

§210.39

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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 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.

§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.* 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 the 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 in effect, after the determination of the Commission becomes final, 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.

(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]

§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 3 months before the target date set pursuant to §210.51(a) if the target date is 15 months or less from the date of institution, and no later than 4 months before the target date if the target date is more than 15 months from the date of institution.

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

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

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

(2) *On certain motions to declassify information.* Following issuance of the

public version of an initial determination under paragraph (a)(1)(i) of this section, the decision of an 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