation Act, Pub. L. 103–182 (December 8, 1993);

Notice of Appearance means the notice of appearance provided for by Article 1904 Rules or by the ECC Rules;

Panel review means review of a final determination pursuant to chapter 19 of the Agreement, including review by an extraordinary challenge committee;

Party means, for the purposes of 19 CFR 207.100 through 207.120, either the investigative attorney(ies) or the charged party(ies);

Person means, for the purposes of 19 CFR 207.100 through 207.120, an individual, partnership, corporation, association, organization, or other entity;

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A);

Professional means an accountant, economist, engineer, or other non-legal specialist who is employed by, or under the direction and control, of a counsel;

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order;

Proprietary information means confidential business information as defined in 19 CFR 201.6(a);

Protective Order means an administrative protective order issued by the Commission;

Relevant FTA Secretary means the Secretary referred to in Article 1908 of the Agreement;

Secretariat means the Secretariat established pursuant to Article 2002 of the Agreement and includes the Secretariat sections located in Canada, the United States, and Mexico;

Service address means the facsimile number, if any, and address of the counsel of record for a person or, where a person is not represented by counsel, the facsimile number, if any, and address set out by a person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served or, where a Change of Service Address has been filed by a person, the facsimile number, if any, and address set out as the service address in that form;

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review;

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Except as otherwise provided in this subpart, the definitions set forth in the Article 1904 Rules and the ECC Rules are applicable to this subpart and to any protective orders issued pursuant to this subpart.

§ 207.92 Procedures for commencing review of final determinations.

(a) *Notice of Intent to Commence Judicial Review.* A Notice of Intent to Commence Judicial Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

(b) *Request for Panel Review.* A Request for Panel Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

§ 207.93 Protection of proprietary information during panel and committee proceedings.

(a) *Requests for protective orders.* A request for access to proprietary information pursuant to 19 U.S.C. 1677f(f)(1) shall be made to the Secretary of the Commission.

(b) *Persons authorized to receive proprietary information under protective order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or an extraordinary challenge committee, any assistant to a member, court reporters and translators;

(2) Counsel and professionals, provided that the counsel or professional does not participate in competitive decision-making, as defined in *US Steel Corp.* v. *United States,* 730 F.2d 1465 (Fed. Cir. 1984), for the person represented or for any person that would gain a competitive advantage through knowledge of the proprietary information sought;

(3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraph (b) (1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) Are not involved in the competitive decision-making, or the support functions for the competitive decision-making, of a participant to the proceeding or of any person that would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(4) The Secretaries of the United States, Canadian and Mexican sections of the Secretariat and members of their staffs;

(5) Any officer or employee of the United States Government who the United States Trade Representative informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Economia, as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(7) Counsel representing, and other staff providing support to, the investigating authority, the Commission.

(c) *Procedures for obtaining access to proprietary information under protective order* — (1) *Persons who must file an application for release under protective order.* To be permitted access to proprietary information in the administrative record of a determination under panel review, all persons described in paragraphs (b)(1), (2), (4), (5), (6), or (c)(5)(i) of this section shall file an application for a protective order.

(2) *Contents of applications for release under protective order.* (i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this rule. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b) (1), (4), (5) and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW., Washington, DC 20436.

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than:

(*1*) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(*2*) The person from whom the information was obtained,

(*3*) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(*4*) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b)(1), (2), (5), or (6) of this section who has been issued a protective order, if such clerical person has signed and dated an agreement, provided to the Commission Secretary upon request, to be bound by the terms set forth in the application for a protective order of the person who retains or employs him or her (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary, return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The United States Secretary may retain a single file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and

(E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as corresponding provisions of Canadian and Mexican law on disclosure undertakings concerning proprietary information.

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an

application immediately upon assuming official responsibilities in the United States, Canadian or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretary of Economia, as the case may be, has notified the Commission Secretary that such person requires access.

(4) *Filing and service of applications* —(i) *Applications of persons described in paragraph (b)(1) of this section.* A person described in paragraph (b)(1) of this section shall submit the completed original of the form to the United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus three (3) copies of the application with the Commission Secretary.

(ii) *Applications of persons described in paragraph (b)(2) of this section* —(A) *Filing.* A person described in paragraph (b)(2) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall file the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) *Service.* If an applicant files before the deadline for filing notices of appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accordance with the applicable Article 1904 Rules and ECC Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

(iii) *Applications of persons described in paragraph (b)(4) of this section.* A person described in paragraph (b)(4) of this section shall file the original and three (3) copies of the protective order application with the Commission Secretary.

(iv) *Applications of persons described in paragraph (b)(5) of this section.* A person described in paragraph (b)(5) of this section shall file the original and three (3) copies with the Commission Secretary and four (4) copies with the United States Secretary.

(v) *Applications of persons described in paragraph (b)(6) of this section.* A person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the relevant FTA Secretary. The relevant FTA Secretary in turn, shall file the original and three (3) copies with the Commission Secretary.

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceedings.* (i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order

that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of NAFTA APO Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary; and

(B) File four (4) copies of the completed NAFTA APO Form C with the United States Secretary.

(iii) Any person described in paragraph (c)(5)(i) of this section must submit a new application for a protective order at the commencement of a panel review.

(d) *Issuance of protective orders* —(1) *Applicants described in paragraphs (b) (1), (4), (5) and (6) of this section.* Upon approval of an application of persons described in paragraphs (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel proceeding initiated under the United States-Canada Free Trade Agreement to whom the Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

(2) *Applicants described in paragraph (b)(2) of this section.* (i) The Commission shall not rule on an application filed by a person described in paragraph (b)(2) until ten (10) days after the request is filed unless there is a compelling need to rule more expeditiously. Any person may file an objection to the application within seven (7) days of the application's filing date, stating the specific reasons why the Commission should not grant the application. One (1) copy of the objection shall be served on the applicant and on all persons who were served with the application. Any reply to an objection will be considered if it is filed and served before the Commission Secretary renders a decision. Service of objections and replies shall be made in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Denial of application.* The Commission's Secretary may deny an application by serving a letter notifying the applicant of the decision and the reasons therefor within fourteen (14) days of the receipt of the application. The letter shall advise the applicant of

the right to appeal to the Commission. Any appeal must be made within five (5) days of the service of the Commission Secretary's letter.

(iii) *Appeal from denial of an application.* An appeal from a denial of a request must be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Such appeal must be served in accordance with paragraph (c)(4)(ii)(B) of this section. The Commission shall make a final decision granting or denying the appeal within thirty (30) days from the day on which the application was filed with the Commission Secretary.

(iv) *Approval of the application.* If the Commission Secretary does not deny an application pursuant to paragraph (d)(2)(ii) of this section, the Commission shall, by the fifteenth day following the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

(v) *Filing of protective orders.* If a protective order is issued to a person described in paragraph (b)(2) of this section, the person shall immediately file one (1) copy of the protective order with the United States Secretary.

(e) *Retention of protective orders; service list.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance with paragraph (b)(6)(ii) of this section. The Secretary shall establish a list of persons authorized to receive proprietary information in a review, including parties whose applications have been granted.

(f) *Filing of amendments to granted applications.* Any person who has been issued a protective order under this section shall:

(1) If a person described in paragraph (b)(1) of this section, submit any amendments to the application for a protective order to the United States Secretary, who shall file the original and three (3) copies with the Commission Secretary;

(2) If a person described in paragraph (b)(2) of this section, file the original and three (3) copies of any amendments to the application with the Commission Secretary and four (4) copies with the United States Secretary; or

(3) If any other person, file the original and three (3) copies of any amendments to the application with the Commission Secretary.

(g) *Modification or revocation of protective orders.* (1) Any person may file with the Commission Secretary a request that a protective order issued under this section be modified or revoked because of changed conditions of fact or law, or on grounds of the public interest. The request shall state the changes desired and include any supporting materials and arguments. The person filing the request shall serve a copy of the request upon the person to whom the protective order was issued.

(2) Any person may file a response to the request within twenty (20) days after it is filed, unless the Commission issues a notice indicating otherwise. After consideration of the request and any responses thereto, the Commission shall take such action as it deems appropriate.

(3) If a request filed under this paragraph alleges that a person is violating the terms of a protective order, the Commission may treat the request as a report of violation under §207.101 of this subpart.

(4) The Commission may also modify or revoke a protective order on its own initiative.

(5) If the Commission revokes, amends or modifies a person's protective order, it shall provide to the person, the United States Secretary and all participants a copy of the Notice of Revocation, amendment or modification.

[59 FR 5097, Feb. 3, 1994, as amended at 70 FR 8512, Feb. 22, 2005]

§ 207.94 Protection of privileged information during panel and committee proceedings.

When and if a panel or extraordinary challenge committee decides that the Commission is required, pursuant to the United States law, to grant access pursuant to protective order to information for which the Commission has claimed a privilege, any individual to whom a panel or extraordinary challenge committee has directed the Commission release information and who is otherwise within the category of individuals eligible to receive proprietary information pursuant to 19 CFR 207.93(b), may file an application for a protective order with the Commission. Upon receipt of such application, the Commission Secretary shall certify to the Commission that a panel or extraordinary challenge committee has required the Commission to release such information to specified persons, pursuant to 19 U.S.C. 1677f(f)(1). Twenty-four hours following such certification, the Commission Secretary shall issue a protective order releasing such information to any authorized applicant subject to terms and conditions equivalent to those described in 19 CFR 207.93(c)(2).

Procedures for Imposing Sanctions for Violation of the Provisions of a Protective Order Issued During Panel and Committee Proceedings

§ 207.100 Sanctions.

(a) A person, other than a person exempted from this regulation by the provisions of 19 U.S.C. 1677f(f)(4), who is determined under this subpart to have committed a prohibited act, may be subject to one or more of the following sanctions:

(1) A civil penalty not to exceed $100,000 for each violation, each day of a continuing violation constituting a separate violation;

(2) Debarment from practice in any capacity before the Commission, which disbarment may, in appropriate circumstances, include such person's partners, associates, employers

and employees, for a designated time period following publication of a determination that the protective order has been breached;

(3) Denial of further access to proprietary or privileged information covered by the breached protective order or to proprietary information in future Commission proceedings;

(4) An official reprimand by the Commission;

(5) In the case of an attorney, accountant, or other professional, referral of the facts underlying the prohibited act to the ethics panel or other disciplinary body of the appropriate professional association or licensing authority;

(6) When appropriate, referral of the facts underlying the violation to the United States Trade Representative or his or her designees, or to another government agency; and

(7) Any other administrative sanctions as the Commission determines to be appropriate.

(b) Each partner, associate, employer, and employee described in paragraph (a)(2) of this section is entitled to all the administrative rights set forth in this subpart.

(c) For the purposes of this subpart, the knowing receipt of information the receipt of which constitutes a violation of a protective order includes, but is not limited to, the reading or unauthorized dissemination of the information covered by a protective order by a person who knows or should reasonably believe that he or she is not authorized to read or disseminate such information.

§ 207.101 Reporting of prohibited act and commencement of investigation.

(a) Any person who has information indicating that a prohibited act has been committed shall immediately report all pertinent facts relating thereto to the Commission Secretary.

(b) Upon receipt, the Commission Secretary shall record the information, assign an investigation number, and forward all information he or she received to the Office of Unfair Import Investigations.

(c) As expeditiously as possible, the Office of Unfair Import Investigations shall conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have committed a prohibited act. At any time, the Office of Unfair Import Investigations may request that the Commission assign an administrative law judge to oversee the inquiry.

(d) At the conclusion of the inquiry, the Office of Unfair Import Investigations shall assess whether the available information is sufficient to provide reasonable cause to believe that a person or persons have committed a prohibited act.

§ 207.102 Initiation of proceedings.

(a) Upon completion of the inquiry,

(1) If the Office of Unfair Import Investigations concludes that there is not reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Submit a report to the Commission; and

(ii) Unless the Commission directs otherwise, the file shall be closed and returned to the Commission Secretary.

(2) If the Office of Unfair Import Investigations concludes that there is reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Make a recommendation to the Commission regarding whether and to what extent it is appropriate to notify the person whose proprietary information may have been compromised; and

(ii) Submit a report and recommendation to the Commission regarding whether to initiate sanctions proceedings or to take other appropriate action.

(b) The Commission may make any appropriate determination regarding the initiation of sanctions proceedings, including rejecting, approving, or approving and amending any recommendation made by the Office of Unfair Import Investigations.

(c) If the Commission determines that it is appropriate to issue a charging letter, the Commission shall appoint an administrative law judge to oversee the proceeding and the Commission Secretary shall initiate a proceeding under this subpart by issuing a charging letter as set forth in 19 CFR 207.103.

(d) If the Commission determines that it is appropriate to initiate proceedings, but that the party to be charged is beyond the jurisdiction of the Commission and within the jurisdiction of another Free Trade Area country, or that for other reasons an authorized agency of another Free Trade Area country would be the more appropriate forum for initiation of a proceeding, the Commission shall take the necessary steps for issuance of a letter requesting the authorized agency of another Free Trade Area country to initiate proceedings under applicable law on the basis of an alleged prohibited act.

(e) The Commission may make any determination regarding notification about the alleged prohibited act and the relevant underlying facts to the persons who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the compromised party is appropriate.

(f) If the Commission determines that it is not appropriate to issue a charging letter or to refer the facts to the authorized agency of another Free Trade Area country, the file shall be closed and returned to the Commission Secretary, unless the Commission directs otherwise.

(g) All aspects of the inquiry shall remain confidential, except as deemed reasonably necessary to the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, or except as otherwise ordered by the Commission. Except as the Commission may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of a prohibited act for which no proceeding is initiated one year after the file is closed.

§ 207.103 Charging letter.

(a) *Contents of charging letter.* Each charged party shall be served by the Commission with a copy of a charging letter and any accompanying motion for interim measures, as provided for in 19 CFR 207.106. The charging letter shall include:

(1) Allegations concerning a prohibited act;

(2) A citation to §207.100 of this subpart, for a listing of sanctions that may be imposed for a prohibited act;

(3) A statement that a proceeding has been initiated and that an APA hearing will be held before an administrative law judge;

(4) A statement that the charged party or his or her attorney may request the issuance of an appropriate administrative protective order to obtain access to the information upon which the charge is based;

(5) A statement that the charged party has a right to retain an attorney at the charged party's own expense for purposes of representation; and

(6) A statement that the charged party has the right to request in the response described in §207.104 of this subpart that the proceedings remain confidential to the extent practicable.

(b) *Service of charging letter.* (1) The charging letter shall be served in a double envelope. The inner envelope shall indicate that it is to be opened only by the addressee. Service of a charging letter shall be made by one of the following methods:

(i) Mailing a copy by registered or certified mail addressed to the charged party at the party's last known permanent address; or

(ii) Personal service; or

(iii) Any other method acceptable under Rule 4 of the Federal Rules of Civil Procedure.

(2) Service shall be evidenced by a certificate of service signed by the person making such service.

(c) *Confidentiality of charging letter.* Prior to entry of an order by the administrative law judge under §207.105 of this subpart, the charging letter will be confidential and disclosed only to necessary Commission staff and the charged parties.

(d) *Amendment of charging letter.* (1) At any time after proceedings have been initiated, the investigative attorney may move for leave to amend or withdraw the charging letter.

(2) If the administrative law judge determines that the charging letter should be amended to include additional parties, the judge shall issue a recommended determination to that effect. The Commission shall review the recommended determination, and issue a determination granting or denying the motion to amend the charging letter to include additional parties.

(3) Upon motion, the administrative law judge may grant leave to amend the charging letter for good cause shown upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties already charged.

(4) Any amended charging letter shall be served upon all charged parties in the form and manner set forth in paragraphs (a) and (b) of this section.

§ 207.104 Response to charging letter.

(a) *Time for filing.* A charged party shall have twenty (20) days from the date of service of the charging letter within which to file a written response to the allegations made in the charging letter unless otherwise ordered by the administrative law judge.

(b) *Form and content.* Each response shall be under oath and signed by the charged party or its duly authorized officer, attorney, or agent, with the name, address, and telephone number of the same. Each charged party shall respond to each allegation in the charging letter, and may set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission or denial of each fact alleged in the charging letter, or if the charged party is without knowledge of any such fact, a statement to that effect.

(c) *Request for confidentiality.* The response shall contain a statement as to whether the charged party seeks an order to maintain the confidentiality of all or part of the proceedings to the extent practicable, pursuant to §207.105 of this subpart.

§ 207.105 Confidentiality.

(a) *Protection of proprietary and privileged information.* As the administrative law judge deems reasonably necessary for the preparation of the defense of a charged party, the attorney for the charged party may be granted access in these proceedings to proprietary information or to the privileged information, the disclosure of which is the subject of the proceedings. Any such access shall be under protective order consistent with the provisions of this subpart.

(b) *Confidentiality of proceedings.* Upon the request of any charged party pursuant to §207.106 of this subpart, the administrative law judge will issue an appropriate confidentiality order. This order will provide for the confidentiality, to the extent practicable and permitted by law, of information relating to allegations concerning the commitment of a prohibited act, consistent with public policy considerations and the needs of the parties in conducting the sanctions proceedings. The order will provide that all proceedings under this provision shall be kept confidential within the terms of the order, except to the extent that a discussion of such proceedings is incorporated into a published final decision of the Commission. Any confidential information not disclosed in such decision will remain protected.

§ 207.106 Interim measures.

(a) At any time after proceedings are initiated, the administrative law judge, upon motion, or on his or her own initiative, may issue a recommended determination to revoke the allegedly-violated protective order, to disclose information about the proceedings that would otherwise be kept confidential, or to take other appropriate interim measures.

(b) Before issuing a determination recommending interim sanctions, the administrative law judge shall afford a party against whom such measures are proposed the opportunity to oppose them. The administrative law judge shall ordinarily decide any motion under this section no more than twenty (20) days after it is filed.

(c) The Commission shall review any recommended determination regarding the imposition of interim measures within twenty (20) days from its issuance or such other time as it may order. The Commission may impose any appropriate interim sanctions.

(d) The administrative law judge may recommend to the Commission that interim measures be modified or revoked. The Commission shall rule on such recommendation within ten (10) days after its issuance or such other time as it may order.

(e) The Commission Secretary shall immediately notify the Secretariat of any interim measures that revoke or modify an outstanding protective order in an ongoing panel review. The Commission Secretary shall also immediately notify the Secretariat of any revocation or modification of an interim measure.

§ 207.107 Motions.

(a) *Presentation and disposition.* (1) After issuance of the charging letter and while part of the proceeding is pending before the administrative law judge, all motions relating to that part of the proceeding shall be addressed to the administrative law judge.

(2) While part of a proceeding is pending before the Commission, all motions relating to that part of the proceeding shall be addressed to the Chairman of the Commission. All written motions shall be filed with the Commission Secretary and served upon all parties.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses.* Any response to a motion shall be filed within ten (10) days after service of the motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Service.* All motions, responses, replies, briefs, petitions, and other documents filed in sanctions proceedings under this subpart shall be served by the party filing the document upon each other party. Service shall be made upon the attorney for the party unless the administrative law judge or the Commission orders otherwise.

§ 207.108 Preliminary conference.

As soon as practicable after the response to the charging letter is filed, the administrative law judge shall direct counsel or other representatives for the parties to meet with him or her at a preliminary conference, unless the administrative law judge determines that such a conference is not necessary. At the conference, the administrative law judge shall consider the issuance of such orders as the administrative law judge deems necessary for the conduct of the proceedings. Such orders may include, as appropriate under these regulations, the establishment of a discovery schedule or the issuance of an order, if requested, to provide for maintaining the confidentiality of the proceedings pursuant to §207.105(b) of this subpart.

§ 207.109 Discovery.

(a) *Discovery methods.* All parties may obtain discovery under such terms and limitations as the administrative law judge may order. Discovery may be by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things for inspection and other purposes; and

(4) Requests for admissions.

(b) *Sanctions.* If a party or an officer or agent of a party fails to comply with a discovery order, the administrative law judge may take such action as he deems reasonable and appropriate, including the issuance of evidentiary sanctions or deeming the respondent to be in default.

(c) *Depositions of nonparty officers or employees of the United States or another Free Trade Area country government* —(1) *Depositions of Commission officers or employees.* A party desiring to take the deposition of an officer or employee of the Commission (other than a member of the Office of Unfair Import Investigations or of the Office of the Administrative Law Judges), or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission direct that officer or employee to testify or produce the requested materials.

(2) *Depositions of officers or employees of other United States agencies, or of the government of another Free Trade Area country.* A party desiring to take the deposition of an officer or employee of another agency, or of the government of another Free Trade Area country, or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission seek the testimony or production of requested material from the officer or employee.

§ 207.110 Subpoenas.

(a) *Application for issuance of a subpoena.* Except as provided in §207.109(c) of this subpart, an application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. The application shall be made in writing, and shall specify the material to be produced as precisely as possible, showing the relevancy of the material and the reasonableness of the scope of the subpoena. The application shall be ruled upon by the administrative law judge.

(b) *Enforcement of a subpoena.* A motion for enforcement of a subpoena shall be made to the administrative law judge. Upon consideration of the motion and any response thereto, the administrative law judge shall recommend to the Commission in favor of or against enforcement. The administrative law judge's recommendation shall provide the basis therefor, and shall address each of the criteria necessary for enforcement of an administrative subpoena. After consideration of the administrative law judge's recommendation, the Commission shall determine whether initiation of enforcement proceedings is appropriate.

(c) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge or the Commission.

§ 207.111 Prehearing conference.

The administrative law judge may direct the attorney or other representatives for the parties to meet with him or her to consider any or all of the following:

(a) Simplification and clarification of the issues;

(b) Scope of the hearing;

(c) Stipulations and admissions of either fact or the content and authenticity of documents;

(d) Disclosure of the names of witnesses and the exchange of documents or other physical evidence that will be introduced in the course of the hearing; and

(e) Such other matters as may aid in the orderly and expeditious disposition of the proceedings.

§ 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each action initiated under §207.102 of this subpart. The purpose of such hearing shall be to receive evidence and hear argument in order to determine whether a charged party has committed a prohibited act and if so, what sanctions are appropriate. Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed, unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* The administrative law judge may order such joinder or consolidation of proceedings initiated under §207.102 of this subpart at the administrative law judge's discretion.

(c) *Compliance with Administrative Procedure Act.* The administrative law judge shall conduct a hearing that complies with the requirements of section 554 of title 5 of the United States Code.

§ 207.113 The record.

(a) *Definition of the record.* The record shall consist of—

(1) The charging letter and response, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;

(2) All orders, notices, and the recommended or initial determinations of the administrative law judge;

(3) Orders, notices, and any final determination of the Commission;

(4) Hearing transcripts, and evidence admitted at the hearing; and

(5) Any other items certified into the record by the administrative law judge.

(b) *Certification of the record.* The record shall be certified to the Commission by the administrative law judge upon his or her filing of the initial determination.

§ 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has committed a prohibited act, and as to appropriate sanctions.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following:

(1) An opinion making all necessary findings of fact and conclusions of law and the reasons therefor, and

(2) A statement that the initial determination shall become the determination of the Commission unless a party files a petition for review of the determination pursuant to §207.115 or the Commission pursuant to §207.116 of this subpart, orders on its own motion a review of the initial determination or certain issues therein.

(c) *Burden of proof.* A finding that a charged party committed a prohibited act shall be supported by clear and convincing evidence.

(d) *Effect of initial determination.* The initial determination shall become the determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission within such time orders review of the initial determination or certain issues therein pursuant to §207.115 or 207.116 of this subpart or by order shall have changed the effective date of the initial determination. In the event an initial determination becomes the determination of the Commission, the parties shall be notified thereof by the Commission Secretary.

§ 207.115 Petition for review.

(a) *The petition and responses.* (1) Any party may request a review by the Commission of the initial determination by filing with the Commission Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default.

(2) Any person who wishes to obtain judicial review pursuant to 19 U.S.C. 1677f(f)(5) must first seek review by the Commission in accordance with the procedures set forth in this regulation governing petitions for review.

(3) Any petition for review must be filed within fourteen (14) days after service of the initial determination on the charged party. The petition shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review is sought, including a statement as to whether review is sought of the initial determination regarding the commitment of a prohibited act, or of the initial determination regarding sanctions;

(iii) Set forth a concise statement of the relevant law or material facts necessary for consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review is necessary or appropriate.

(4) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission.

(5) Any party may file a response to the petition within seven (7) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant a petition for review, in whole or in part, within forty-five (45) 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 base its decision whether to grant a petition for review upon the petition and response thereto, without oral argument or further written submissions, unless the Commission shall order otherwise.

(3) The Commission shall grant a petition for 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 the filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition shall be served by the Commission Secretary on all parties.

§ 207.116 Commission review on its own motion.

Within forty-five (45) days of the date of service of the initial determination, the Commission on its own initiative shall order review of an initial determination or certain issues therein upon request of any Commissioner.

§ 207.117 Review by Commission.

On review, the parties may not present argument on any issue that is not set forth in the notice of review; and 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 Commission may make any findings or conclusions that in its judgment are proper based on the record in the proceeding.

§ 207.118 Role of the General Counsel in advising the Commission.

The Assistant General Counsel for Section 337 Investigations shall serve as Acting General Counsel for the purpose of advising the Commission on proceedings brought under this subpart if the prohibited act described in the charging letter involves a protective order issued in connection with a panel review that was pending when the letter was issued, and the General Counsel participated in the panel review. No other Commission attorney shall advise the Commission on proceedings under this subpart concerning a protective order issued during a panel review in which the attorney participated.

§ 207.119 Reconsideration.

(a) *Motion for reconsideration.* Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a motion for reconsideration, setting forth the relief desired and the grounds in support thereof. Any motion 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 moving party had no opportunity to submit arguments.

(b) *Disposition of motion for reconsideration.* The Commission shall grant or deny the motion for reconsideration. No response to a motion for reconsideration will be received unless requested by the Commission, but a motion for reconsideration will not be granted in the absence of such a request. If the motion to reconsider is granted, the Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 207.120 Public notice of sanctions.

If the final Commission decision is that there has been a prohibited act, and that public sanctions are to be imposed, notice of the decision will be published in the Federal Register and forwarded to the Secretariat. Such publication will occur no sooner than fourteen (14) days after issuance of a final decision or after any motion for reconsideration has been denied. The Commission Secretary shall also serve notice of the Commission decision upon such departments and agencies of the United States, Canadian and Mexican governments as the Commission deems appropriate.

PART 208—INVESTIGATIONS WITH RESPECT TO COMMERCIAL AVAILABILITY OF TEXTILE FABRIC AND YARN IN SUB-SAHARAN AFRICAN COUNTRIES

Authority: 19 U.S.C. 1335; 19 U.S.C. 3721(c).

Source: 72 FR 8626, Feb. 27, 2007, unless otherwise noted.

§ 208.1 Applicability of part.

This part 208 applies to proceedings of the Commission under section 112(c) of the African Growth and Opportunity Act, as amended (19 U.S.C. 3721(c)).

§ 208.2 Definitions applicable to this part.

(a) *Beneficiary sub-Saharan African country.* The term "beneficiary sub-Saharan African country" means those countries so designated by the President under 19 U.S.C. 2466a.

(b) *Lesser developed beneficiary sub-Saharan African country.* The term "lesser developed beneficiary sub-Saharan African country" means a beneficiary sub-Saharan African country that had a per capita gross national product of less than $1,500 in 1998, as measured by the International Bank for Reconstruction and Development; Botswana; and Namibia.

(c) *Applicable 1-year period.* The term "applicable 1-year period" means the 12-month period beginning on October 1 and ending on September 30 of the following year.

§ 208.3 Petitions.

(a) *Who may file.* A petition under this part may be filed with the Commission by an interested party, including a producer of fabric or yarn in a beneficiary sub-Saharan African country, a producer of apparel in a lesser developed beneficiary sub-Saharan African country, or any other person who demonstrates to the satisfaction of the Commission a proper interest in filing a petition.

(b) *Contents of petition.* The Commission will consider only petitions that address a single yarn or single fabric. The term "a single yarn or single fabric" means a single product, which may be classified in more than one heading of the HTS or may be only part of a heading. A petition shall include the following information in support of a request for a Commission investigation and determination under this part, to the extent that such information is available from governmental or other sources. To the extent information is not available from such sources, the petition may be based on best estimates, including an explanation of the basis therefor. If the petition does not include the required information and/or estimates and explanation, the petition will not be accepted, and it will instead be returned to the submitter. All quantities must be expressed in the unit of quantity used in the Harmonized Tariff Schedule of the United States, showing any conversion factors used (for example, most woven fabrics are reported in square meters, and most apparel are reported in numbers of units).

(1) *Product description.* The name and description of the fabric or yarn concerned, including fiber content, yarn size, fabric construction, and finishing processes, specifying the United States tariff provision under which such article is classified (to the 8-digit level if possible) and the beneficiary sub-Saharan African country or countries in which the fabric or yarn is produced.

(2) *Statement of interest.* The names and addresses of the interested party or parties filing the petition or represented in the petition, the location and nature of their establishments, a description of the fabrics, yarns, and apparel that they produce, import, and/or sell, for each party filing or represented (including but not limited to the fabric or yarn that is a subject of the petition), and the basis for asserting that such person or entity is an interested party eligible to file a petition under this part.

(3) *Basis for certain statements.* The basis for asserting that the subject fabric or yarn produced in a beneficiary sub-Saharan African country is available in "commercial quantities" and for "use" in a lesser developed beneficiary sub-Saharan African country or countries. In support of a claim that such fabric or yarn is available in "commercial quantities," provide evidence for the 3 most recent full years for which information is available, and partial year data for the most recent year (if less than a full year), that such fabric or yarn is available for sale to third parties and the quantities offered, and any evidence of such sales to third parties. Include advertisements or other documentation in support of such claim. In support of a claim that such fabric or yarn is available for "use" in a lesser developed beneficiary sub-Saharan African country or countries, provide evidence for the 3 most recent full years for which information is available, and partial year data for the most recent year (if less than a full year), of any offers, orders, or contracts or other supporting documentation. For orders already delivered, indicate the quantity involved and the time and location of the deliveries to the apparel producer. For orders for which deliveries have not yet been made, indicate the time or likely time of the receipt by an apparel producer in all countries where the fabric or yarn has been sold or offered for sale, including lesser developed sub-Saharan African country or countries.

(4) *Data concerning fabric and yarn.* With respect to the subject fabric or yarn:

(i) Data on production, sales, inventories, and capacity, that is supportable through documentation that can be made available to the Commission, for each firm known or believed to be producing the subject fabric or yarn in a beneficiary sub-Saharan African country, for each of the 3 most recent full years for which data are available, and partial year data for the most recent year (if less than a full year);

(ii) The name, address (house number, street, city, country, postal mailing number), telephone number, e-mail address, and contact person for each producer known or believed to be producing such fabric or yarn in a beneficiary sub-Saharan African country.

(5) *Orders from apparel producers and other users.* Data on orders from apparel producers and other users in all countries where the fabric or yarn has been sold or

offered for sale, including lesser developed beneficiary sub-Saharan African countries, by country, for the most recent full year and partial year (if less than a full year), and projected orders for the 1-year period (October 1–September 30) beginning after the Commission's determination. The information furnished shall include the full fabric or yarn specification in the order, including, but not limited to, the fiber content, yarn size, fabric construction, finishing processes, quantities, projected delivery time for the fabric or yarn to the customer identified in the order, and any other information that the interested party submitting the petition believes is relevant. It shall also include the name, address (house number, street, city, country, postal mailing number), telephone number, e-mail address, and contact person (i) for each beneficiary sub-Saharan African fabric or yarn producer identified in each reported order, and (ii) for each lesser developed beneficiary sub-Saharan African apparel producer or other user identified in each reported order.

(6) *Estimated quantity available in next 1-year period.* Estimated production of the subject fabric or yarn, by firm, for the 1-year period (October 1–September 30) beginning after the Commission's determination, and an estimate of the quantity of such production of fabric or yarn, by firm, that will be available in lesser developed beneficiary sub-Saharan African countries in that 1-year period, and basis for that estimate, including orders and other supporting documents.

§ 208.4 Institution of investigations; publication of notice; and availability of petition for public inspection.

(a) *Institution of investigation and publication of notice.* The Commission, after receipt of a petition under this part, properly filed, will institute an appropriate investigation not later than 10 days after receipt of the petition, and publish notice thereof in the Federal Register.

(b) *Contents of notice.* The notice instituting the investigation will identify the petitioner, the fabric or yarn that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, the deadlines for filing briefs, statements, and other documents, page limits (if any) on posthearing briefs and documents, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information.

(c) *Availability for public inspection.* The Commission will promptly make each petition available for public inspection (with the exception of confidential business information).

§ 208.5 Public hearing.

(a) *In general.* The Commission may, in its discretion, hold a public hearing in connection with an investigation under this part. If the Commission holds a public hearing, it will do so only after having caused reasonable notice thereof to be published in the Federal Register.

(b) *Opportunity to appear.* All interested parties will be afforded an opportunity to be present, to present evidence, and to be heard at any such hearing.

§ 208.6 Service, filing, and certification of documents.

(a) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including §201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file the confidential version on or before the deadline date and may file the nonconfidential version no later than one business day after the deadline for filing the document. If the submitter is a party, the submitter is to serve the nonconfidential version of the document on other parties on the service list no later than one business day after the deadline for filing the document. The confidential version filed with the Commission shall enclose all confidential business information in brackets and have the following warning marked on every page: “Bracketing of CBI not final for one business day after date of filing.” The bracketing becomes final one business day after the date of filing of the document, i.e., at the same time as the nonconfidential version of the document is due to be filed. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time as the nonconfidential version is filed. No changes to the document other than bracketing and deletion of confidential business information are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with §201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in §201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in §201.11 of this chapter, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list and a certificate of service shall then be filed. Notwithstanding §201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

(c) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

§ 208.7 Determinations and reports.

(a) *Determinations.* When relevant information is not available on the record or any party withholds information that has been requested by the Commission, the Commission will make its determination on the basis of the facts available. When the Commission relies on information submitted as facts available, it will, to the extent practicable, corroborate the information from independent sources that are reasonably available to the Commission.

(b) *Time for determinations and reports.* The Commission will make its determinations under section 112(c)(2)(A) and (B)(i) of AGOA and transmit its reports to the President by September 25, 2007, with respect to petitions received on or before March 28 and accepted on or before April 11, 2007, and will make its determinations by August 1 of subsequent years with respect to petitions received on or before January 15 and accepted on or before February 1 of those years.

(c) *Contents of report.* The Commission will include in its report to the President the following:

(1) The determination made with respect to whether a fabric or yarn produced in beneficiary sub-Saharan African countries is available in commercial quantities for use in lesser developed beneficiary sub-Saharan African countries, and an explanation of the basis for the determination;

(2) If the determination in paragraph (c)(1) of this section is affirmative, a determination with respect to the quantity of the fabric or yarn that will be so available in lesser developed beneficiary sub-Saharan African countries in the applicable 1-year period beginning after the determination is made;

(3) Any dissenting or separate views by members of the Commission regarding such determinations.

(d) *Public version of report.* Upon making its report to the President, the Commission will make such report public (with the exception of information which the Commission determines to be confidential), and publish a summary thereof in the Federal Register.

[72 FR 8626, Feb. 27, 2007, as amended at 72 FR 11287, Mar. 13, 2007]

§ 208.8 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* In the case of an investigation under this part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of §201.6 of this chapter unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the

President (and/or the United States Trade Representative); such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

SUBCHAPTER C—INVESTIGATIONS OF UNFAIR PRACTICES IN IMPORT TRADE

PART 210—ADJUDICATION AND ENFORCEMENT

Authority: 19 U.S.C. 1333, 1335, and 1337.

Source: 59 FR 39039, Aug. 1, 1994, unless otherwise noted.

Subpart A—Rules of General Applicability

§ 210.1 Applicability of part.

The rules in this part apply to investigations under section 337 of the Tariff Act of 1930 and related proceedings. These rules are authorized by sections 333, 335, or 337 of the Tariff Act of 1930 (19 U.S.C. §§1333, 1335, and 1337) and sections 2 and 1342(d)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988).

§ 210.2 General policy.

It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, all investigations and related proceedings under this part shall be conducted expeditiously. The parties, their attorneys or other representatives, and the presiding administrative law judge shall make every effort at each stage of the investigation or related proceeding to avoid delay.

§ 210.3 Definitions.

As used in this part—

Administrative law judge means the person appointed under section 3105 of title 5 of the United States Code who presides over the taking of evidence in an investigation under this part. If the Commission so orders or a section of this part so provides, an administrative law judge also may preside over stages of a related proceeding under this part.

Commission investigative attorney means a Commission attorney designated to engage in investigatory activities in an investigation or a related proceeding under this part.

Complainant means a person who has filed a complaint with the Commission under this part, alleging a violation of section 337 of the Tariff Act of 1930.

Intervenor means a person who has been granted leave by the Commission to intervene as a party to an investigation or a related proceeding under this part.

Investigation means a formal Commission inquiry instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930. An investigation is instituted upon publication of a notice in the Federal Register. The investigation entails postinstitution adjudication of the complaint. An investigation can also involve the processing of one or more of the following: A motion to amend the complaint and notice of investigation; a motion for temporary relief; a motion to designate “more complicated” the temporary relief stage of the investigation; an interlocutory appeal of an administrative law judge's decision on a particular matter; a motion for sanctions for abuse of process, abuse of discovery, or failure to make or cooperate in discovery, which if granted, would have an impact on the adjudication of the merits of the complaint; a petition for reconsideration of a final Commission determination; a motion for termination of the investigation in whole or part; and procedures undertaken in response to a judgment or judicial order issued in an appeal of a Commission determination or remedial order issued under section 337 of the Tariff Act of 1930.

Party means each complainant, respondent, intervenor, or the Office of Unfair Import Investigations.

Proposed intervenor means any person who has filed a motion to intervene in an investigation or a related proceeding under this part.

Proposed respondent means any person named in a complaint filed under this part as allegedly violating section 337 of the Tariff Act of 1930.

Related proceeding means preinstitution proceedings, sanction proceedings (for the possible issuance of sanctions that would not have a bearing on the adjudication of the merits of a complaint or a motion under this part), bond forfeiture proceedings, proceedings to enforce, modify, or revoke a remedial or consent order, or advisory opinion proceedings.

Respondent means any person named in a notice of investigation issued under this part as allegedly violating section 337 of the Tariff Act of 1930.

U.S. Customs Service means U.S. Customs and Border Protection.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 73 FR 38320, July 7, 2008]

§ 210.4 Written submissions; representations; sanctions.

(a) *Caption; names of parties.* The front page of every written submission filed by a party or a proposed party to an investigation or a related proceeding under this part shall contain a caption setting forth the name of the Commission, the title of the investigation or related proceeding, the docket number or investigation number, if any, assigned to the investigation or related proceeding, and in the case of a complaint, the names of the complainant and all proposed respondents.

(b) *Signature.* Every pleading, written motion, and other paper of a party or proposed party who is represented by an attorney in an investigation or a related proceeding under this part shall be signed by at least one attorney of record in the attorney's individual name. A party or proposed party who is not represented by an attorney shall sign, or his duly authorized officer or agent shall sign, the pleading, written motion, or other paper. Each paper shall state the signer's address and telephone number, if any. Pleadings, written motions, and other papers need not be under oath or accompanied by an affidavit, except as provided in §§210.12(a)(1), 210.13(b), 210.18, 210.52(d), 210.59(b), or another section of this part or by order of the administrative law judge or the Commission. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after omission of the signature is called to the attention of the submitter.

(c) *Representations.* By presenting to the presiding administrative law judge or the Commission (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party or proposed party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) *Sanctions.* If, after notice and a reasonable opportunity to respond (see paragraphs (d)(1) (i) and (ii) of this section and §210.25), the presiding administrative law judge or the Commission determines that paragraph (c) of this section has been violated, the administrative law judge or the Commission may, subject to the conditions stated below and in §210.25, impose an appropriate sanction upon the attorneys, law firms, or parties

that have violated paragraph (c) or are responsible for the violation. A representation need not be frivolous in its entirety in order for the administrative law judge or the Commission to determine that paragraph (c) has been violated. If any portion of a representation is found to be false, frivolous, misleading, or otherwise in violation of paragraph (c), a sanction may be imposed. In determining whether paragraph (c) has been violated, the administrative law judge or the Commission will consider whether the representation or disputed portion thereof was objectively reasonable under the circumstances.

(1) *How initiated* —(i) *By motion.* A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (c). It shall be served as provided in paragraph (g) of this section, but shall not be filed with or presented to the presiding administrative law judge or the Commission unless, within seven days after service of the motion (or such other period as the administrative law judge or the Commission may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. See also §210.25 (a) through (c). If warranted, the administrative law judge or the Commission may award to the party or proposed party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(ii) *On the administrative law judge's or the Commission's initiative.* The administrative law judge or the Commission may enter an order sua sponte describing the specific conduct that appears to violate paragraph (c) of this section and directing an attorney, law firm, party, or proposed party to show cause why it has not violated paragraph (c) with respect thereto.

(2) *Nature of sanctions; limitations.* A sanction imposed for violation of paragraph (c) of this section shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (d)(2) (i) through (iv) of this section, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(i) Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(ii) Monetary sanctions may not be awarded against a represented party or proposed party for a violation of paragraph (c)(2) of this section.

(iii) Monetary sanctions may not be imposed on the administrative law judge's or the Commission's initiative unless—

(A) The Commission or the administrative law judge issues an order to show cause before the investigation or related proceeding is terminated, in whole or in relevant part, as to the party or proposed party which is, or whose attorneys are, to be sanctioned; and

(B) Such termination is the result of—

(*1*) A motion to withdraw the complaint, motion, or petition that was the basis for the investigation or related proceeding;

(*2*) A settlement agreement;

(*3*) A consent order agreement; or

(*4*) An arbitration agreement.

(iv) Monetary sanctions imposed to compensate the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations will include reimbursement for some or all costs reasonably incurred as a direct result of the violation, but will not include attorney's fees.

(3) *Order.* When imposing sanctions, the administrative law judge or the Commission shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. See also §210.25(d)—(f).

(e) *Inapplicability to discovery.* Paragraphs (c) and (d) of this section do not apply to discovery requests, responses, objections, and motions that are subject to provisions of §§210.27 through 210.34.

(f) *Filing of documents*. (1) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with the Commission's Handbook on Filing Procedures, which is issued by and available from the Secretary and posted on the Commission's Electronic Document Information System Web site at https://edis.usitc.gov. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures in the filing of a document may result in the rejection of the document as improperly filed.

(2) A complaint, petition, or request, and supplements and amendments thereto, filed under §§210.8, 210.75, 210.76, or 210.79 shall be filed in paper form. An original and eight (8) true paper copies shall be filed. All exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD-ROM, DVD, or other portable electronic media approved by the Secretary. Sections 210.8 and 210.12 set out additional requirements for a complaint filed under section 210.8. Additional requirements for a petition or request filed under §§210.75, 210.76, or 210.79 are set forth in those sections. Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(3) Responses to a complaint, briefs, comments and responses thereto, compliance reports, motions and responses or replies thereto, petitions and replies thereto, prehearing statements, and proposed findings of fact and conclusions of law and responses thereto provided for under §§210.4(d), 210.13, 210.8, 210.14, 210.15, 210.16, 210.17, 210.18, 210.19, 210.20, 210.21, 210.23, 210.24, 210.25, 210.26, 210.33, 210.34, 210.35, 210.36, 210.40, 210.43, 210.45, 210.46, 210.47, 210.50, 210.52, 210.53, 210.57, 210.59, or 210.71; and submissions filed with the Secretary pursuant to an order of the presiding administrative law judge shall be filed electronically, and true paper copies of such submissions shall be filed by 12 noon, eastern time, on the next business day.

(4) Except for the documents listed in paragraphs (f)(2) and (f)(3) of this section, all other documents shall be filed electronically, and no paper copies will be required.

(5) If paper copies are required under this section, the required number of paper copies shall be governed by paragraph (f)(6) of this section. A paper copy provided for in this section must be a true copy of the electronic version of the document, i.e., a copy that is identical in all possible respects.

(6) Unless the Commission or this part specifically states otherwise:

(i) Two (2) true paper copies of each submission shall be filed if the investigation or related proceeding is before an administrative law judge; and

(ii) Eight (8) true paper copies of each submission shall be filed if the investigation or related proceeding is before the Commission.

(7)(i) If a complaint, a supplement or amendment to a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in §201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the supplement or amendment to the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in §210.8(a). A nonconfidential copy of all exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD-ROM, DVD, or other portable electronic media approved by the Secretary, separate from the media used for the confidential version.

(ii)(A) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(1) A response to a complaint and all supplements and exhibits thereto;

(2) All submissions relating to a motion to amend the complaint or notice of investigation; and

(3) All submissions addressed to the Commission.

(B) Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(8) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(9) Where to file; date of filing. Documents shall be filed at the Office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in §201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

(10) Conformity with rules. Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(11) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(g) Cover Sheet. When making a paper filing, parties must complete the cover sheet online at http://edis.usitc.gov and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of confidential information under §210.5.

(h) Specifications. (1) Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except

copies of documents prepared for another agency or a court (e.g. patent file wrappers or pleadings papers), and single sided. Typed matter shall not exceed 6.5 x 9.5 inches using 11-point or larger type and shall be double-spaced between each line of text using the standard of 6 lines of type per inch. Text and footnotes shall be in the same size type. Quotations more than two lines long in the text or footnotes may be indented and single-spaced. Headings and footnotes may be single-spaced.

(2) The administrative law judge may impose any specifications he deems appropriate for submissions that are addressed to the administrative law judge.

(i) Service. Unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise, every written submission filed by a party or proposed party shall be served on all other parties in the manner specified in §201.16(b) of this chapter.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 60 FR 32443, June 22, 1995; 68 FR 32978, June 3, 2003; 73 FR 38320, July 7, 2008; 76 FR 61937, October 6, 2011]

§ 210.5 Confidential business information.

(a) *Definition and submission.* Confidential business information shall be defined and identified in accordance with §201.6 (a) and (c) of this chapter. Unless the Commission, the administrative law judge, or another section of this part states otherwise, confidential business information shall be submitted in accordance with §201.6(b) of this chapter. In the case of a complaint, any supplement to the complaint, and a motion for temporary relief filed under this part, the number of nonconfidential copies shall be prescribed by §210.8(a) of this part.

(b) *Restrictions on disclosure.* Information submitted to the Commission or exchanged among the parties in connection with an investigation or a related proceeding under this part, which is properly designated confidential under paragraph (a) of this section and §201.6(a) of this chapter, may not be disclosed to anyone other than the following persons without the consent of the submitter:

(1) Persons who are granted access to confidential information under §210.39(a) or a protective order issued pursuant to §210.34(a);

(2) An officer or employee of the Commission who is directly concerned with—

(i) Carrying out or maintaining the records of the investigation or related proceeding for which the information was submitted;

(ii) The administration of a bond posted pursuant to subsection (e), (f), or (j) of section 337 of the Tariff Act of 1930;

(iii) The administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g), a cease and desist order issued pursuant to subsection (f), or a consent order issued pursuant to subsection (c) of section 337 of the Tariff Act of 1930; or

(iv) Proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), (f), (g), or (i) of section 337 of the Tariff Act of 1930, or a consent order issued under section 337 of the Tariff Act of 1930;

(3) An officer or employee of the United States Government who is directly involved in a review conducted pursuant to section 337(j) of the Tariff Act of 1930; or

(4) An officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under section 337 (d), (e), or (g) of the Tariff Act of 1930 resulting from the investigation or related proceeding in connection with which the information was submitted.

(c) *Transmission of certain records to district court.* Notwithstanding paragraph (b) of this section, confidential business information may be transmitted to a district court and be admissible in a civil action, subject to such protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

(d) *Confidentiality determinations in preinstitution proceedings.* After a complaint is filed under section 337 of the Tariff Act of 1930 and before an investigation is instituted by the Commission, confidential business information designated confidential by the supplier shall be submitted in accordance with §201.6(b) of this chapter. The Secretary shall decide, in accordance with §201.6(d) of this chapter, whether the information is entitled to confidential treatment. Appeals from the ruling of the Secretary shall be made to the Commission as set forth in §201.6(e) and (f) of this chapter.

(e) *Confidentiality determinations in investigations and other related proceedings.* (1) If an investigation is instituted or if a related proceeding is assigned to an administrative law judge, the administrative law judge shall set the ground rules for the designation, submission, and handling of information designated confidential by the submitter. When requested to do so, the administrative law judge shall decide whether information in a document addressed to the administrative law judge, or to be exchanged among the parties while the administrative law judge is presiding, is entitled to confidential treatment. The administrative law judge shall also decide, with respect to all orders, initial determinations, or other documents issued by the administrative law judge, whether information designated confidential by the supplier is entitled to confidential treatment. The supplier of the information or the person seeking the information may, with leave of the administrative law judge, request an appeal to the Commission of the administrative law judge's unfavorable ruling on this issue, under §210.24(b)(2).

(2) The Commission may continue protective orders issued by the administrative law judge, amend or revoke those orders, or issue new ones. All submissions addressed to the

Commission that contain information covered by an existing protective order will be given confidential treatment. (See also §210.72.) New information that is submitted to the Commission, designated confidential by the supplier, and not covered by an existing protective order must be submitted to the Secretary with a request for confidential treatment in accordance with §201.6(b) and (c) of this chapter. The Secretary shall decide, in accordance with §201.6(d) of this chapter, whether the information is entitled to confidential treatment. Appeals from the ruling of the Secretary shall be made to the Commission as provided in §201.6(e) and (f) of this chapter. The Commission shall decide, with respect to all orders, notices, opinions, and other documents issued by or on behalf of the Commission, whether information designated confidential by the supplier is entitled to confidential treatment.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 60 FR 32444, June 22, 1995]

§ 210.6 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) Unless the Commission, the administrative law judge, or this or another section of this part specifically provides otherwise, the computation of time and the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with §§210.14 and 210.16(d) of this chapter.

(b) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a document upon it, and the document was served by mail, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under §210.16(d), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(c) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a Commission document upon it, and the document was served by overnight delivery, the deadline shall be computed by adding one day to the end of the prescribed period, unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(d) “Overnight delivery” is defined as delivery by the next business day.

[72 FR 13689, Mar. 23, 2007]

§ 210.7 Service of process and other documents; publication of notices.

(a) *Manner of service.* (1) The service of process and all documents issued by or on behalf of the Commission or the administrative law judge—and the service of all documents issued by parties under §§210.27 through 210.34 of this part—shall be in accordance with §201.16 of this chapter, unless the Commission, the administrative law judge, or this or another section of this part specifically provides otherwise.

(2) The service of all initial determinations as defined in §210.42 and all documents containing confidential business information—issued by or on behalf of the Commission or the administrative law judge—on a private party shall be effected by serving a copy of the document by overnight delivery—as defined in §210.6(d)—on the person to be served, on a member of the partnership to be served, on the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above before the Commission, by serving a copy by overnight delivery on such attorney.

(3) Whenever the Commission effects service of documents issued by or on behalf of the Commission or the administrative law judge upon the private parties by overnight delivery, service upon the Office of Unfair Import Investigations shall also be deemed to have occurred by overnight delivery.

(b) *Designation of a single attorney or representative for service of process.* The service list prepared by the Secretary for each investigation will contain the name and address of no more than one attorney or other representative for each party to the investigation. In the event that two or more attorneys or other persons represent one party to the investigation, the party must select one of their number to be the lead attorney or representative for service of process. The lead attorney or representative for service of process shall state, at the time of the filing of its entry of appearance with the Secretary, that it has been so designated by the party it represents. (Only those persons authorized to receive confidential business information under a protective order issued pursuant to §210.34(a) are eligible to be included on the service list for documents containing confidential business information.)

(c) *Publication of notices.* (1) Notice of action by the Commission or an administrative law judge will be published in the Federal Register only as specifically provided in paragraph (b)(2) of this section, by another section in this chapter, or by order of an administrative law judge or the Commission.

(2) When an administrative law judge or the Commission determines to amend or supplement a notice published in accordance with paragraph (b)(1) of this section, notice of the amendment will be published in the Federal Register.

[60 FR 53119, Oct. 12, 1995, as amended at 72 FR 13960, Mar. 23, 2007; 73 FR 38320, July 7, 2008]

Subpart B—Commencement of Preinstitution Proceedings and Investigations

§ 210.8 Commencement of preinstitution proceedings.

A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies.

(a)(1) A complaint filed under this section shall be filed in paper form with the Secretary as follows.

(i) An original and eight (8) true paper copies of the nonconfidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) An original and eight (8) true paper copies of the confidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(iii) For each proposed respondent, one true copy of the nonconfidential version of the complaint and one true copy of the confidential version of the complaint, if any, along with one true copy of the nonconfidential exhibits and one true copy of the confidential exhibits shall be filed, and

(iv) For the government of the foreign country in which each proposed respondent is located as indicated in the complaint, one true copy of the nonconfidential version of the complaint shall be filed.

Note to paragraph (a)(1): The same requirements apply for the filing of a supplement or amendment to the complaint.

(2) If the complainant is seeking temporary relief, the complainant must also file:

(i) An original and eight (8) true paper copies of the nonconfidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) An original and eight (8) true paper copies of the confidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary; and

(iii) For each proposed respondent, one true copy of the nonconfidential version of the motion and one true copy of the confidential version of the motion along with one true copy of the nonconfidential exhibits and one true copy of the confidential exhibits filed with the motion.

Note to paragraph (a)(2): The same requirements apply for the filing of a supplement or amendment to the complaint or a supplement to the motion for temporary relief.

(b) *Provide specific information regarding the public interest*. Complainant must file, concurrently with the complaint, a separate statement of public interest, not to exceed five pages, inclusive of attachments, addressing how issuance of the requested relief, i.e.,

a general exclusion order, a limited exclusion order, and/or a cease and desist order, in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. In particular, the submission should:

(1) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(2) Identify any public health, safety, or welfare concerns relating to the requested remedial orders;

(3) Identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded;

(4) Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and

(5) State how the requested remedial orders would impact consumers.

(c) *Publication of notice of filing*. (1) When a complaint is filed, the Secretary to the Commission will publish a notice in the Federal Register inviting comments from the public and proposed respondents on any public interest issues arising from the complaint and potential exclusion and/or cease and desist orders. In response to the notice, members of the public and proposed respondents may provide specific information regarding the public interest in a written submission not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within eight (8) calendar days of publication of notice of the filing of a complaint. Comments that substantively address allegations made in the complaint will not be considered. Members of the public and proposed respondents may address how issuance of the requested exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. Submissions should:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded;

(iv) Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and

(v) State how the requested remedial orders would impact consumers.

(2) Complainant may file a reply to any submissions received under paragraph (c)(1) of this section not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within three (3) calendar days following the filing of the submissions.

(d) *Upon the initiative of the Commission.* The Commission may upon its initiative commence a preinstitution proceeding based upon any alleged violation of section 337 of the Tariff Act of 1930.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 32444, June 22, 1995; 68 FR 32978, June 3, 2003; 73 FR 38320, July 7, 2008; 76 FR 61937, October 6, 2011; 76 FR 64803, October 19, 2011]

§ 210.9 Action of Commission upon receipt of complaint.

Upon receipt of a complaint alleging violation of section 337 of the Tariff Act of 1930, the Commission shall take the following actions:

(a) *Examination of complaint.* The Commission shall examine the complaint for sufficiency and compliance with the applicable sections of this chapter.

(b) *Informal investigatory activity.* The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefore, and give attention to other preliminary matters.

§ 210.10 Institution of investigation.

(a)(1) The Commission shall determine whether the complaint is properly filed and whether an investigation should be instituted on the basis of the complaint. That determination shall be made within 30 days after the complaint is filed, unless—

(i) Exceptional circumstances preclude adherence to a 30-day deadline;

(ii) Additional time is allotted under other sections of this part in connection with the preinstitution processing of a motion by the complainant for temporary relief;

(iii) The complainant requests that the Commission postpone the determination on whether to institute an investigation; or

(iv) The complainant withdraws the complaint.

(2) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute an investigation on the basis of the complaint, the determination will be made as soon after that deadline as possible.

(3) If additional time is allotted in connection with the preinstitution processing of a motion by the complainant for temporary relief, the Commission will determine whether to institute an investigation and provisionally accept the motion within 35 days after the filing of the complaint or by a subsequent deadline computed in accordance with §210.53(a), §210.54, §210.55(b), §210.57, or §210.58 as applicable.

(4) If the complainant desires to have the Commission postpone making a determination on whether to institute an investigation in response to the complaint, the complainant must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for whatever date is appropriate in light of the facts.

(5)(i) The complainant may withdraw the complaint as a matter of right at any time before the Commission votes on whether to institute an investigation. To effect such withdrawal, the complainant must file a written notice with the Commission.

(ii) If a motion for temporary relief was filed in addition to the complaint, the motion must be withdrawn along with the complaint, and the complainant must serve copies of the notice of withdrawal on all proposed respondents and on the embassies that were served with copies of the complaint and motion pursuant to §210.54.

(b) An investigation shall be instituted by the publication of a notice in the Federal Register. The notice will define the scope of the investigation and may be amended as provided in §210.14(b) and (c). The Commission may order the administrative law judge to take evidence and to issue a recommended determination on the public interest based generally on the submissions of the parties and the public under §210.8(b) and (c). If the Commission orders the administrative law judge to take evidence with respect to the public interest, the administrative law judge will limit public interest discovery appropriately, with particular consideration for third parties, and will ensure that such discovery will not delay the investigation or be used improperly. Public interest issues will not be within the scope of discovery unless the administrative law judge is specifically ordered by the Commission to take evidence on these issues.

(c) If the Commission determines not to institute an investigation on the basis of the complaint, the complaint shall be dismissed, and the complainant and all proposed respondents will receive written notice of the Commission's action and the reason(s) therefor.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38321, July 7, 2008; 76 FR 64803, October 19, 2011]

§ 210.11 Service of complaint and notice of investigation.

(a)(1) Unless the Commission institutes temporary relief proceedings, upon institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the complaint, the nonconfidential exhibits, and the notice of investigation upon each respondent; and

(ii) Copies of the nonconfidential version of the complaint and the notice of investigation upon the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint.

(2) If the Commission institutes temporary relief proceedings, upon institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the complaint and the notice of investigation upon each respondent; and

(ii) A copy of the notice of investigation upon the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint.

(3) All respondents named after an investigation has been instituted and the governments of the foreign countries in which they are located as indicated in the complaint shall be served as soon as possible after the respondents are named.

(4) The Commission shall serve copies of the notice of investigation upon 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 agencies and departments as the Commission considers appropriate.

(b) With leave from the presiding administrative law judge, a complainant may attempt to effect personal service of the complaint and notice of investigation upon a respondent, if the Secretary's efforts to serve the respondent have been unsuccessful. If the complainant succeeds in serving the respondent by personal service, the complainant must notify the administrative law judge and file proof of such service with the Secretary.

[73 FR 38321, July 7, 2008]

Subpart C—Pleadings

§ 210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of §201.8 of this chapter and §§210.4 and 210.5 of this part, the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint, and include a statement attesting to the representations in §210.4(c)(1) through (3);

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;

(3) Describe specific instances of alleged unlawful importations or sales, and shall provide the Tariff Schedules of the United States item number(s) for importations occurring prior to January 1, 1989, and the Harmonized Tariff Schedule of the United States item number(s) for importations occurring on or after January 1, 1989;

(4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act of 1930;

(5) Include a statement as to whether the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1) (B), (C), (D), or (E) of the Tariff Act of 1930, include a description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established, including the relevant operations of any licensees. Relevant information includes but is not limited to:

(A) Significant investment in plant and equipment;

(B) Significant employment of labor or capital; or

(C) Substantial investment in the exploitation of the subject patent, copyright, trademark, mask work, or vessel hull design, including engineering, research and development, or licensing; or

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A) (i) or (ii), include a description of the domestic industry affected, including the relevant operations of any licensees; or

(iii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition or unfair acts that have the threat or effect of restraining or monopolizing trade and commerce in the United States under section 337(a)(1)(A)(iii), include a description of the trade and commerce affected.

(7) Include a description of the complainant's business and its interests in the relevant domestic industry or the relevant trade and commerce. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject intellectual property; and

(8) If the alleged violation involves an unfair method of competition or an unfair act other than those listed in paragraph (a)(6)(i) of this section, state a specific theory and provide corroborating data to support the allegation(s) in the complaint concerning the existence of a threat or effect to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to restrain or monopolize trade and commerce in the United States. The information that should ordinarily be provided includes the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other pertinent data.

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent—

(i) The identification of each U.S. patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. patent;

(iv) A copy of each license agreement (if any) for each involved U.S. patent that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees;

(v) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn corresponding to each involved U.S. patent, with an indication of the prosecution status of each such patent application;

(vi) A nontechnical description of the invention of each involved U.S. patent;

(vii) A reference to the specific claims in each involved U.S. patent that allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act of 1930, or the process under which such article was produced;

(viii) A showing that each person named as violating section 337 of the Tariff Act of 1930 is importing or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. patent. The complainant shall make such showing by appropriate allegations, and when practicable,

by a chart that applies each asserted independent claim of each involved U.S. patent to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced;

(ix) A showing that an industry in the United States, relating to the articles protected by the patent exists or is in the process of being established. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. patent to a representative involved domestic article or to the process under which such article was produced; and

(x) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act of 1930, or of the process utilized in producing the imported article, and, when a chart is furnished under paragraphs (a)(9)(viii) and (a)(9)(ix) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) Include, when a complaint is based upon the infringement of a federally registered copyright, trademark, mask work, or vessel hull design—

(i) The identification of each licensee under each involved copyright, trademark, mask work, and vessel hull design;

(ii) A copy of each license agreement (if any) that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees.

(11) Contain a request for relief, and if temporary relief is requested under section 337 (e) and/or (f) of the Tariff Act of 1930, a motion for such relief shall accompany the complaint as provided in §210.52(a) or may follow the complaint as provided in §210.53(a).

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, if practicable, the complainant shall submit both the domestic article and all imported articles that are the subject of the complaint.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. patent the following:

(1) One certified copy of the U.S. Patent and Trademark Office prosecution history for each involved U.S. patent, plus three additional copies thereof; and

(2) Four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark, one certified copy of the Federal registration and three additional copies, and one certified copy of the prosecution history for each federally registered trademark.

(e) *Additional material to accompany each complaint based on a non-Federally registered trademark.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a non-Federally registered trademark the following:

(1) A detailed and specific description of the alleged trademark;

(2) Information concerning prior attempts to register the alleged trademark; and

(3) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one certified copy of the Federal registration and three additional copies;

(g) *Additional material to accompany each registered mask work-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of a semiconductor chip in a manner that constitutes infringement of a Federally registered mask work, one certified copy of the Federal registration and three additional copies;

(h) *Additional material to accompany each vessel hull design-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a vessel hull design, one certified copy of the Federal registration (including all deposited drawings, photographs, or other pictorial representations of the design), and three additional copies;

(i) *Initial disclosures.* Complainant shall serve on each respondent represented by counsel who has agreed to be bound by the terms of the protective order one copy of each document submitted with the complaint pursuant to §210.12(c) through (h) within five days of service of a notice of appearance and agreement to be bound by the terms of the protective order; and

(j) *Duty to supplement complaint.* Complainant shall supplement the complaint prior to institution of an investigation if complainant obtains information upon the basis of which

he knows or reasonably should know that a material legal or factual assertion in the complaint is false or misleading.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994; 73 FR 38321, July 7, 2008]

§ 210.13 The response.

(a) *Time for response.* Except as provided in §210.59(a) and unless otherwise ordered in the notice of investigation or by the administrative law judge, respondents shall have 20 days from the date of service of the complaint and notice of investigation, by the Commission under §210.11(a) or by a party under §210.11(b), within which to file a written response to the complaint and the notice of investigation. When the investigation involves a motion for temporary relief and has not been declared "more complicated," the response to the complaint and notice of investigation must be filed along with the response to the motion for temporary relief—i.e., within 10 days after service of the complaint, notice of investigation, and the motion for temporary relief by the Commission under §210.11(a) or by a party under §210.11(b). (See §210.59.)

(b) *Content of the response.* In addition to conforming to the requirements of §201.8 of this chapter and §§210.4 and 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged in the complaint and notice, or if the respondent is without knowledge of any such fact, a statement to that effect. Allegations of a complaint and notice not thus answered may be deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the involved article. Respondents who are importers must also provide the Harmonized Tariff Schedule item number(s) for importations of the accused imports occurring on or after January 1, 1989, and the Tariff Schedules of the United States item number(s) for importations occurring before January 1, 1989. Each response shall also include a statement concerning the respondent's capacity to produce the subject article and the relative significance of the United States market to its operations. Respondents who are not manufacturing their accused imports shall state the name and address of the supplier(s) of those imports. Affirmative defenses shall be pleaded with as much specificity as possible in the response. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S.patent, the respondent is encouraged to make the following showing when appropriate:

(1) If it is asserted in defense that the article imported or sold by respondents is not covered by, or produced under a process covered by, the claims of each involved U.S. patent, a showing of such noncoverage for each involved claim in each U.S. patent in question shall be made, which showing may be made by appropriate allegations and, when practicable, by a chart that applies the involved claims of each U.S. patent in

question to a representative involved imported article of the respondent or to the process under which such article was produced;

(2) Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under paragraph (b)(1) of this section, the parts of such drawings, photographs, or other visual representations, should be labeled so that they can be read in conjunction with such chart; and

(3) If the claims of any involved U.S. patent are asserted to be invalid or unenforceable, the basis for such assertion, including, when prior art is relied on, a showing of how the prior art renders each claim invalid or unenforceable and a copy of such prior art. For good cause, the presiding administrative law judge may waive any of the substantive requirements imposed under this paragraph or may impose additional requirements.

(c) *Submission of article as exhibit.* At the time the response is filed, if practicable, the respondent shall submit the accused article imported or sold by that respondent, unless the article has already been submitted by the complainant.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38322, July 7, 2008]

§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims, respondent submissions on the public interest.

(a) *Preinstitution amendments.* The complaint may be amended at any time prior to the institution of the investigation.

(b) *Postinstitution amendments generally.* (1) After an investigation has been instituted, the complaint or notice of investigation may be amended only by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. A motion for amendment must be made to the presiding administrative law judge. If the proposed amendment of the complaint would require amending the notice of investigation, the presiding administrative law judge may grant the motion only by filing with the Commission an initial determination. All other dispositions of such motions shall be by order.

(2) If disposition of the issues in an investigation on the merits will be facilitated, or for other good cause shown, the presiding administrative law judge may allow appropriate amendments to pleadings other than complaints upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation.

(c) *Postinstitution amendments to conform to evidence.* When issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice. Such amendments of the pleadings and notice as may be necessary to make them

conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly consented.

(d) *Supplemental submissions.* The administrative law judge may, upon reasonable notice and on such terms as are just, permit service of a supplemental submission setting forth transactions, occurrences, or events that have taken place since the date of the submission sought to be supplemented and that are relevant to any of the issues involved.

(e) *Counterclaims.* At any time after institution of the investigation, but not later than ten business days before the commencement of the evidentiary hearing, a respondent may file a counterclaim at the Commission in accordance with section 337(c) of the Tariff Act of 1930. Counterclaims shall be filed in a separate document. A respondent who files such a counterclaim shall immediately file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the respondent would exist under 28 U.S.C. 1391.

(f) Respondent submissions on the public interest. When the Commission has ordered the administrative law judge to take evidence with respect to the public interest under §210.50(b)(1), respondents must submit a statement concerning the public interest, including any response to the issues raised by the complainant pursuant to §210.8(b) and (c)(2), at the same time that their response to the complaint is due. This submission must be no longer than five pages, inclusive of attachments.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 76 FR 64803, October 19, 2011]

Subpart D—Motions

§ 210.15 Motions.

(a) *Presentation and disposition.* (1) During the period between the institution of an investigation and the assignment of the investigation to a presiding administrative law judge, all motions shall be addressed to the chief administrative law judge. During the time that an investigation or related proceeding is before an administrative law judge, all motions therein shall be addressed to the administrative law judge.

(2) When an investigation or related proceeding is before the Commission, all motions shall be addressed to the Chairman of the Commission. A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. All motions shall be filed with the Secretary and shall be served upon each party.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses to motions.* Within 10 days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the

Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution, the proposed respondent, shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Motions for extensions.* As a matter of discretion, the administrative law judge or the Commission may waive the requirements of this section as to motions for extension of time, and may rule upon such motions ex parte.

§ 210.16 Default.

(a) *Definition of default.* (1) A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in §210.13 or §210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.

(2) A party may be found in default as a sanction for abuse of process, under §210.4(c), or failure to make or cooperate in discovery, under §210.33(b).

(b) *Procedure for determining default.* (1) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue upon his own initiative, an order directing that respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing, the administrative law judge shall issue an initial determination finding the respondent in default. An administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

(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) 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) 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) 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 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]

§ 210.17 Failures to act other than the statutory forms of 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;

(g) Failure to file a brief or other written submission requested by the administrative law judge or the Commission; and

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

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.

§ 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 holiday, 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.

(d) *Refusal of application for summary determination; continuances and other orders.* Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the

administrative law judge may refuse the application for summary determination, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is appropriate, and a ruling to that effect shall be made a matter of record.

(e) *Order establishing facts.* If on motion under this section a summary determination is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge, by examining the pleadings and the evidence and by interrogating counsel if necessary, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the investigation as are warranted. The facts so specified shall be deemed established.

(f) *Order of summary determination.* An order of summary determination shall constitute an initial determination of the administrative law judge.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38322, July 7, 2008]

§ 210.19 Intervention.

Any person desiring to intervene in an investigation or a related proceeding under this part shall make a written motion. The motion shall have attached to it a certificate showing that the motion has been served upon each party to the investigation or related proceeding in the manner described in §201.16(b) of this chapter. Any party may file a response to the motion in accordance with §210.15(c) of this part, provided that the response is accompanied by a certificate confirming that the response was served on the proposed intervenor and all other parties. The Commission, or the administrative law judge by initial determination, may grant the motion to the extent and upon such terms as may be proper under the circumstances.

§ 210.20 Declassification of confidential information.

(a) Any party may move to declassify documents (or portions thereof) that have been designated confidential by the submitter but that do not satisfy the confidentiality criteria set forth in §201.6(a) of this chapter. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the chief administrative law judge or such administrative law judge as he may designate.

(b) Following issuance of a public version of the initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 or an initial determination that would otherwise terminate the investigation (if adopted by the Commission), the granting of a motion, in whole or part, to declassify information designated confidential shall constitute an initial determination, except as to that information for which no submissions in opposition to declassification have been filed.

§ 210.21 Termination of investigations.

(a) *Motions for termination.* (1) Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section. A motion for termination of an investigation based on withdrawal of the complaint shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion. If the agreement contains confidential business information within the meaning of §201.6(a) of this chapter, at least one copy of the agreement with such information deleted shall accompany the motion, in addition to a copy of the confidential version. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

(2) Any party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement, including an agreement to present the matter for arbitration, or a consent order, as provided in paragraphs (b), (c) and (d) of this section.

(b) *Termination by Settlement.* (1) An investigation before the Commission may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement. A motion for termination by settlement shall contain copies of the licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of §201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion.

(2) The motion and agreement(s) shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. Notice of the initial determination and the agreement 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. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the Federal Register. Termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(c) *Termination by entry of consent order.* An investigation before the Commission may be terminated pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a consent order. Termination by consent order need not constitute a determination as to violation of section 337.

(1) *Opportunity to submit proposed consent order* —(i) *Prior to institution of an investigation.* Where time, the nature of the proceeding, and the public interest permit, any person being investigated pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. §2482) shall be afforded the opportunity to submit to the Commission a proposal for disposition of the matter under investigation in the form of a consent order stipulation that incorporates a proposed consent order executed by or on behalf of such person and that complies with the requirements of paragraph (c)(3) of this section.

(ii) *Subsequent to institution of an investigation.* In investigations under section 337 of the Tariff Act of 1930, a proposal to terminate by consent order shall be submitted as a motion to the administrative law judge with a stipulation that incorporates a proposed consent order. If the stipulation contains confidential business information within the meaning of §201.6(a) of this chapter, a copy of the stipulation with such information deleted shall accompany the motion. The stipulation shall comply with the requirements of paragraph (c)(3)(i) of this section. At any time prior to commencement of the hearing, the motion may be filed by one or more respondents, and may be filed jointly with other parties to the investigation. Upon request and for good cause shown, the administrative law judge may consider such a motion during or after a hearing. The filing of the motion shall not stay proceedings before the administrative law judge unless the administrative law judge so orders. The administrative law judge shall promptly file with the Commission an initial determination regarding the motion for termination if the motion is granted. If the initial determination contains confidential business information, a copy of the initial determination with such information deleted shall be filed with the Commission simultaneously with the filing of the confidential version of the initial determination. Pending disposition by the Commission of a consent order stipulation, a party may not, absent good cause shown, withdraw from the stipulation once it has been submitted pursuant to this section.

(2) *Commission disposition of consent order.* (i) If an initial determination granting the motion for termination based on a consent order stipulation is filed with the Commission, notice of the initial determination and the consent order stipulation 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.

(ii) The Commission, after considering the effect of the settlement by consent order 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, shall dispose of the initial determination according to the procedures of §§210.42 through 210.45. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the Federal

Register. Termination by consent order need not constitute a determination as to violation of section 337. Should the Commission reverse the initial determination, the parties are in no way bound by their proposal in later actions before the Commission.

(3) *Contents of consent order stipulation* —(i) *Contents.* (A) Every consent order stipulation shall contain, in addition to the proposed consent order, the following:

(*1*) An admission of all jurisdictional facts;

(*2*) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order;

(*3*) A statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of this part; and

(*4*) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure.

(B) In the case of an intellectual property-based investigation, the consent order stipulation shall also contain—

(*1*) A statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable; and

(*2*) A statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order.

(C) The consent order stipulation may contain a statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed.

(ii) *Effect, interpretation, and reporting.* The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions. The Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

(d) *Termination based upon arbitration agreement.* Upon filing of a motion for termination with the administrative law judge or the Commission, a section 337 investigation may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of an agreement between complainant and one or

more of the respondents to present the matter for arbitration. The motion and a copy of the arbitration agreement shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission with the confidential versions of such documents. A notice will be published in the Federal Register if the Commission's final disposition of the initial determination results in termination of the investigation in its entirety. Termination based on an arbitration agreement does not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(e) *Effect of termination.* Termination issued by the administrative law judge shall constitute an initial determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 60 FR 53120, Oct. 12, 1995; 73 FR 38322, July 7, 2008]

§ 210.22 [Reserved]

§ 210.23 Suspension of investigation.

Any party may move to suspend an investigation under this part, because of the pendency of proceedings before the Secretary of Commerce or the administering authority pursuant to section 337(b)(3) of the Tariff Act of 1930. The administrative law judge or the Commission also may raise the issue sua sponte. An administrative law judge's decision granting a motion for suspension shall be in the form of an initial determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994]

§ 210.24 Interlocutory appeals.

Rulings by the administrative law judge on motions may not be appealed to the Commission prior to the administrative law judge's issuance of an initial determination, except in the following circumstances:

(a) *Appeals without leave of the administrative law judge.* The Commission may in its discretion entertain interlocutory appeals, except as provided in §210.64, when a ruling of the administrative law judge:

(1) Requires the disclosure of Commission records or requires the appearance of Government officials pursuant to §210.32(c)(2); or

(2) Denies an application for intervention under §210.19. Appeals from such rulings may be sought by filing an application for review, not to exceed 15 pages, with the Commission within five days after service of the administrative law judge's ruling. An answer to the application for review may be filed within five days after service of the application. The application for review should specify the person or party taking the

appeal, designate the ruling or part thereof from which appeal is being taken, and specify the reasons and present arguments as to why review is being sought. The Commission may, upon its own motion, enter an order staying the return date of an order issued by the administrative law judge pursuant to §210.32(c)(2) or may enter an order placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues that will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals with leave of the administrative law judge.* (1) Except as otherwise provided in paragraph (a) of this section, §210.64, and paragraph (b)(2) of this section, applications for review of a ruling by an administrative law judge may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be an inadequate remedy.

(2) Applications for review of a ruling by an administrative law judge under §210.5(e)(1) as to whether information designated confidential by the supplier is entitled to confidential treatment under §210.5(b) may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof.

(3) A written application for review under paragraph (b)(1) or (b)(2) of this section shall not exceed 15 pages and may be filed within five days after service of the administrative law judge's determination. An answer to the application for review may be filed within five days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal. Unless otherwise ordered by the Commission, Commission review, if permitted, shall be confined to the application for review and answer thereto, without oral argument or further briefs.

(c) *Investigation not stayed.* Application for review under this section shall not stay the investigation before the administrative law judge unless the administrative law judge or the Commission shall so order.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994]

§ 210.25 Sanctions.

(a)(1) Any party may file a motion for sanctions for abuse of process under §210.4(d)(1), abuse of discovery under §210.27(d)(3), failure to make or cooperate in discovery under §210.33 (b) or (c), or violation of a protective order under §210.34(c). A motion alleging abuse of process should be filed promptly after the requirements of §210.4(d)(1)(i) have been satisfied. A motion alleging abuse of discovery, failure to make or cooperate in

discovery, or violation of a protective order should be filed promptly after the allegedly sanctionable conduct is discovered.

(2) The administrative law judge (when the investigation or related proceeding is before him) or the Commission (when the investigation or related proceeding is before it) also may raise the sanction issue sua sponte. (See also §§210.4(d)(1)(ii), 210.27(d)(3), 210.33(c), and 210.34(c).)

(b) A motion for sanctions shall be addressed to the presiding administrative law judge, if the allegedly sanctionable conduct occurred and is discovered while the administrative law judge is presiding in an investigation or in a related proceeding. During an investigation, the administrative law judge's ruling on the motion shall be in the form of an order, if it is issued before or concurrently with the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation. In a related proceeding, the administrative law judge's ruling shall be in the form of an order, regardless of the point in time at which the order is issued.

(c) A motion for sanctions shall be addressed to the Commission, if the allegedly sanctionable conduct occurred while the Commission is presiding or is filed after the subject investigation or related proceeding is terminated. The Commission may assign the motion to an administrative law judge for issuance of a recommended determination. The deadlines and procedures that will be followed in processing the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(d) If an administrative law judge's order concerning sanctions is issued before the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation, it may be appealed under §210.24(b)(1) with leave from the administrative law judge, if the requirements of that section are satisfied. If the order is issued concurrently with the initial determination, the order may be appealed by filing a petition meeting the requirements of §210.43(b). The periods for filing such petitions and responding to the petitions will be specified in the Commission notice issued pursuant to §210.42(i), if the initial determination has granted a motion for termination of the investigation, or in the Commission notice issued pursuant to §210.46(a), if the initial determination concerns violation of section 337. The Commission will determine whether to adopt the order after disposition of the initial determination concerning violation of section 337 or termination of the investigation.

(e) If the administrative law judge's ruling on the motion for sanctions is in the form of a recommended determination pursuant to paragraph (c) of this section, the deadlines and procedures for parties to contest the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(f) If a motion for sanctions is filed with the administrative law judge during an investigation, he may defer his adjudication of the motion until after he has issued a final initial determination concerning violation of section 337 of the Tariff Act of 1930 or

termination of investigation. If the administrative law judge defers his adjudication in such a manner, his ruling on the motion for sanctions must be in the form of a recommended determination and shall be issued no later than 30 days after issuance of the Commission's final determination on violation of section 337 or termination of the investigation. To aid the Commission in determining whether to adopt a recommended determination, any party may file written comments with the Commission 14 days after service of the recommended determination. Replies to such comments may be filed within seven days after service of the comments. The Commission will determine whether to adopt the recommended determination after reviewing the parties' arguments and taking any other steps the Commission deems appropriate.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§ 210.26 Other motions.

Motions pertaining to discovery shall be filed in accordance with §210.15 and the pertinent provisions of subpart E of this part (§§210.27 through 210.34). Motions pertaining to evidentiary hearings and prehearing conferences shall be filed in accordance with §210.15 and the pertinent provisions of subpart F of this part (§§210.35 through 210.40). Motions for temporary relief shall be filed as provided in subpart H of this part (see §§210.52 through 210.57).

Subpart E—Discovery and Compulsory Process

§ 210.27 General provisions governing discovery.

(a) *Discovery methods.* The parties to an investigation may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; and requests for admissions.

(b) *Scope of discovery.* Regarding the scope of discovery for the temporary relief phase of an investigation, see §210.61. For the permanent relief phase of an investigation, unless otherwise ordered by the administrative law judge, a party may obtain discovery regarding any matter, not privileged, that is relevant to the following:

(1) The claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things;

(2) The identity and location of persons having knowledge of any discoverable matter;

(3) The appropriate remedy for a violation of section 337 of the Tariff Act of 1930 (see §210.42(a)(1)(ii)(A)); or

(4) The appropriate bond for the respondents, under section 337(j)(3) of the Tariff Act of 1930, during Presidential review of the remedial order (if any) issued by the Commission (see §210.42(a)(1)(ii)(B)).

It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Supplementation of Responses.* (1) A party who has responded to a request for discovery with a response is under a duty to supplement or correct the response to include information thereafter acquired if ordered by the administrative law judge or the Commission or in the following circumstances: A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) A duty to supplement responses also may be imposed by agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(d) *Signing of Discovery Requests, Responses, and Objections.* (1) The front page of every request for discovery or response or objection thereto shall contain a caption setting forth the name of the Commission, the title of the investigation or related proceeding, and the docket number or investigation number, if any, assigned to the investigation or related proceeding.

(2) Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and shall state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, the request, objection, or response is:

(i) Consistent with §210.5(a) (if applicable) and other relevant provisions of this chapter, and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a request, response, or objection is certified in violation of paragraph (d)(2) of this section, the administrative law judge or the Commission, upon motion or sua sponte under §210.25 of this part, may impose an appropriate sanction upon the person who made the certification, the party on whose behalf the request, response, or objection was made, or both.

(4) An appropriate sanction may include an order to pay to the other parties the amount of reasonable expenses incurred because of the violation, including a reasonable attorney's fee, to the extent authorized by Rule 26(g) of the Federal Rules of Civil Procedure. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(5) Monetary sanctions may be imposed under this section to reimburse the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations. Monetary sanctions will not be imposed under this section to reimburse the Commission for attorney's fees.

§ 210.28 Depositions.

(a) *When depositions may be taken.* Following publication in the Federal Register of a Commission notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. The presiding administrative law judge will determine the permissible dates or deadlines for taking such depositions.

(b) *Persons before whom depositions may be taken.* Depositions may be taken before a person having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation. The administrative law judge shall determine the appropriate period for providing such notice. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A notice may provide for the taking of testimony by telephone, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. Evidence objected to shall be taken subject to the objections, except that privileged communications and subject matter need not be disclosed. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, after which the deposition shall be subscribed by the deponent (unless the parties by stipulation waive signing or the deponent is ill or cannot be found or refuses to sign) and certified by the person before whom the deposition was taken. If the deposition is not subscribed by the deponent, the person administering the oath shall state on the record such fact and the reason therefor. When a deposition is recorded by stenographic means, the stenographer shall certify on the transcript that the witness was sworn in the stenographer's presence and that the transcript is a true record of the testimony of the witness. When a deposition is recorded by other than stenographic means and is thereafter transcribed, the person transcribing it shall certify that the person heard the witness sworn on the recording and that the transcript is a correct writing of the recording. Thereafter, upon payment of reasonable charges therefor, that person shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent. See paragraph (i) of this section concerning the effect of errors and irregularities in depositions.

(e) *Depositions of nonparty officers or employees of the Commission or of other Government agencies.* A party desiring to take the deposition of an officer or employee of the Commission other than the Commission investigative attorney, or of an officer or employee of another Government agency, or to obtain documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall proceed by written motion to the administrative law judge for leave to apply for a subpoena under §210.32(c). Such a motion shall be granted only upon a showing that the information expected to be obtained thereby is within the scope of discovery permitted by §210.27(b) or §210.61 and cannot be obtained without undue hardship by alternative means.

(f) *Service of deposition transcripts on the Commission staff.* The party taking the deposition shall promptly serve one copy of the deposition transcript on the Commission investigative attorney.

(g) *Admissibility of depositions.* The fact that a deposition is taken and served upon the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such investigation upon which a determination may be based. Objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require exclusion of the evidence if the witness were then present and testifying.

(h) *Use of depositions.* A deposition may be used as evidence against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;

(2) The deposition of a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purposes if the administrative law judge finds—

(i) That the witness is dead; or

(ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the oral testimony of witnesses at a hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part that ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(i) *Effect of errors and irregularities in depositions* —(1) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving notice.

(2) *As to disqualification of person before whom the deposition is to be taken.* Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to taking of depositions.* (i) Objections to the competency of a witness or the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(ii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if

promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(iii) Objections to the form of written questions submitted under this section are waived unless served in writing upon the party propounding them. The presiding administrative law judge shall set the deadline for service of such objections.

(4) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, served, or otherwise dealt with by the person before whom it is taken are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§ 210.29 Interrogatories.

(a) *Scope; use at hearing.* Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may relate to any matters that can be inquired into under §210.27(b) or §210.61, and the answers may be used to the extent permitted by the rules of evidence.

(b) *Procedure.* (1) Interrogatories may be served upon any party after the date of publication in the Federal Register of the notice of investigation.

(2) Parties answering interrogatories shall repeat the interrogatories being answered immediately preceding the answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within ten days of service of the interrogatories or within the time specified by the administrative law judge. The party submitting the interrogatories may move for an order under §210.33(a) with respect to any objection to or other failure to answer an interrogatory.

(3) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or a later time.

(c) *Option to produce records.* When the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract,

or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specifications provided shall include sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the documents from which the answer may be ascertained.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§ 210.30 Requests for production of documents and things and entry upon land.

(a) *Scope.* Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of §210.27(b).

(b) *Procedure.* (1) The request may be served upon any party after the date of publication in the Federal Register of the notice of investigation. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within 10 days or the time specified by the administrative law judge. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of any item or category, the part shall be specified. The party submitting the request may move for an order under §210.33(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

(c) *Persons not parties.* This section does not preclude issuance of an order against a person not a party to permit entry upon land.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§ 210.31 Requests for admission.

(a) *Form, content, and service of request for admission.* Any party may serve on any other party a written request for admission of the truth of any matters relevant to the investigation and set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter as to which an admission is requested shall be separately set forth. The request may be served upon a party whose complaint is the basis for the investigation after the date of publication in the Federal Register of the notice of investigation. The administrative law judge will determine the period within which a party may serve a request upon other parties.

(b) *Answers and objections to requests for admissions.* A party answering a request for admission shall repeat the request for admission immediately preceding his answer. The matter may be deemed admitted unless, within 10 days or the period specified by the administrative law judge, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter as to which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) *Sufficiency of answers.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) *Effect of admissions; withdrawal or amendment of admission.* Any matter admitted under this section may be conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the

investigation will be subserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice him in maintaining his position on the issue of the investigation. Any admission made by a party under this section is for the purpose of the pending investigation and any related proceeding as defined in §210.3 of this chapter.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§ 210.32 Subpoenas.

(a) *Application for issuance of a subpoena* —(1) *Subpoena ad testificandum.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge.

(2) *Subpoena duces tecum.* An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(3) The administrative law judge shall rule on all applications filed under paragraph (a)(1) or (a)(2) of this section and may issue subpoenas when warranted.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits that constitute or contain evidence relevant to the subject matter involved and that are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty Commission records or personnel or for records and personnel of other Government agencies* —(1) *Procedure.* An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Commission, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship or by alternative means.

(2) *Ruling.* Such applications shall be ruled upon by the administrative law judge, and he may issue such subpoenas when warranted. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of

the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. §552) shall be entertained by the administrative law judge.

(d) *Motion to limit or quash.* Any motion to limit or quash a subpoena shall be filed within such time as the administrative law judge may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of the subpoenas pursuant to the provisions of this section may be made ex parte, and, if so made, such applications and rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge.

(f) *Witness Fees* —(1) *Deponents and witnesses.* Any person compelled to appear in person to depose or testify in response to a subpoena shall be paid the same mileage as are paid witnesses with respect to proceedings in the courts of the United States; provided, that salaried employees of the United States summoned to depose or testify as to matters related to their public employment, irrespective of the party at whose instance they are summoned, shall be paid in accordance with the applicable Federal regulations.

(2) *Responsibility.* The fees and mileage referred to in paragraph (f)(1) of this section shall be paid by the party at whose instance deponents or witnesses appear. Fees due under this paragraph shall be tendered no later than the date for compliance with the subpoena issued under this section. Failure to timely tender fees under this paragraph shall not invalidate any subpoena issued under this section.

(g) *Obtaining judicial enforcement.* In order to obtain judicial enforcement of a subpoena issued under paragraphs (a)(3) or (c)(2) of this section, the administrative law judge shall certify to the Commission, on motion or sua sponte, a request for such enforcement. The request shall be accompanied by copies of relevant papers and a written report from the administrative law judge concerning the purpose, relevance, and reasonableness of the subpoena. If the request, relevant papers, or written report contain confidential business information, the administrative law judge shall certify nonconfidential copies along with the confidential versions. The Commission will subsequently issue a notice stating whether it has granted the request and authorized its Office of the General Counsel to seek such enforcement.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38233, July 7, 2008]

§ 210.33 Failure to make or cooperate in discovery; sanctions.

(a) *Motion for order compelling discovery.* A party may apply to the administrative law judge for an order compelling discovery upon reasonable notice to other parties and all persons affected thereby.

(b) *Non-monetary sanctions for failure to comply with an order compelling discovery.* If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena, the administrative law judge, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite the failure to comply, may take such action in regard thereto as is just, including, but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents, or other material in support of his position in the investigation;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule by initial determination that a determination in the investigation be rendered against the party, or both; or

(6) Order any other non-monetary sanction available under Rule 37(b) of the Federal Rules of Civil Procedure. Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the administrative law judge. It shall be the duty of the parties to seek, and that of the administrative law judge to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If, in the administrative law judge's opinion such relief would not be sufficient, the administrative law judge shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

(c) *Monetary sanctions for failure to make or cooperate in discovery.* (1) If a party or an officer, director, or managing agent of the party or person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, the administrative law judge or the Commission may make such orders in regard to the failure as are just. In lieu of or in addition to taking action listed in paragraph (b) of this section and to the extent

provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, the administrative law judge or the Commission, upon motion or sua sponte under §210.25, may require the party failing to obey the order or the attorney advising that party or both to pay reasonable expenses, including attorney's fees, caused by the failure, unless the administrative law judge or the Commission finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(2) Monetary sanctions may be imposed under this section to reimburse the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations. Monetary sanctions will not be imposed under this section to reimburse the Commission for attorney's fees.

§ 210.34 Protective orders; reporting requirement; sanctions and other actions.

(a) *Issuance of protective order.* Upon motion by a party or by the person from whom discovery is sought or by the administrative law judge on his own initiative, and for good cause shown, the administrative law judge may make any order that may appear necessary and appropriate for the protection of the public interest or that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the administrative law judge;

(6) That a deposition, after being sealed, be opened only by order of the Commission or the administrative law judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or the administrative law judge. If the motion for a protective order is denied, in whole or in part, the Commission

or the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The Commission also may, upon motion or sua sponte, issue protective orders or may continue or amend a protective order issued by the administrative law judge.

(b) *Unauthorized disclosure of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further disclosure of such information by the party or the recipient of such information.

(c) *Violation of protective order.* Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined to have violated the terms of the protective order, may be subject to one or more of the following:

(1) An official reprimand by the Commission;

(2) Disqualification from or limitation of further participation in a pending investigation;

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to §201.15(a) of this chapter;

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;

(5) Sanctions of the sort enumerated in §210.33(b), or such other action as may be appropriate.

Note to paragraph(c): The issue of whether sanctions should be imposed may be raised on a motion by a party, the administrative law judge's own motion, or the Commission's own initiative in accordance with §210.25(a)(2). Parties, including the party that identifies an alleged breach or makes a motion for sanctions, and the Commission shall treat the identity of the alleged breacher as confidential business information unless the Commission issues a public sanction. The identity of the alleged breacher means the name of any individual against whom allegations are made. The Commission or administrative law judge shall allow the parties to make written submissions and, if warranted, to present oral argument bearing on the issues of violation of a protective order and sanctions therefor. If before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(1) through (4) of this section shall be in the form of a recommended determination. When the motion is addressed to the administrative law judge, he shall grant or deny a motion for sanctions under paragraph (c)(5) of this section by issuing an order.

(d) *Reporting requirement.* Each person who is subject to a protective order issued pursuant to paragraph (a) of this section shall report in writing to the Commission

immediately upon learning that confidential business information disclosed to him or her pursuant to the protective order is the subject of:

(1) A subpoena;

(2) A court or an administrative order (other than an order of a court reviewing a Commission decision);

(3) A discovery request;

(4) An agreement; or

(5) Any other written request, if the request or order seeks disclosure, by him or any other person, of the subject confidential business information to a person who is not, or may not be, permitted access to that information pursuant to either a Commission protective order or §210.5(b).

Note to paragraph (d): This reporting requirement applies only to requests and orders for disclosure made for use of confidential business information in non-Commission proceedings.

(e) *Sanctions and other actions.* After providing notice and an opportunity to comment, the Commission may impose a sanction upon any person who willfully fails to comply with paragraph (d) of this section, or it may take other action.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

Subpart F—Prehearing Conferences and Hearings

§ 210.35 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

(1) Simplification and clarification of the issues;

(2) Negotiation, compromise, or settlement of the case, in whole or in part;

(3) Scope of the hearing;

(4) Necessity or desirability of amendments to pleadings subject, however, to the provisions of §210.14 (b) and (c);

(5) Stipulations and admissions of either fact or the content and authenticity of documents;

(6) Expedition in the discovery and presentation of evidence including, but not limited to, restriction of the number of expert, economic, or technical witnesses; and

(7) Such other matters as may aid in the orderly and expeditious disposition of the investigation including disclosure of the names of witnesses and the exchange of documents or other physical exhibits that will be introduced in evidence in the course of the hearing.

(b) *Subpoenas.* Prehearing conferences may be convened for the purpose of accepting returns on subpoenas duces tecum issued pursuant to §210.32(a)(3).

(c) *Reporting.* In the discretion of the administrative law judge, prehearing conferences may or may not be stenographically reported and may or may not be public.

(d) *Order.* The administrative law judge may enter in the record an order that recites the results of the conference. Such order shall include the administrative law judge's rulings upon matters considered at the conference, together with appropriate direction to the parties. The administrative law judge's order shall control the subsequent course of the hearing, unless the administrative law judge modifies the order.

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

§ 210.36 General provisions for hearings.

(a) *Purpose of hearings.* (1) An opportunity for a hearing shall be provided in each investigation under this part, in accordance with the Administrative Procedure Act. At the hearing, the presiding administrative law judge will take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act of 1930, and for the purpose of making findings and recommendations, as described in §210.42(a)(1)(ii), concerning the appropriate remedy and the amount of the bond to be posted by respondents during Presidential review of the Commission's action, under section 337(j) of the Tariff Act.

(2) An opportunity for a hearing in accordance with the Administrative Procedure Act shall also be provided in connection with every motion for temporary relief filed under this part.

(b) *Public hearings.* All hearings in investigations under this part shall be public unless otherwise ordered by the administrative law judge.

(c) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(d) *Rights of the parties.* Every hearing under this section shall be conducted in accordance with the Administrative Procedure Act (i.e., 5 U.S.C. §§554 through 556).

Hence, every party shall have the right of adequate notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) *Presiding official.* An administrative law judge shall preside over each hearing unless the Commission shall otherwise order.

§ 210.37 Evidence.

(a) *Burden of proof.* The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, or unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded as far as practicable.

(c) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) *Official notice.* When any decision of the administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) *Objections.* Objections to evidence shall be made in timely fashion and shall briefly state the grounds relied upon. Rulings on all objections shall appear on the record.

(f) *Exceptions.* Formal exception to an adverse ruling is not required.

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what he expects to prove by the answer of the witness, or the administrative law judge may in his discretion receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained with the record so as to be available for consideration by any reviewing authority.

§ 210.38 Record.

(a) *Definition of the record.* The record shall consist of all pleadings, the notice of investigation, motions and responses, all briefs and written statements, and other documents and things properly filed with the Secretary, in addition to all orders, notices, and initial determinations of the administrative law judge, orders and notices of the Commission, hearing and conference transcripts, evidence admitted into the record

(including physical exhibits), and any other items certified into the record by the administrative law judge or the Commission.

(b) *Reporting and transcription.* Hearings shall be reported and transcribed by the official reporter of the Commission under the supervision of the administrative law judge, and the transcript shall be a part of the record.

(c) *Corrections.* Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be addressed to the administrative law judge, who may order that the transcript be changed to reflect such corrections as are warranted, after consideration of any objections that may be made. Such corrections shall be made by the official reporter by furnishing substitute typed pages, under the usual certificate of the reporter, for insertion in the transcript. The original uncorrected pages shall be retained in the files of the Commission.

(d) *Certification of record.* The record, including all physical exhibits entered into evidence or such photographic reproductions thereof as the administrative law judge approves, shall be certified to the Commission by the administrative law judge upon his filing of an initial determination or at such earlier time as the Commission may order.

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

§ 210.39 In camera treatment of confidential information.

(a) *Definition.* Except as hereinafter provided and consistent with §§210.5 and 210.34, confidential documents and testimony made subject to protective orders or orders granting in camera treatment are not made part of the public record and are kept confidential in an in camera record. Only the persons identified in a protective order, persons identified in §210.5(b), and court personnel concerned with judicial review shall have access to confidential information in the in camera record. The right of the administrative law judge and the Commission to disclose confidential data under a protective order (pursuant to §210.34) to the extent necessary for the proper disposition of each proceeding is specifically reserved.

(b) *Transmission of certain Commission records to district court.* (1) In a civil action involving parties that are also parties to a proceeding before the Commission under section 337 of the Tariff Act of 1930, at the request of a party to a civil action that is also a respondent in the proceeding before the Commission, the district court may stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission under certain conditions. If such a stay is ordered by the district court, after the determination of the Commission becomes final and the stay is dissolved, the Commission shall certify to the district court such portions of the record of its proceeding as the district court may request. Notwithstanding paragraph (a) of this section, the in camera record may be transmitted to a district court and be admissible in a civil action, subject to such protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

(2) To facilitate timely compliance with any court order requiring the Commission to transmit all or part of the record of its section 337 proceedings to the court, as described in paragraph (b)(1) of this section, a party that requests the court to issue an order staying the civil action or an order dissolving the stay and directing the Commission to transmit all or part of the record to the court must file written notice of the issuance or dissolution of a stay with the Commission Secretary within 10 days of the issuance or dissolution of a stay by the district court.

(c) *In camera treatment of documents and testimony.* The administrative law judge shall have authority to order documents or oral testimony offered in evidence, whether admitted or rejected, to be placed in camera.

(d) *Part of confidential record.* In camera documents and testimony shall constitute a part of the confidential record of the Commission.

(e) *References to in camera information.* In submitting proposed findings, briefs, or other papers, counsel for all parties shall make an attempt in good faith to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of in camera data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "Business Confidential," which shall be 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,

(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, and

(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 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 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 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 64803, October 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 issue, such as a violation of section 337, was decided adversely to the party.

(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.

(5) *Service of petition.* All petitions for review of an initial determination shall be served on the other parties by messenger, overnight delivery, or equivalent means.

(c) *Responses to the petition.* Any party may file a response within eight (8) days after service of a petition of a final initial determination under §210.42(a)(1), and within five

(5) business days after service of all other types of petitions, 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. If a response to a petition for review filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the response not to exceed ten pages. Responses to petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits.

(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) within 60 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(a)(2) or §210.42(c), which grants a motion for summary determination that would terminate the investigation in its entirety if it becomes the final determination of the Commission, §210.50(d)(3), or §210.70(c) within 45 days after 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), except as noted above, within 30 days after 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; 73 FR 38325, July 7, 2008]

§ 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. In addition, the Commission may take no position on specific issues or portions of the initial determination of the administrative law judge. The Commission 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; 73 FR 38235, July 7, 2008]

§ 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 or action ordered to be taken thereunder or toll the running of any statutory time period affecting such determination or action ordered to be taken thereunder unless specifically so ordered by the Commission.

§ 210.48 Disposition of petitions for reconsideration.

The Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 210.49 Implementation of Commission action.

(a) *Service of Commission determination upon the parties.* A Commission determination pursuant to §210.45(c) or a termination on the basis of a licensing or other agreement, a consent order or an arbitration agreement pursuant to §210.21(b), (c) or (d), respectively, shall be served upon each party to the investigation.

(b) *Publication and transmittal to the President.* A Commission determination that there is a violation of section 337 of the Tariff Act of 1930 or that there is reason to believe that there is a violation, together with the action taken relative to such determination under §210.50(a) or §210.50(d) of this part, or the modification or rescission in whole or in part of an action taken under §210.50(a), shall promptly be published in the Federal Register. It shall also be promptly transmitted to the President or an officer assigned the functions of the President under 19 U.S.C. 1337(j)(1)(B), 1337(j)(2), and 1337(j)(4), together with the record upon which the determination and the action are based.

(c) *Enforceability of Commission action.* Unless otherwise specified, any Commission action other than an exclusion order or an order directing seizure and forfeiture of articles imported in violation of an outstanding exclusion order shall be enforceable upon receipt by the affected party of notice of such action. Exclusion orders and seizure and forfeiture orders shall be enforceable upon receipt of notice thereof by the Secretary of the Treasury.

(d) *Finality of affirmative Commission action.* If the President does not disapprove the Commission's action within a 60-day period beginning the day after a copy of the Commission's action is delivered to the President, or if the President notifies the Commission before the close of the 60-day period that he approves the Commission's action, such action shall become final the day after the close of the 60-day period or the day the President notifies the Commission of his approval, as the case may be.

(e) *Duration.* Final Commission action shall remain in effect as provided in subpart I of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 73 FR 38325, July 7, 2008]

§ 210.50 Commission action, the public interest, and bonding by respondents.

(a) During the course of each investigation under this part, the Commission shall—

(1) Consider what action (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order), if any, it should take, and, when appropriate, take such action;

(2) Consult with and seek advice and information from 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 it considers appropriate, concerning the subject matter of the complaint and the effect its actions (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order) under section 337 of the Tariff Act of 1930 shall have 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;

(3) Determine the amount of the bond to be posted by a respondent pursuant to section 337(j)(3) of the Tariff Act of 1930 following the issuance of temporary or permanent relief under section 337(d), (e), (f), or (g) of the Tariff Act of 1930, taking into account the requirement of section 337(e) and (j)(3) that the amount of the bond be sufficient to protect the complainant from any injury.

(4) Receive submissions from the parties, interested persons, and other Government agencies and departments with respect to the subject matter of paragraphs (a)(1), (a)(2), and (a)(3) of this section. After a recommended determination on remedy is issued by the presiding administrative law judge, the parties are requested to submit to the Commission, within 30 days from service of the recommended determination, any information relating to the public interest, including any updates to the information requested by §§210.8(b) and (c) and 210.14(f). Any submissions under this section are limited to 5 pages, inclusive of attachments.

(i) When the matter under consideration pursuant to paragraph (a)(1) of this section is whether to grant some form of permanent relief, the submissions described in paragraph (a)(4) of this section shall be filed by the deadlines specified in the Commission notice issued pursuant to §210.46(a).

(ii) When the matter under consideration is whether to grant some form of temporary relief, such submissions shall be filed by the deadlines specified in §210.67(b), unless the Commission orders otherwise.

(iii) Any submission from a party shall be served upon the other parties in accordance with §210.4(g). The parties' submissions, as well as any filed by interested persons or other agencies shall be available for public inspection in the Office of the Secretary.

(iv) The Commission will consider motions for oral argument or, when necessary, a hearing with respect to the subject matter of this section, except that no hearing or oral argument will be permitted in connection with a motion for temporary relief.

(b)(1) With respect to an administrative law judge's authorization to take evidence or other information and to hear arguments from the parties and other interested persons on the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination on temporary relief, see §§210.61, 210.62, and 210.66(a). For purposes of the recommended determination required by §210.42(a)(1)(ii), an administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons on the issues of appropriate Commission action and bonding by the respondents upon order of the Commission. Unless the Commission orders otherwise, and except as provided for in paragraph (b)(2) of this section, an administrative law judge shall not take evidence on the issue of the public interest for purposes of the recommended determination under §210.42(a)(1)(ii).

(2) Regarding terminations by settlement agreement, consent order, or arbitration agreement under §210.21 (b), (c) or (d), the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on 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.

(c) No general exclusion from entry of articles shall be ordered under paragraph (a)(1) of this section unless the Commission determines that—

(1) Such exclusion is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(2) There is a pattern of violation of section 337 of the Tariff Act of 1930 and it is difficult to identify the source of infringing products.

(d) *Forfeiture or return of respondents' bonds.* (1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1) or 1337(j)(3), proceedings to determine whether a respondent's bond should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j). If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

(ii) A respondent may file a motion addressed to the administrative law judge who last presided over the investigation for the return of its bond within 90 days after the expiration of the Presidential review period under 19 U.S.C. 1337(j). If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

(2) Any nonmoving party may file a response to a motion filed under paragraph (d)(1) of this section within 15 days after filing of the motion, unless otherwise ordered by the administrative law judge.

(3) A motion for forfeiture or return of a respondent's bond in whole or part will be adjudicated by the administrative law judge in an initial determination with a 45-day effective date, which shall be subject to review under the provisions of §§210.42 through 210.45. In determining whether to grant the motion, the administrative law judge and the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure (taking into account that the roles of the parties are reversed in this instance).

(4) If the Commission determines that a respondent's bond should be forfeited to a complainant, and if the bond is being held by the Secretary of the Treasury, the Commission Secretary shall promptly notify the Secretary of the Treasury of the Commission's determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 73 FR 38326, July 7, 2008; 76 FR 64803, October 19, 2011]

§ 210.51 Period for concluding investigation.

(a) *Permanent relief.* Within 45 days after institution of the investigation, the administrative law judge shall issue an order setting a target date for completion of the investigation. If the target date does not exceed 16months from the date of institution of the investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 16 months, the order of the administrative law judge shall constitute an initial determination. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission. Any extension of the target date beyond 16

months, before the investigation is certified to the Commission, shall be by initial determination.

(b) *Temporary relief.* The temporary relief phase of an investigation shall be concluded and a final order issued no later than 90 days after publication of the notice of investigation in the Federal Register, unless the temporary relief phase of the investigation has been designated “more complicated” by the Commission or the presiding administrative law judge pursuant to §210.22(c) and §210.60. If that designation has been made, the temporary relief phase of the investigation shall be concluded and a final order issued no later than 150 days after publication of the notice of investigation in the Federal Register.

(c) *Computation of time.* In computing the deadlines imposed in paragraph (b) of this section, there shall be excluded any period during which the investigation is suspended pursuant to §210.23.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67629, Dec. 30, 1994; 61 FR 43432, Aug. 23, 1996; 73 FR 38326, July 7, 2008]

Subpart H—Temporary Relief

§ 210.52 Motions for temporary relief.

Requests for temporary relief under section 337 (e) or (f) of the Tariff Act of 1930 shall be made through a motion filed in accordance with the following provisions:

(a) A complaint requesting temporary relief shall be accompanied by a motion setting forth the complainant's request for such relief. In determining whether to grant temporary relief, the Commission will apply the standards the U.S. Court of Appeals for the Federal Circuit uses in determining whether to affirm lower court decisions granting preliminary injunctions. The motion for temporary relief accordingly must contain a detailed statement of specific facts bearing on the factors the Federal Circuit has stated that a U.S. District Court must consider in granting a preliminary injunction.

(b) The motion must also contain a detailed statement of facts bearing on:

(1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of temporary relief; and

(2) The appropriate amount of the bond, if the Commission determines that a bond will be required.

(c) In determining whether to require a bond as a prerequisite to the issuance of temporary relief, the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure.

(d) The following documents and information also shall be filed along with the motion for temporary relief:

(1) A memorandum of points and authorities in support of the motion;

(2) Affidavits executed by persons with knowledge of the facts asserted in the motion; and

(3) All documents, information, and other evidence in complainant's possession that complainant intends to submit in support of the motion.

(e) If the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief contains confidential business information as defined in §201.6(a) of this chapter, the complainant must follow the procedure outlined in §§210.4(a), 210.5(a), 201.6 (a) and (c), 210.8(a), and 210.55 of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67629, Dec. 30, 1994; 60 FR 32444, June 22, 1995]

§ 210.53 Motion filed after complaint.

(a) A motion for temporary relief may be filed after the complaint, but must be filed prior to the Commission determination under §210.10 on whether to institute an investigation. A motion filed after the complaint shall contain the information, documents, and evidence described in §210.52 and must also make a showing that extraordinary circumstances exist that warrant temporary relief and that the moving party was not aware, and with due diligence could not have been aware, of those circumstances at the time the complaint was filed. When a motion for temporary relief is filed after the complaint but before the Commission has determined whether to institute an investigation based on the complaint, the 35-day period allotted under §210.58 for review of the complaint and informal investigatory activity will begin to run anew from the date on which the motion was filed.

(b) A motion for temporary relief may not be filed after an investigation has been instituted.

§ 210.54 Service of motion by the complainant.

Notwithstanding the provisions of §210.11 regarding service of the complaint by the Commission upon institution of an investigation, on the day the complainant files a complaint with the Commission (see §210.8(a)(1) and §210.8(a)(2) of subpart B of this part), the complainant must serve non-confidential copies of both documents (as well as non-confidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint. If a complainant files any supplemental information with the Commission prior to institution, nonconfidential copies of that supplemental information must be served on all proposed respondents and

on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the complaint. The complaint, motion, and supplemental information, if any, shall be served by messenger, overnight delivery, or equivalent means. A signed certificate of service must accompany the complaint and motion for temporary relief. If the certificate does not accompany the complaint and the motion, the Secretary shall not accept the complaint or the motion and shall promptly notify the submitter. Actual proof of service on each respondent and embassy (e.g., certified mail return receipts, messenger, or overnight delivery receipts, or other proof of delivery)—or proof of a serious but unsuccessful effort to make such service—must be filed within 10 days after the filing of the complaint and motion. If the requirements of this section are not satisfied, the Commission may extend its 35-day deadline under §210.58 for determining whether to provisionally accept the motion for temporary relief and institute an investigation on the basis of the complaint.

[73 FR 38326, July 7, 2008]

§ 210.55 Content of service copies.

(a) Any purported confidential business information that is deleted from the nonconfidential service copies of the complaint and motion for temporary relief must satisfy the requirements of §201.6(a) of this chapter (which defines confidential information for purposes of Commission proceedings). For attachments to the complaint or motion that are confidential in their entirety, the complainant must provide a nonconfidential summary of what each attachment contains. Despite the redaction of confidential material from the complaint and motion for temporary relief, the nonconfidential service copies must contain enough factual information about each element of the violation alleged in the complaint and the motion to enable each proposed respondent to comprehend the allegations against it.

(b) If the Commission determines that the complaint, motion for temporary relief, or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under §201.6(a) of this chapter, the Commission may require the complainant to file and serve new non-confidential versions of the aforesaid submissions in accordance with §210.54 and may determine that the 35-day period under §210.58 for deciding whether to institute an investigation and to provisionally accept the motion for temporary relief for further processing shall begin to run anew from the date the new non-confidential versions are filed with the Commission and served on the proposed respondents in accordance with §210.54.

[73 FR 38326, July 7, 2008]

§ 210.56 Notice accompanying service copies.

(a) Each service copy of the complaint and motion for temporary relief shall be accompanied by a notice containing the following text:

Notice is hereby given that the attached complaint and motion for temporary relief will be filed with the U.S. International Trade Commission in Washington, DC on ____, 20_. The filing of the complaint and motion will not institute an investigation on that date, however, nor will it begin the period for filing responses to the complaint and motion pursuant to 19 CFR 210.13 and 210.59.

Upon receipt of the complaint, the Commission will examine the complaint for sufficiency and compliance with 19 CFR 201.8, 210.4, 210.5, 210.8, and 210.12. The Commission's Office of Unfair Import Investigations will conduct informal investigatory activity pursuant to 19 CFR 210.9 to identify sources of relevant information and to assure itself of the availability thereof. The motion for temporary relief will be examined for sufficiency and compliance with 19 CFR 201.8, 210.4, 210.5, 210.52, 210.53(a) (if applicable), 210.54, 210.55, and 210.56, and will be subject to the same type of preliminary investigative activity as the complaint.

The Commission generally will determine whether to institute an investigation on the basis of the complaint and whether to provisionally accept the motion for temporary relief within 35 days after the complaint and motion are filed or, if the motion is filed after the complaint, within 35 days after the motion is filed—unless the 35-day deadline is extended pursuant to 19 CFR 210.53, 210.54, 210.55(b), 210.57, or 210.58. If the Commission determines to institute an investigation and provisionally accept the motion, the motion will be assigned to a Commission administrative law judge for issuance of an initial determination in accordance with 19 CFR 210.66. See 19 CFR 210.10 and 210.58.

If the Commission determines to conduct an investigation of the complaint and motion for temporary relief, the investigation will be formally instituted on the date the Commission publishes a notice of investigation in the Federal Register pursuant to 19 CFR 210.10(b). If an investigation is instituted, copies of the complaint, the notice of investigation, and the Commission's Rules of Practice and Procedure (19 CFR Part 210) will be served on each respondent by the Commission pursuant to 19 CFR 210.11(a). Responses to the complaint, the notice of investigation, and the motion for temporary relief must be filed within 10 days after Commission service thereof, and must comply with 19 CFR 201.8, 210.4, 210.5, 210.13, and 210.59. See also 19 CFR 201.14 and 210.6 regarding computation of the 10-day response period.

If, after reviewing the complaint and motion for temporary relief, the Commission determines not to institute an investigation, the complaint and motion will be dismissed and the Commission will provide written notice of that decision and the reasons therefor to the complainant and all proposed respondents pursuant to 19 CFR 210.10.

For information concerning the filing and processing of the complaint and its treatment, and to ask general questions concerning section 337 practice and procedure, contact the Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401, Washington, DC 20436, telephone 202–205–2560. Such inquiries will be referred to the Commission investigative attorney assigned to the complaint. (See also the Commission's Rules of Practice and Procedure set forth in 19 CFR Part 210.)

To learn the date that the Commission will vote on whether to institute an investigation and the publication date of the notice of investigation (if the Commission decides to institute an investigation), contact the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–2000.

This notice is being provided pursuant to 19 CFR 210.56.

(b) In the event that the complaint and motion for temporary relief are filed after the date specified in the above notice, the complainant must serve a supplementary notice to all proposed respondents and embassies stating the correct filing date. The supplementary notice shall be served by messenger, overnight delivery, or equivalent means. The

complainant shall file a certificate of service and a copy of the supplementary notice with the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38326, July 7, 3008]

§ 210.57 Amendment of the motion.

A motion for temporary relief may be amended at any time prior to the institution of an investigation. All material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC, of the foreign governments that they represent, in accordance with §210.54. If the amendment expands the scope of the motion or changes the complainant's assertions on the issue of whether a bond is to be required as a prerequisite to the issuance of temporary relief or the appropriate amount of the bond, the 35-day period under §210.58 for determining whether to institute an investigation and provisionally accept the motion for temporary relief shall begin to run anew from the date the amendment is filed with the Commission. A motion for temporary relief may not be amended to expand the scope of the temporary relief inquiry after an investigation is instituted.

§ 210.58 Provisional acceptance of the motion.

The Commission shall determine whether to accept a motion for temporary relief at the same time it determines whether to institute an investigation on the basis of the complaint. That determination shall be made within 35 days after the complaint and motion for temporary relief are filed, unless the 35-day period is restarted pursuant to §210.53(a), 210.54, 210.55, or 210.57, or exceptional circumstances exist which preclude adherence to the prescribed deadline. (See §210.10(a)(1).) Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with §§210.52, 210.53(a) (if applicable), 210.54 through 210.56, as well as §§201.8, 210.4, and 210.5. The motion will be subject to the same type of preliminary investigatory activity as the complaint. (See §210.9(b).) Acceptance of a motion pursuant to this paragraph constitutes provisional acceptance for referral of the motion to the chief administrative law judge, who will assign the motion to a presiding administrative law judge for issuance of an initial determination under §210.66(a). Commission rejection of an insufficient or improperly filed complaint will preclude acceptance of a motion for temporary relief. Commission rejection of a motion for temporary relief will not preclude institution of an investigation of the complaint.

§ 210.59 Responses to the motion and the complaint.

(a) Any party may file a response to a motion for temporary relief. Unless otherwise ordered by the administrative law judge, a response to a motion for temporary relief in an ordinary investigation must be filed not later than 10 days after service of the motion by the Commission. In a “more complicated” investigation, the response shall be due within 20 days after such service, unless otherwise ordered by the presiding administrative law judge.

(b) The response must comply with the requirements of §201.8 of this chapter, as well as §§210.4 and 210.5 of this part, and shall contain the following information:

(1) A statement that sets forth with particularity any objection to the motion for temporary relief;

(2) A statement of specific facts concerning the factors the U.S. Court of Appeals for the Federal Circuit would consider in determining whether to affirm lower court decisions granting or denying preliminary injunctions;

(3) A memorandum of points and authorities in support of the respondent's response to the motion;

(4) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. Each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter-proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

(c) Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with §201.8 of this chapter, §§210.4 and 210.5 of this part, and any protective order issued by the administrative law judge under §210.34 of this part.

§ 210.60 Designating an investigation “more complicated” for the purpose of adjudicating a motion for temporary relief.

At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to §210.58, the Commission may designate the investigation “more complicated” pursuant to §210.22(c) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under §210.66(a), the administrative law judge may issue an order, sua sponte or on motion, designating the investigation “more complicated” for the purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the Federal Register. As required by section 337(e)(2) of the Tariff Act of 1930, the notice shall state the reasons that the temporary relief phase of the investigation was designated “more complicated.” The “more complicated” designation may be conferred by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto, or for other good cause shown.

§ 210.61 Discovery and compulsory process.

The presiding administrative law judge shall set all discovery deadlines. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(a) Any matter relevant to the motion for temporary relief and the responses thereto, including the issues of bonding by the complainant; and

(b) The issues the Commission considers pursuant to sections 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930, viz.,

(1) The appropriate form of relief (notwithstanding the form requested in the motion for temporary relief),

(2) Whether the public interest precludes that form of relief, and

(3) The amount of the bond to be posted by the respondents to secure importations or sales of the subject imported merchandise while the temporary relief order is in effect. The administrative law judge may, but is not required to, make findings on the issues specified in sections 337 (e)(1), (f)(1), or (j)(3) of the Tariff Act of 1930. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to §210.67(b).

§ 210.62 Evidentiary hearing.

An opportunity for a hearing in accordance with the Administrative Procedure Act and §210.36 of this part will be provided in connection with every motion for temporary relief. If a hearing is conducted, the presiding administrative law judge may, but is not required to, take evidence concerning the issues of remedy, the public interest, and bonding by respondents under section 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

§ 210.63 Proposed findings and conclusions and briefs.

The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, or briefs under §210.40 concerning the issues involved in adjudication of the motion for temporary relief.

§ 210.64 Interlocutory appeals.

There will be no interlocutory appeals to the Commission under §210.24 on any matter connected with a motion for temporary relief that is decided by an administrative law judge prior to the issuance of the initial determination on the motion for temporary relief.

§ 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]

§ 210.68 Complainant's temporary relief bond.

(a) In every investigation under this part involving a motion for temporary relief, the question of whether the complainant shall be required to post a bond as a prerequisite to the issuance of such relief shall be addressed by the parties, the presiding administrative law judge, and the Commission in the manner described in §§210.52, 210.59, 210.61, 210.62, and 210.66. If the Commission determines that a bond should be required, the bond may consist of one or more of the following:

(1) The surety bond of a surety or guarantee corporation that is licensed to do business with the United States in accordance with 31 U.S.C. 9304–9306 and 31 CFR parts 223 and 224;

(2) The surety bond of an individual, a trust, an estate, or a partnership, or a corporation, whose solvency and financial responsibility will be investigated and verified by the Commission; or

(3) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR part 225, which is owned by the complainant and tendered in lieu of a surety bond, pursuant to 31 U.S.C. 9303(c) and 31 CFR part 225.

The same restrictions and requirements applicable to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR part 113, shall apply with respect to sureties on bonds filed with the Commission by complainants as a prerequisite to a temporary relief under section 337 of the Tariff Act of 1930. If the surety is an individual, the individual must file an affidavit of the type shown in appendix A to §210.68. Unless otherwise ordered by the Commission, while the bond of the individual surety is in effect, an updated affidavit must be filed every four months (computed from the date on which the bond was approved by the Secretary or the Commission).

(b) The bond and accompanying documentation must be submitted to the Commission within the time specified in the Commission notice, order, determination, or opinion requiring the posting of a bond, or within such other time as the Commission may order. If the bond is not submitted within the specified period (and an extension of time has not been granted), temporary relief will not be issued.

(c) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forfeiture of the bond pursuant to §210.70:

(1) The investigation caption and docket number;

(2) The names, addresses, and seals (if appropriate) of the principal, the surety, the obligee, as well as the “attorney in fact” and the registered process agent (if applicable) (see Customs Service regulations in 19 CFR part 113 and Treasury Department regulations in 31 CFR parts 223, 224, and 225);

(3) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond); and

(4) A section at the bottom of the bond or other instrument for the date and authorized signature of the Secretary to reflect Commission approval of the bond.

(d) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation tendered in lieu of a surety bond, in accordance with 31 U.S.C. §9303, 31 CFR parts 202, 206, and 225 and other governing Treasury

regulations and circular(s). If required by the governing Treasury regulations and circular, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other government obligation tendered in lieu of a surety bond may have to be collateralized. See, e.g., 31 CFR 202.6 and the appropriate Treasury Circular.

Appendix A to §210.68—Affidavit by Individual Surety

United States International Trade Commission Affidavit by Individual Surety 19 CFR 210.68

_____

State of

_____

County

SS:_____

I, the undersigned, being duly sworn, depose and say that I am a citizen of the United States, and of full age and legally competent; that I am not a partner in any business of the principal on the bond or bonds on which I appear as surety; and that the information herein below furnished is true and complete to the best of my knowledge. This affidavit is made to induce the United States International Trade Commission to accept me as surety on the bond(s) filed or to be filed with the United States International Trade Commission pursuant to 19 CFR 210.68. I agree to notify the Commission of any transfer or change in any of the assets herein enumerated.

_____

1. Name (First, Middle, Last)

_____

2. Home Address

_____

3. Type & Duration of Occupation

_____

4. Name of Employer (If Self-Employed)

_____

5. Business Address

_____

6. Telephone No.

Home_____
Business_____

7. The following is a true representation of my assets, liabilities, and net worth and does not include any financial interest I have in the assets of the principal on the bond(s) on which I appear as surety.

a. Fair value of solely owned real estate *	
b. All mortgages or other encumbrances on the real estate included in Line a	
c. Real estate equity (subtract Line b from Line a)	
d. Fair value of all solely owned property other than real estate	
e. Total of the amounts on Lines c and d	
f. All other liabilities owing or incurred not included in Line b	
g. Net worth (subtract Line f from Line e)	

*Do not include property exempt from execution and sale for any reason. Surety's interest in community property may be included if not so exempt.

_____

8. LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER, THE VALUE OF WHICH IS IN LINE a, ITEM 7 ABOVE[1]

Amount of assessed value of above real estate for taxation purposes:

_____

9. DESCRIPTION OF PROPERTY INCLUDED IN LINE d, ITEM 7 ABOVE (List the value of each category of property separately)[2]

_____

10. ALL OTHER BONDS ON WHICH I AM SURETY (State character and amount of each bond; if none, so state)[3]

_____

11. SIGNATURE

_____

12. BOND AND COMMISSION INVESTIGATION TO WHICH THIS AFFIDAVIT RELATES

SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

DATE OATH ADMINISTERED

MONTH DAY YEAR

CITY_____
STATE (Or Other Jurisdiction)_____
_____

NAME & TITLE OF OFFICIAL

ADMINISTERING OATH_____
SIGNATURE_____
MY COMMISSION EXPIRES_____

INSTRUCTIONS

1. Here describe the property by giving the number of the lot and square or block, and addition or subdivision, if in a city, and, if in the country, after showing state, county, and township, locate the property by metes and bounds, or by part of section, township, and range, so that it may be identified.

2. Here describe the property by name so that it can be identified—for example “Fifteen shares of the stock of the “National Metropolitan Bank, New York City,” or “Am. T. & T. s. f.5's 60.”

3. Here state what other bonds the affiant has already signed as surety, giving the name and address of the principal, the date, and the amount and character of the bond.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994]

§ 210.69 Approval of complainant's temporary relief bond.

(a) In accordance with 31 U.S.C. §9304(b), all bonds posted by complainants must be approved by the Commission before the temporary relief sought by the complainant will be issued. See also 31 U.S.C. §9303(a) and 31 CFR 225.1 and 225.20. The Commission's bond approval officer for purposes of those provisions shall be the Secretary.

(b) The bond approval process may entail investigation by the Secretary or the Commission's Office of Investigations to determine the veracity of all factual information set forth in the bond and the accompanying documentation (e.g., powers of attorney), as well as any additional verification required by 31 CFR parts 223, 224, or 225. The Secretary may reject a bond on one or more of the following grounds:

(1) Failure to comply with the instructions in the Commission determination, order, or notice directing the complainant to post a bond;

(2) Failure of the surety or the bond to provide information or supporting documentation required by the Commission, the Secretary, §210.68 of this part, 31 CFR parts 223 or 224, or other governing statutes, regulations, or Treasury circulars, or because of a limitation prescribed in a governing statute, regulation, or circular;

(3) Failure of an individual surety to execute and file with the bond, an affidavit of the type shown in appendix A to §210.68, which sets forth information about the surety's assets, liabilities, net worth, real estate and other property of which the initial surety is the sole owner, other bonds on which the individual surety is a surety (and which must be

updated at 4-month intervals while the bond is in effect, measured from the date on which the bond is approved by the Secretary on behalf of the Commission or by the Commission);

(4) Any question about the solvency or financial responsibility of the surety, or any question of fraud, misrepresentation, or perjury which comes to light as a result of the verification inquiry during the bond approval process; and

(5) Any other reason deemed appropriate by the Secretary.

(c) If the complainant believes that the Secretary's rejection of the bond was erroneous as a matter of law, the complainant may appeal the Secretary's rejection of the bond by filing a petition with the Commission in the form of a letter to the Chairman, within 10 days after service of the rejection letter.

(d) After the bond is approved and temporary relief is issued, if any question concerning the continued solvency of the individual or the legality or enforceability of the bond or undertaking develops, the Commission may take the following action(s), sua sponte or on motion;

(1) Revoke the Commission approval of the bond and require complainant to post a new bond; or

(2) Revoke or vacate the temporary remedial order for public interest reasons or changed conditions of law or fact (criteria that are the basis for modification or rescission of final Commission action pursuant to §210.76(a)(1) and (b)); or

(3) Notify the Treasury Department if the problem involves a corporate surety licensed to do business with the United States under 31 U.S.C. §§9303–9306 and 31 CFR parts 223 and 224; or

(4) Refer the matter to the U.S. Department of Justice if there is a suggestion of fraud, perjury, or related conduct.

§ 210.70 Forfeiture or return of complainant's temporary relief bond.

(a)(1) If the Commission determines that one or more of the respondents whose merchandise was covered by the temporary relief order has not violated section 337 of the Tariff Act of 1930 to the extent alleged in the motion for temporary relief and provided for in the temporary relief order, proceedings to determine whether the complainant's bond should be forfeited to one or more respondents in whole or part may be initiated upon the filing of a motion by a respondent within 30 days after filing of the aforesaid Commission determination on violation.

(2) A complainant may file a motion for the return of its bond.

(b) Any nonmoving party may file a response to a motion filed under paragraph (a) of this section within 15 days after filing of the motion, unless otherwise ordered by the administrative law judge.

(c) A motion for forfeiture or return of a complainant's temporary relief bond in whole or part will be adjudicated by the administrative law judge in an initial determination with a 45-day effective date, which shall be subject to review under the provisions of §§210.42 through 210.45. In determining whether to grant the motion, the administrative law judge and the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure.

[59 FR 67629, Dec. 30, 1994]

Subpart I—Enforcement Procedures and Advisory Opinions

§ 210.71 Information gathering.

(a) *Power to require information.* (1) Whenever the Commission issues an exclusion order, the Commission may require any person to report facts available to that person that will help the Commission assist the U.S. Customs Service in determining whether and to what extent there is compliance with the order. Similarly, whenever the Commission issues a cease and desist order or a consent order, it may require any person to report facts available to that person that will aid the Commission in determining whether and to what extent there is compliance with the order or whether and to what extent the conditions that led to the order are changed.

(2) The Commission may also include provisions that exercise any other information-gathering power available to the Commission by law, regardless of whether the order at issue is an exclusion order, a cease and desist order, or a consent order. The Commission may at any time request the cooperation of any person or agency in supplying it with information that will aid the Commission or the U.S. Customs Service in making the determinations described in paragraph (a)(1) of this section.

(b) *Form and detail of reports.* Reports under paragraph (a) of this section are to be in writing, under oath, and in such detail and in such form as the Commission prescribes.

(c) *Power to enforce informational requirements.* Terms and conditions of exclusion orders, cease and desist orders, and consent orders for reporting and information gathering shall be enforceable by the Commission by a civil action under 19 U.S.C. §1333, or, at the Commission's discretion, in the same manner as any other provision of the exclusion order, cease and desist order, or consent order is enforced.

(d) *Term of reporting requirement.* An exclusion order, cease and desist order, or consent order may provide for the frequency of reporting or information gathering and the date on which these activities are to terminate. If no date for termination is provided, reporting and information gathering shall terminate when the exclusion order, cease and desist order, or consent order or any amendment to it expires by its own terms or is terminated.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008]

§ 210.72 Confidentiality of information.

Confidential information (as defined in §201.6(a) of this chapter) that is provided to the Commission pursuant to exclusion order, cease and desist order, or consent order will be received by the Commission in confidence. Requests for confidential treatment shall comply with §201.6 of this chapter. The restrictions on disclosure and the procedures for handling such information (which are set out in §§210.5 and 210.39) shall apply and, in a proceeding under §§210.75 or 210.76, the Commission or the presiding administrative law judge may, upon motion or sua sponte, issue or continue appropriate protective orders.

§ 210.73 Review of reports.

(a) *Review to insure compliance.* The Commission, through the Office of Unfair Import Investigations, will review reports submitted pursuant to any exclusion order, cease and desist order, or consent order and conduct such further investigation as it deems necessary to insure compliance with its orders.

(b) *Extension of time.* The Director of the Office of Unfair Import Investigations may, for good cause shown, extend the time in which reports required by exclusion orders, cease and desist orders, and consent orders may be filed. An extension of time within which a report may be filed, or the filing of a report that does not evidence full compliance with the order, does not in any circumstances suspend or relieve a respondent from its obligation under the law with respect to compliance with such order.

§ 210.74 Modification of reporting requirements.

(a) *Exclusion and cease and desist orders.* The Commission may modify reporting requirements of exclusion and cease and desist orders as necessary:

(1) To help the Commission assist the U.S. Customs Service in ascertaining that there has been compliance with an outstanding exclusion order;

(2) To help the Commission ascertain that there has been compliance with a cease and desist order;

(3) To take account of changed circumstances; or

(4) To minimize the burden of reporting or informational access.

An order to modify reporting requirements shall identify the reports involved and state the reason or reasons for modification. No reporting requirement will be suspended during the pendency of such a modification unless the Commission so orders. The Commission may, if the public interest warrants, announce that a modification of reporting is under consideration and ask for comment, but it may also modify any

reporting requirement at any time without notice, consistent with the standards of this section.

(b) *Consent orders.* Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall serve notice of any proposed change, together with the reporting requirements to be modified and the reasons therefor, on each party subject to the consent order. Such parties shall be given the opportunity to submit briefs to the Commission, and the Commission may hold a hearing on the matter. Notice of any proposed change in the reporting requirements will be published in the Federal Register if the Commission determines to solicit public comment on the proposed change.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53121, Oct. 12, 1995]

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

(a) *Informal enforcement proceedings.* Informal enforcement proceedings may be conducted by the Commission, through the Office of Unfair Import Investigations, with respect to any act or omission by any person in possible violation of any provision of an exclusion order, cease and desist order, or consent order. Such matters may be handled by the Commission through correspondence or conference or in any other way that the Commission deems appropriate. The Commission may issue such orders as it deems appropriate to implement and insure compliance with the terms of an exclusion order, cease and desist order, or consent order, or any part thereof. Any matter not disposed of informally may be made the subject of a formal proceeding pursuant to this subpart.

(b) *Formal enforcement proceedings.* (1) The Commission may institute an enforcement proceeding at the Commission level upon the filing by the complainant in the original investigation or his successor in interest, by the Office of Unfair Import Investigations, or by the Commission of a complaint setting forth alleged violations of any exclusion order, cease and desist order, or consent order. If a proceeding is instituted, the complaint shall be served upon the alleged violator and a notice of institution published in the Federal Register. Within 15 days after the date of service of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted may be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered.

(2) Upon the failure of a respondent to file and serve a response within the time and in the manner prescribed herein the Commission, in its discretion, may find the facts alleged in the complaint to be true and take such action as may be appropriate without notice or hearing, or, in its discretion, proceed without notice to take evidence on the allegations set forth in the complaint, provided that the Commission (or administrative law judge, if one is appointed) may permit late filings of an answer for good cause shown.

(3) The Commission, in the course of a formal enforcement proceeding under this section may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The hearing will not be subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code. The Commission may delegate the hearing to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify an initial determination to the Commission. That initial determination shall become the determination of the Commission 90 days after the date of service of the initial determination, unless the Commission, within 90 days after the date of such service shall have ordered review of the initial determination on certain issues therein, or by order shall have changed the effective date of the initial determination.

(4) Upon conclusion of a formal enforcement proceeding under this section, the Commission may:

(i) Modify a cease and desist order, consent order, and/or exclusion order in any manner necessary to prevent the unfair practices that were originally the basis for issuing such order;

(ii) Bring civil actions in a United States district court pursuant to paragraph (c) of this section (and section 337(f)(2) of the Tariff Act of 1930) to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and to obtain a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order; or

(iii) Revoke the cease and desist order or consent order and direct that the articles concerned be excluded from entry into the United States.

(5) Prior to effecting any modification, revocation, or exclusion under this section, the Commission shall consider the effect of such action 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.

(6) In lieu of or in addition to taking the action provided for in paragraph (b)(1) of this section, the Commission may issue, pursuant to section 337(i) of the Tariff Act of 1930, an order providing that any article imported in violation of the provisions of section 337 of the Tariff Act of 1930 and an outstanding final exclusion order issued pursuant to section 337(d) of the Tariff Act of 1930 be seized and forfeited to the United States, if the following conditions are satisfied:

(i) The owner, importer, or consignee of the article (or the agent of such person) previously attempted to import the article into the United States;

(ii) The article previously was denied entry into the United States by reason of a final exclusion order; and

(iii) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact that seizure and forfeiture would result from any further attempt to import the article into the United States.

(c) *Court enforcement.* To obtain judicial enforcement of an exclusion order, a cease and desist order, a consent order, or a sanctions order, the Commission may initiate a civil action in the U.S. district court. In a civil action under section 337(f)(2) of the Tariff Act of 1930, the Commission may seek to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and may ask the court to issue a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order. The Commission may initiate a proceeding to obtain judicial enforcement without any other type of proceeding otherwise available under section 337 or this subpart or without prior notice to any person, except as required by the court in which the civil action is initiated.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008]

§ 210.76 Modification or rescission of exclusion orders, cease and desist orders, and consent orders.

(a) *Petitions for modification or rescission of exclusion orders, cease and desist orders, and consent orders.* (1) Whenever any person believes that changed conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, or consent order be modified or set aside, in whole or in part, such person may file with the Commission a petition requesting such relief. The Commission may also on its own initiative consider such action. The petition shall state the changes desired and the changed circumstances warranting such action, shall include materials and argument in support thereof, and shall be served on all parties to the investigation in which the exclusion order, cease and desist order, or consent order was issued. Any person may file an opposition to the petition within 10 days of service of the petition.

(2) If the petitioner previously has been found by the Commission to be in violation of section 337 of the Tariff Act of 1930 and if its petition requests a Commission determination that the petitioner is no longer in violation of that section or requests modification or rescission of an order issued pursuant to section 337 (d), (e), (f), (g), or (i) of the Tariff Act of 1930, the burden of proof in any proceeding initiated in response to the petition pursuant to paragraph (b) of this section shall be on the petitioner. In accordance with section 337(k)(2) of the Tariff Act, relief may be granted by the Commission with respect to such petition on the basis of new evidence or evidence that could not have been presented at the prior proceeding or on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(b) *Commission action upon receipt of petition.* The Commission may thereafter institute a proceeding to modify or rescind the exclusion order, cease and desist order, or consent order by issuing a notice. The Commission may hold a public hearing and afford interested persons the opportunity to appear and be heard. After consideration of the

petition, any responses thereto, and any information placed on the record at a public hearing or otherwise, the Commission shall take such action as it deems appropriate. The Commission may delegate any hearing under this section to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 61 FR 43433, Aug. 23, 1996]

§ 210.77 Temporary emergency action.

(a) Whenever the Commission determines, pending a formal enforcement proceeding under §210.75(b), that without immediate action a violation of an exclusion order, cease and desist order, or consent order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice modify or revoke such order and, if it is revoked, replace the order with an appropriate exclusion order.

(b) Prior to taking any action under this section, the Commission shall consider the effect of such action 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. The Commission shall, if it has not already done so, institute a formal enforcement proceeding under §210.75(b) at the time of taking action under this section or as soon as possible thereafter, in order to give the alleged violator and other interested parties a full opportunity to present information and views regarding the continuation, modification, or revocation of Commission action taken under this section.

§ 210.78 Notice of enforcement action to Government agencies.

(a) *Consultation.* The Commission may consult with or seek information from any Government agency when taking any action under this subpart.

(b) *Notification of Treasury.* The Commission shall notify the Secretary of the Treasury of any action under this subpart that results in a permanent or temporary exclusion of articles from entry, or the revocation of an order to such effect, or the issuance of an order compelling seizure and forfeiture of imported articles.

§ 210.79 Advisory opinions.

(a) *Advisory opinions.* Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether any person's proposed course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed his request as fully and accurately as possible. Advisory

opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code.

(b) *Revocation.* The Commission may at any time reconsider any advice given under this section and, where the public interest requires, revoke its prior advice. In such event the person will be given notice of the Commission's intent to revoke as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a person for violation of an exclusion order, cease and desist order, or consent order with respect to any action that was taken in good faith reliance upon the Commission's advice under this section, if all relevant facts were accurately presented to the Commission and such action was promptly discontinued upon notification of revocation of the Commission's advice.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008]

Appendix A to Part 210—Adjudication and Enforcement

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
1. Violation §210.42(a)(1)	12 days from service of the initial determination	8 days from service of any petition	60 days from service of the initial determination.
2. Forfeiture of respondent's bond §210.50(d)(3)	10 days from service of the initial determination	5 business days from service of any petition	45 days from service of the initial determination.
3. Forfeiture of complainant's temporary relief bond §210.70(c)	10 days from service of the initial determination	5 business days from service of any petition	45 days from service of the initial determination.
4. Summary initial determination that would terminate the investigation if it became the Commission's final determination §210.42(c)	10 days from service of the initial determination	5 business days from service of any petition	45 days from service of the initial determination.
5. Other matters §210.42(c)	5 business days from service of the initial determination	5 business days from service of any petition	30 days from service of the initial determination on private parties.

6. Formal enforcement proceedings §210.75(b)	By order of the Commission	By order of the Commission	90 days from service of the initial determination on private parties.

[73 FR 38327, July 7, 2008]

PART 212—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

Source: 47 FR 9391, Mar. 5, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 212.01 Purpose.

(a) The Equal Access to Justice Act, 5 U.S.C. 504 (called “the Act” in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before an agency. Under the Act an eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the Commission proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 212.02 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 212.03 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission is presented by an attorney or other representative who enters an appearance and participates in the proceeding. The Commission proceedings covered are those conducted under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. No award shall be made, however, for fees and expenses related to those portions of the proceedings conducted for the consideration of

relief, the public interest, and bonding pursuant to subsections 337 (d), (e), and (f) of the Tariff Act of 1930 and 19 CFR 210.14.

(b) An award may be made against the Commission only in connection with a proceeding brought by the Commission upon its own complaint.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 212.04 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term *party* is defined in 5 U.S.C. 551(3) and 19 CFR 210.04. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1144j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered to be an “individual” rather than a “sole owner of an unincorporated business” if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the presiding officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the presiding officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 212.05 Standards for awards.

(a) The determination whether an applicant is a prevailing party shall be made on a case-by-case basis.

(b) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication, or in a significant and discrete substantive portion of the adversary adjudication, unless the position of the Commission investigative attorney was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission investigative attorney. An award may be avoided by showing that the position of the Commission was reasonable in law and fact.

(c) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust. The burden of proof that an award should be reduced or denied for either of these reasons is on the Commission investigative attorney.

§ 212.06 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item if the attorney, agent or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the presiding officer shall consider the following:

(1) If the attorney, agent or expert witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the service;

(2) The prevailing rate for similar services in the community in which the attorney, agent or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services and the study or other matter was necessary for preparation of the applicant's case.

§ 212.07 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in the proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the Commission should establish. It should also explain fully the reasons why the higher rate is warranted. The Commission will respond to the petition within 60 days after it is filed by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

Subpart B—Information Required From Applicants

§ 212.10 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission investigative attorney that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 212.11 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in §212.04(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled “Confidential Financial Information,” accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain in detail why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on the Commission investigative attorney or counsel

representing another agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the presiding officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, 19 CFR 201.17–201.21.

§ 212.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 212.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication or in a significant and discrete substantive portion of the adversary adjudication, but in no case later than 30 days after the Commission's final disposition of the adversary adjudication.

(b) If review or reconsideration is sought or taken of a determination as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§ 212.20 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication, except as provided in §212.11(b) for confidential financial information.

§ 212.21 Answer to application.

(a) Within 30 days after service of an application, the Commission investigative attorney shall file an answer to the application.

(b) If the applicant and the Commission investigative attorney believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to

negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the applicant and the Commission investigative attorney.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the position of the Commission. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the Commission investigative attorney shall include with the answer supporting affidavits or a request for further proceedings under §212.25.

§ 212.22 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under §212.25.

§ 212.23 Comments by other parties.

Any party to the adversary adjudication other than the applicant and the Commission investigative attorney may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 212.24 Settlement.

The applicant and the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying adversary adjudication, or after the underlying adversary adjudication has been concluded. If a prevailing party and the Commission investigative attorney agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 212.25 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the Commission investigative attorney, or on his or her own initiative, the presiding officer may in his or her discretion order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 212.26 Determination.

The presiding officer shall issue a recommended determination on the application within 90 days after completion of proceedings on the application. The determination shall include written findings and conclusions on the applicant's eligibility and status as prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The determination shall also include, if at issue, findings on whether the position of the Commission investigative attorney was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 212.27 Agency review.

Except as otherwise authorized by the presiding officer, the parties shall be allowed ten (10) days from the date of service of the recommended determination to file exceptions to the recommended determination and alternative findings of fact and conclusions of law with the Commission. Upon receipt of the recommended determination, the Commission shall review the same and issue a final determination on the application or remand the application to the presiding officer for further proceedings.

§ 212.28 Judicial review.

Judicial review of final Commission determinations on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 212.29 Payment of award.

An applicant seeking payment of an award shall submit to the Office of Finance of the Commission a copy of the Commission's final determination granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The address for submission to the Commission is: United States International Trade Commission, Office of Finance, 500 E Street SW., Washington, DC 20436. The Commission will pay the amount to the applicant within 60 days, unless judicial review of the award or of the underlying determination of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[68 FR 32979, June 3, 2003]

PART 213—TRADE REMEDY ASSISTANCE

Authority: Sec. 339 of the Tariff Act of 1930 (19 U.S.C. 1339), as added by sec. 221, Trade and Tariff Act of 1984 (Pub. L. 98–573, approved Oct. 30, 1984; 90 Stat. 2989), and as amended by sec. 1614, Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, approved Aug. 23, 1988; 102 Stat. 110); sec. 335, Tariff Act of 1930 (72 Stat 680; 19 U.S.C. 1335).

Source: 54 FR 33883, Aug. 17, 1989, unless otherwise noted.

§ 213.1 Purpose and applicability of part.

(a) Section 339 of the Tariff Act of 1930, as amended, establishes in the Commission an office known as the Trade Remedy Assistance Office and directs the Commission to provide general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in §213.2(b) and the procedures to be followed and appropriate filing dates in investigations under the trade laws. In coordination with other agencies administering the trade laws, the Trade Remedy Assistance Office also shall provide technical assistance, as defined in §213.2(d), to eligible small businesses seeking to obtain the remedies and benefits available under the trade laws.

(b) The rules in this part govern the establishment of the Trade Remedy Assistance Office, its function, small business eligibility for technical assistance and procedures for obtaining such assistance. Members of the public seeking general information from the Trade Remedy Assistance Office are not subject to the application procedures set forth in this part.

§ 213.2 Definitions.

(a) *Office.* The Trade Remedy Assistance Office (hereinafter *Office*) provides general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in §213.2(b) and the procedures to be followed and appropriate filing dates in investigations under those trade laws. In coordination with other agencies responsible for administering the trade laws listed in §213.2(b), the Office also provides technical assistance, as defined in §213.2(d) to eligible small businesses that seek to obtain remedies and benefits under the trade laws. The Office's address is Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

(b) *Trade laws.* The trade laws (with respect to which general information and technical assistance are available) are defined as:

(1) Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);

(2) Chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(3) Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(4) Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 et seq., relating to the imposition of countervailing duties and antidumping duties);

(5) Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security);

(6) Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade); and

(7) Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption).

(c) *Administering agencies.* Administering agency refers to the agency or agencies responsible for administering a particular trade law. The trade laws relating to injury caused by import competition, unfair practices in import trade and market disruption are administered by the Commission. The trade laws relating to countervailing and antidumping duties are jointly administered by the Commission and the Department of Commerce. The trade laws relating to adjustment assistance for firms and safeguarding national security are administered by the Department of Commerce. The trade law relating to adjustment assistance for workers is administered by the Department of Labor. The trade law relating to relief from foreign import restrictions and export subsidies is administered by the United States Trade Representative.

(d) *Technical Assistance.* Technical assistance is informal advice and assistance, including informal legal advice, intended to enable eligible small businesses to determine the appropriateness of pursuing particular trade remedies, to prepare petitions and complaints (other than those which are frivolous in the opinion of the agency) and to seek to obtain the remedies and benefits available under the trade laws identified in §213.2(b). Technical assistance is available to eligible small businesses at any time until the completion of administrative review or of an appeal to the administering agency regarding proceedings under the trade laws listed in §213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf and receipt of technical assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides such technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant.* An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity that applies for techincal assistance under this part.

(f) *Eligible small business.* An eligible small business is an applicant that the Office has determined to be entitled to technical assistance in accordance with the SBA size standards and the procedures set forth in this part.

(g) *SBA size standards.* SBA size standards are the small business size standards of the Small Business Administration set forth in 13 CFR 121.2. The SBA size standards categorize business concerns according to the Standard Industrial Classification ("SIC") code of the Bureau of the Census and base the size determination upon the number of employees or annual receipts of the business concern in the appropriate SIC category.

§ 213.3 Determination of small business eligibility.

(a) *Application for technical assistance from small businesses.* An applicant for technical assistance must certify that it qualifies as a small business under the appropriate size standard(s) and that it is an independently owned and operated company. An application for technical assistance is available from the Office. The application must be signed under oath by an officer or principal of the applicant. The completed application should be submitted to the Office at the address set forth in §213.2(a).

(b) *Application for technical assistance from joint applicants, trade associations and unions.* If several businesses jointly or simultaneously from the same industry apply for technical assistance, each business must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, an officer of the trade association must certify that eighty (80) percent of the trade association's members are companies that meet the appropriate size standard(s) and provide a listing of members of the association. If a union applies for technical assistance, an officer of the union must certify that the union has less than ten thousand (10,000) members within the industry for which trade relief is being sought. Applications for trade associations or for unions to request technical assistance are available from the Office. Applications must be signed under oath by an officer of the association or union and completed applications should be submitted to the Office as set forth in §213.2(a).

(c) *Determination of eligibility and notification of determination.* The Office shall determine whether the applicant is eligible for technical assistance and notify the applicant of the determination within ten (10) days of receipt of a properly completed application. Pursuant to 19 U.S.C. 1339(c)(1), the Office's determination of eligibility is not reviewable by any other agency or by any court.

(d) *Notification to administering agencies.* When an applicant seeks technical assistance on matters involving the trade laws, and the Office determines that the applicant is eligible for technical assistance, the Office shall:

(1) Promptly notify the appropriate administering agency or agencies of the Office's determination that the applicant is eligible to receive technical assistance; and

(2) Consult with the administering agency or agencies as to the provision of technical assistance to that applicant.

§ 213.4 Disclosure of receipt of technical assistance.

An eligible small business that has received technical assistance from the Office must state that it has received technical assistance from the Trade Remedy Assistance Office in any resulting petition, complaint or application which is filed with the Commission or any other agency which administers the trade law under which remedies or benefits are sought.

§ 213.5 Access to Commission resources.

Commission resources, in addition to the Office's resources, are available to an eligible small business to the same extent as those resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to an eligible small business.

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.