

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 his 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 30 days before the date fixed for any hearing provided for in § 210.36(a)(1). Any motion for summary determination filed in connection with the temporary relief phase of an investigation must be filed on or before the deadline set by the presiding administrative law judge.

(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