

FORM S-11

FOR REGISTRATION UNDER THE
SECURITIES ACT OF 1933 OF
SECURITIES OF CERTAIN REAL
ESTATE COMPANIES

GENERAL INSTRUCTIONS

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H. Eligibility To Use Incorporation by Reference

If a registrant meets the following requirements immediately prior to the time of filing a registration statement on this Form, it may elect to provide information required by Items 3 through 28 of this Form in accordance with Item 28A and Item 29 of this Form:

1. The registrant is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 ("Exchange Act").

2. The registrant has filed all reports and other materials required to be filed by Sections 13(a), 14, or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials).

3. The registrant has filed an annual report required under Section 13(a) or Section 15(d) of the Exchange Act for its most recently completed fiscal year.

4. The registrant is not:

(a) And during the past three years neither the registrant nor any of its predecessors was:

(i) A blank check company as defined in Rule 419(a)(2) (§ 230.419(a)(2) of this chapter);

(ii) A shell company, other than a business combination related shell company, each as defined in Rule 405 (§ 230.405 of this chapter); or

(iii) A registrant for an offering of penny stock as defined in Rule 3a51-1 of the Exchange Act (§ 240.3a51-1 of this chapter).

(b) Registering an offering that effectuates a business combination transaction as defined in Rule 165(f)(1) (§ 230.165(f)(1) of this chapter).

5. If a registrant is a successor registrant it shall be deemed to have satisfied conditions 1, 2, 3, and 4(b) above if:

(a) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(b) All predecessors met the conditions at the time of succession and

the registrant has continued to do so since the succession.

6. The registrant makes its periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference pursuant to Item 28A or Item 29 of this Form readily available and accessible on a Web site maintained by or for the registrant and containing information about the registrant.

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PART I—INFORMATION REQUIRED IN PROSPECTUS

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Item 28A. Material Changes

If the registrant elects to incorporate information by reference pursuant to General Instruction H, describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest Form 10-K or Form 10-KSB and which have not been described in a Form 10-Q, Form 10-QSB, or Form 8-K filed under the Exchange Act.

Item 29. Incorporation of Certain Information by Reference

If the registrant elects to incorporate information by reference pursuant to General Instruction H:

(a) It must specifically incorporate by reference into the prospectus contained in the registration statement the following documents by means of a statement to that effect in the prospectus listing all such documents:

(1) The registrant's latest annual report on Form 10-K or Form 10-KSB filed pursuant to Section 13(a) or Section 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10-K or Form 10-KSB was required to have been filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act or proxy or information statements filed pursuant to Section 14 of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

Note to Item 29(a). Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to use of material incorporated by reference.

(b)(1) The registrant must state:

(i) That it will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the reports or documents that have been incorporated by

reference in the prospectus contained in the registration statement but not delivered with the prospectus;

(ii) That it will provide these reports or documents upon written or oral request;

(iii) That it will provide these reports or documents at no cost to the requester;

(iv) The name, address, telephone number, and e-mail address, if any, to which the request for these reports or documents must be made; and

(v) The registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

Note to Item 29(b)(1). If the registrant sends any of the information that is incorporated by reference in the prospectus contained in the registration statement to security holders, it also must send any exhibits that are specifically incorporated by reference in that information.

(2) The registrant must:

(i) Identify the reports and other information that it files with the SEC; and

(ii) State that the public may read and copy any materials it files with the SEC at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

If the registrant is an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>).

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By the Commission.

Dated: December 14, 2007.

Nancy M. Morris,
Secretary.

[FR Doc. E7-24617 Filed 12-19-07; 8:45 am]

BILLING CODE 8011-01-P

**INTERNATIONAL TRADE
COMMISSION****19 CFR Parts 201 and 210****Rules of General Application and
Adjudication and Enforcement**

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States International Trade Commission ("Commission") proposes to amend its

Rules of Practice and Procedure concerning rules of general application, adjudication, and enforcement. The amendments are necessary to make certain technical corrections, to clarify certain provisions, to harmonize different parts of the Commission's rules, and to address concerns that have arisen in Commission practice. The intended effect of the proposed amendments is to facilitate compliance with the Commission's Rules and improve the administration of agency proceedings.

DATES: To be assured of consideration, written comments must be received by 5:15 p.m. within 60 days after publication of this notice of proposed rulemaking.

ADDRESSES: You may submit comments, identified by docket number MISC-022, by any of the following methods:

—*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

—*Agency Web Site:* <http://www.usitc.gov>. Follow the instructions for submitting comments on the Web site at <http://www.usitc.gov/secretary/edis.htm>.

—*E-mail:* eric.frahm@usitc.gov. Include docket number MISC-022 in the subject line of the message.

—*Mail:* For paper submission. U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

—*Hand Delivery/Courier:* U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. From the hours of 8:45 a.m. to 5:15 p.m.

Instructions: All submissions received must include the agency name and docket number (MISC-022) or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.usitc.gov>, including any personal information provided. For paper copies, a signed original and 14 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Marilyn R. Abbott, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

Docket: For access to the docket to read background documents or comments received, go to <http://www.usitc.gov> and/or the U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Eric Frahm, Office of the General Counsel,

United States International Trade Commission, telephone 202-205-3107. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. This preamble provides background information, a regulatory analysis of the proposed amendments, an explanation of the proposed amendments to part 201, a section-by-section explanation of the proposed amendments to part 210, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment, in addition to any other comments they wish to make on the proposed amendments, on whether the proposed amendments are in language that is sufficiently clear for users to understand.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule revisions will be promulgated in accordance with the Administrative Procedure Act ("APA") (5 U.S.C. 553), and will be codified in 19 CFR parts 201 and 210.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to update certain outdated provisions and improve other provisions of the Commission's existing Rules of Practice and Procedure. The Commission proposes amendments to its rules covering investigations under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) ("section 337") in order to increase the efficiency of its section 337 investigations. This rulemaking effort began in 2003 when the ITC Trial Lawyers Association ("ITCTLA") submitted a report to the Commission which suggested several rule changes that it believed would make the Commission rules more effective. In the course of considering the ITCTLA proposals, the Office of the General Counsel and the Office of Unfair Import Investigations ("OUII") also suggested various rule changes. The Commission invites the public to comment on all of

these proposed rules amendments. In any comments, please consider addressing whether the proposed amendments are in language that is clear and easy to understand. In addition, in any comments, please consider addressing how the proposed rules amendments could be improved, and/or offering specific constructive alternatives where appropriate.

Consistent with its ordinary practice, the Commission is issuing these proposed amendments in accordance with the rulemaking procedure in section 553 of the APA. This procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the final rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of final rulemaking, these proposed regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the final rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The final rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because

they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since they do not contain any new information collection requirements.

Explanation of the Proposed Amendments to 19 CFR Part 201

The Commission proposes to amend part 201, Rules of General Application, in the manner described below.

Subpart B—Initiation and Conduct of Investigations

Section 201.16

Section 201.16 provides generally for service of process and other documents, and includes paragraph (d) which provides for additional time after service by mail. Recently amended sections 210.6 and 210.7 allow one additional day for the parties to respond to Commission documents that are served by overnight delivery. *See* 72 FR 13689, March 23, 2007. The Commission proposes adding new paragraph (e) of section 201.16 to also provide one additional day for parties to respond to documents served on them by overnight delivery by other parties, and to conform section 201.16 to sections 210.6 and 210.7. The Commission also proposes redesignating existing paragraph (e) as new paragraph (f) to allow for this change.

Section-by-Section Explanation of the Proposed Amendments to 19 CFR Part 210

The Commission proposes to amend part 210, Adjudication and Enforcement, in the manner described below.

Subpart A—Rules of General Applicability

Section 210.3

This section provides definitions of words and phrases used in part 210. The phrase “U.S. Customs Service” is used throughout part 210. Pursuant to the Homeland Security Act of 2002, the U.S. Customs Service merged into the Department of Homeland Security. The official name of this entity is now “U.S. Customs and Border Protection.” 72 FR 20131, April 23, 2007. Thus, the Commission proposes to amend section 210.3 to reflect the official name.

Section 210.4

Paragraph (f)(1)(i) of section 210.4 sets forth the physical specifications for the filing of documents addressed to the

Commission and was adopted when filings were frequently typeset by commercial printers. The Commission proposes revising section 210.4 to remove reference to any physical specifications related to typographic printing processes.

Section 210.7

Paragraph (a), Manner of Service

Recently, sections 210.6 and 210.7 were amended to include provisions relating to the service of certain Commission documents by overnight delivery. *See* 72 FR 13689–90, March 23, 2007. Although these amendments were intended, *inter alia*, to streamline the service process and promote uniformity of service, the amendments regarding service by overnight delivery have created the prospect of differing response dates for the private parties and OUII. Thus, an unintended consequence of these amendments is that tracking of multiple service dates by the Commission will be necessary for various documents and/or numerous additional requests for extensions of time will be made to conform response dates for all parties.

Under existing practice, the Commission normally grants requests for extensions of time which are made to ensure that the due date for responses is uniform as to all parties. Therefore, the Commission proposes to add a new paragraph (a)(3) to section 210.7 so that when the Commission effects service upon the private parties by overnight delivery, service upon OUII shall also be deemed to have been effected by overnight delivery. This amendment to paragraph (a) of section 210.7 should eliminate multiple response dates for the same document by providing a uniform response date for all parties, thereby obviating the need for recurrent requests to conform response dates and minimizing administrative burdens on Commission personnel. Thus, the amendment is consistent with the aims of the recent overnight service provisions relating to Commission documents. *See* 72 FR 13689, March 23, 2007.

New Paragraph (b), Designations for Service of Process

Paragraph (a)(1) of section 210.7 generally provides service rules and requires that documents shall be served on all other parties. At present, any entity that files an entry of appearance on behalf of a named party is placed on the service list and is served with all documents. Service of documents containing confidential business information also requires signing onto

the protective order for that investigation. This leads to the situation where multiple offices of the same law firm and multiple law firms are being served with documents on behalf of a single party. Redundancy in service is a substantial financial burden on both the private parties and the Commission in terms of copying and delivery costs.

The Commission proposes that a lead attorney be designated to accept process for all other attorneys representing the same party in a section 337 investigation. Under this proposal, no limit would be placed on the number of attorneys of record for a party, but each named party would have to designate one attorney-for-service who agrees to accept all service on behalf of that party. The Commission proposes adding new paragraph (b) to provide designation of a single attorney, selected lead attorney, or representative for service of process. The Commission also proposes redesignating existing paragraph (b) of section 210.7 (which concerns the publication of notices) as paragraph (c) to accommodate the addition of new paragraph (b).

Subpart B—Commencement of Preinstitution Proceedings and Investigations

Sections 210.8 and 210.11

Sections 210.8 and 210.11 generally concern commencement of preinstitution proceedings and service of a complaint and notice of investigation. To make sections 210.8 and 210.11 easier to read and understand, the Commission proposes completely revising each of these sections by distinctly setting out their respective requirements for: (1) Complaints not seeking temporary relief, and (2) complaints seeking temporary relief. Specifically, paragraphs (a)(1) of proposed sections 210.8 and 210.11 relate to complaints not seeking temporary relief, and paragraphs (a)(2) of proposed sections 210.8 and 210.11 relate to complaints seeking temporary relief. Further detailed explanation of these revisions follows.

Section 210.8 requires that the complainant provide the Secretary with sufficient copies of the complaint, any supplement to the complaint, any motion for temporary relief, and all exhibits to any of these papers so that it may serve them on the proposed respondents should the Commission institute an investigation. Thereafter, section 210.11 requires the Secretary to serve a copy of the complaint, and notice of investigation (and any accompanying motion for temporary

relief) upon each respondent and their respective embassies in Washington, DC. Sections 210.8 and 210.11 acknowledge that, for investigations involving temporary relief, section 210.54 requires the complainant to serve nonconfidential copies of the complaint and motion for relief and nonconfidential copies of all attached materials on all proposed respondents and the embassy in Washington, DC. Furthermore, section 210.54 requires that the complainant submit to the Commission actual proof of service on each respondent and embassy within ten days after the filing of the complaint.

Thus, sections 210.8 and 210.11 mandate duplicate service of the complaint and temporary relief motion together with all exhibits by the complainant and the Secretary in investigations involving temporary relief and needlessly increase the number of copies that must be supplied to the Secretary and served by the Secretary following the institution of an investigation. Duplicate service, especially of voluminous exhibits, imposes a serious financial burden on both the complainant and the Commission in terms of copying and mailing costs. During the 1988 rules revision, the Commission acknowledged that the rules required double service, but reasoned that service of the complaint by the Commission was necessary because the date of service by the Commission is the date used for computing the date for a response. See 53 FR 33046, August 29, 1988.

The proposed amendment to this rule provides that in investigations involving temporary relief, the complainant be required to submit only the required number of service copies of any unserved confidential material provided in connection with the complaint or motion for temporary relief and the requisite number of copies of the public complaint (without exhibits) for service by the Secretary. The proposed amendment provides that the Secretary is required, upon institution of an investigation involving temporary relief, to serve only the Notice of Investigation and a copy of the complaint (without exhibits) on each respondent and embassy. The amendment further provides that the service of these documents by the Secretary serves as the operative service for calculating a response date. In the rare event that complainant does not serve a proposed respondent with the exhibits, the respondents may take up the matter with the presiding ALJ under section 210.4, or obtain the public exhibits from the Secretary's office or through the

Commission's Electronic Document Information System ("EDIS").

Accordingly, the Commission proposes language to revise sections 210.8 and 210.11 to provide that upon the institution of an investigation involving temporary relief, the Secretary will serve the Notice of Investigation and a copy of the complaint (without exhibits) on each respondent and embassy. In view of the proposed changes to § 210.11(a)(1), the Commission also proposes to revise section 210.54 and section 210.56 to eliminate references to subsequent service of the motion for temporary relief by the Commission.

In reviewing the language of section 210.8 with a view toward proposing alternate language to eliminate double-service in temporary relief cases, it was noted that existing section 210.8 is itself rather confusing. Indeed, the Commission frequently receives inquiries from law firms representing prospective complainants that are confused about how many copies of the complaint and associated materials they are required to file to commence a section 337 proceeding. Thus, the Commission proposes revising section 210.8 to make it easier to determine how many copies are required when filing a permanent relief or a temporary relief complaint, and to make it possible for the Commission to eliminate unnecessary effort and expenses associated with the initial storage and subsequent re-service of materials required for complaints involving temporary relief requests. To achieve these ends, the Commission proposes breaking out the filing requirements in section 210.8 into separate paragraphs (paragraph (a)(1) for permanent relief and paragraph (a)(2) for temporary relief proceedings), and setting out numbered lists (§§ 210.8(a)(1)(i)–(iv) for permanent relief and §§ 210.8(a)(2)(i)–(vi) for temporary relief proceedings) specifying the required number of copies of each item to be filed with the Secretary for each type of proceeding. Supplements to such filings are also specifically referenced in the proposed section 210.8.

The Commission proposes similarly structured revisions to § 210.11(a)(1), which concerns Commission service of complaints and notices of investigation. The Commission also proposes revising section 210.54 and § 210.56(a) to reflect the aforementioned revisions to sections 210.8 and 210.11.

Section 210.10

Paragraph (a)(5)(i) of section 210.10 allows a complainant to withdraw the complaint "as a matter of right" prior to

the Commission's vote on institution of the investigation simply by filing a written notice with the Commission. If the complaint is being withdrawn pursuant to a settlement agreement, however, the rule requires that a copy of the settlement agreement be filed with the written notice. The requirement to submit a settlement agreement is consistent with § 210.21(b) regarding termination of an on-going investigation based on a settlement agreement. However, prior to the institution of an investigation, the Commission may not have the knowledge necessary to assess the significance of the terms of any settlement agreement. Also, any review of a settlement agreement before institution contradicts the statement that a complainant may withdraw the complaint "as a matter of right" before institution. Thus, the Commission proposes revising paragraph (a)(5)(i) of section 210.10 to delete the requirement that any copies of the settlement agreement and/or other documents be submitted when a complaint is withdrawn prior to institution.

Section 210.11

Section 210.11 requires the Secretary to serve a copy of the complaint, and notice of investigation (and any accompanying motion for temporary relief) upon each respondent and their respective embassies in Washington, DC. The Commission proposes amending section 210.11 by substantially revising paragraphs (a) and (b) to make them easier to read and understand as discussed above in relation to section 210.8 and 210.11.

Paragraph (a) of section 210.11 generally provides for service of the complaint and notice of investigation as discussed above with regard to the proposed changes to sections 210.8 and 210.11. The Commission proposes revising paragraph (a) to eliminate double-service in temporary relief cases and to reduce the number of copies required when serving the complaint and temporary relief motion as previously discussed in relation to sections 210.8 and 210.11. The Commission also proposes adding paragraphs (a)(1)(ii) and (a)(2)(ii) to specifically provide for service of documents on "upon the embassy in Washington, DC, of the country in which each proposed respondent is located as indicated in the Complaint."

Paragraph (b) of section 210.11 allows a complainant, with leave of the ALJ, to attempt personal service of a complaint after the Secretary's efforts to serve the respondent by certified mail have failed. The Commission proposes that the rule

be amended to remove the reference to certified mail because the Commission now serves foreign addressees by overnight delivery.

Subpart C—Pleadings

Section 210.12 and 210.13

Section 210.12 generally provides the requirements for a complaint, and section 210.13 generally provides for a response. The Commission proposes substituting the phrase “U.S. patent” where appropriate for the phrase “U.S. letters patent” throughout the 210 rules to reflect current usage. This change affects revised §§ 210.12(a)(9), (a)(9)(i), (a)(9)(ii), (a)(9)(iii), (a)(9)(iv), (a)(9)(v), (a)(9)(vi), (a)(9)(vii) (two occurrences), and (a)(9)(viii); revised §§ 210.12(c), (c)(1), and (c)(2); and §§ 210.13(b), (b)(1) (three occurrences), and (b)(3).

Section 210.12

Paragraph (a)(1), Verification of Complaint

Paragraph (a)(1) of section 210.12 requires a complaint to be under oath and signed by the complainant or his authorized agent (verification of the complaint). To further clarify the meaning of this section, the Commission also proposes that this section be revised to include language that a complaint is to include a verification attesting to the matters in §§ 210.4(c)(1)–(3).

Paragraphs (a)(6)(i) and (h), Domestic Industry

Paragraphs (a)(6)(i) and (h) of section 210.12 relate to the requirement that complainants include a showing of domestic industry for certain intellectual property rights. Since the last rules revision, section 337 was amended to add 19 U.S.C. 1337(a)(1)(E), which concerns vessel hull designs, to the statute. The Commission proposes revising § 210.12(a)(6)(i) and § 210.12(a)(6)(i)(C) to include the appropriate references to 19 U.S.C. 1337(a)(1)(E). The Commission also proposes adding new § 210.12(h) concerning vessel hull designs to bring section 210.12 into compliance with the statutory change. The current final paragraph (h) of section 210.12 would then be redesignated as paragraph (i).

Paragraph (a)(9), Content of Complaint

Paragraph (a)(9) of section 210.12 relates to the content of a complaint based on infringement of a valid and enforceable U.S. patent. The Commission proposes substituting the phrase “U.S. patent” where appropriate for the phrase “U.S. letters patent” to reflect current usage. This change was discussed previously with respect to sections 210.12 and 210.13.

Paragraphs (a)(9)(iv), (a)(10), (c)(1), (d), (f), and (g); Copies of License Agreements

The Commission proposes adding new § 210.12(a)(9)(iv) and §§ 210.12(a)(10)(i) and (a)(10)(ii) to reduce the number of copies of license agreements that complainants must file, and proposes revising §§ 210.12(c)(1), (d), (f), and (g) to eliminate the language of these paragraphs regarding submission of license agreements.

Section 210.12(c)(1) currently requires that a complainant submit the following “additional material” regarding licenses with a patent-based section 337 complaint: Three copies of each license agreement related to each patent, or three copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. Sections 210.12(d), (f), and (g) set forth the same requirement for complaints based upon federally registered trademarks, copyrights, and mask works, respectively. Newly proposed § 210.12(h) concerning vessel hull designs does not call for three copies of license agreements.

Because licenses are currently identified in the rules as “additional material to accompany” the complaint, and only three copies of the licenses are required to be filed, licenses (which can be voluminous) are not normally filed as exhibits to the complaint. Rather, they are generally submitted as appendices to the complaint. Licenses are, therefore, not included in the service copies of the complaint that the Commission transmits to the respondents upon institution of an investigation. Also, since licenses are usually deemed to contain confidential business information (“CBI”), they are generally not available to the public via EDIS. Complainants have increasingly expressed concern during the pre-institution process about submitting copies of all or some of their license agreements with the complaint because of non-disclosure provisions in these agreements.

While the submission of all license agreements regarding asserted patents and federally registered trademarks, copyrights and mask works is required under the current Rules, such agreements do not normally bear upon the decision to institute an investigation. Indeed, the present requirement burdens the complainant and Office of the Secretary with the reproduction and storage of documents that are not needed by Commission staff at the outset of an investigation and that can later be obtained by the parties through routine discovery requests. Accordingly, the Commission proposes that paragraphs (c)(1), (d), (f), and (g) of section 210.12 be amended so that the

submission of license agreements would be required only in those instances where (i) the complainant relies upon its status as a licensee for purposes of standing or (ii) the complainant relies upon the domestic activities of a licensee in support of its domestic industry contentions. Moreover, the Commission proposes that in these instances, the license be submitted as an exhibit to the complaint (which would ultimately be served upon the respondents), rather than as an appendix item (which would remain in the Commission files and would not be served on respondents). In addition, under this proposal, all licensees of the asserted rights would also have to be identified in the complaint. Such identification is currently required for patent licensees under § 210.12(a)(9)(iii), but not for licensees of registered trademarks, copyrights, or mask works. The Commission proposes adding new paragraph (10) in § 210.12(a) to clearly set forth the requirements regarding licenses for non-patent-based complaints (*i.e.*, complaints based on the infringement of a federally registered copyright, trademark, mask work, or vessel hull design). Thus, the Commission also proposes that existing paragraph (10) of § 210.12(a) be redesignated as paragraph (11). Finally, as noted above, the Commission proposes that paragraphs (d), (f), and (g) of section 210.12 be revised to eliminate the language at the end of each subsection regarding the submission of licenses.

Paragraph (a)(9)(iv), Foreign Patent Applications

Existing paragraph (a)(9)(iv) of section 210.12 relates to the requirement that a complainant provide a list of each pending foreign patent application and each foreign patent application that has been denied. As currently written, the rule does not require the identification of any foreign patent application that has been abandoned or withdrawn. In current practice, however, OUII has consistently requested that complainants provide this information during OUII’s pre-institution investigatory review. The proposed change to current § 210.12(a)(9)(iv) contains language which conforms this section of the rules to current practice. The Commission also proposes redesignating paragraph (a)(9)(iv) as paragraph (a)(9)(v) of this section to allow for the addition of new paragraph (a)(9)(iv) relating to the submission of copies of license agreements in certain circumstances, as discussed above.

Paragraphs (a)(9)(vii) and (a)(9)(viii), Infringement/Domestic Industry Charts

Paragraphs (a)(9)(vii) and (a)(9)(viii) of section 210.12 require a complainant to supply infringement charts and domestic industry charts along with the complaint, respectively. As currently written, section 210.12 is ambiguous because it begins by requiring a showing

of infringement by each respondent and then states that a complainant makes such a showing by providing a claim chart applying an exemplary patent claim to both a representative domestic product and an infringing product of each respondent so named. For clarity, the Commission proposes that there be a requirement for infringement claim charts and a separate requirement for a domestic industry claim chart. This proposal revises section 210.12 to require claim charts for both infringement and the domestic industry, and affects the following paragraphs of section 210.12: Paragraph (a)(9)(vii) is revised to delete the reference to a "domestic article or process," new paragraph (a)(9)(ix) is added to specifically require domestic industry claim charts, and paragraphs (a)(9)(iv)–(a)(9)(viii) are redesignated as paragraphs (a)(9)(v)–(viii) and (a)(9)(x), respectively, to accommodate new paragraphs (a)(9)(iv) and (a)(9)(ix).

Paragraph (c), Material to Accompany Each Patent-based Complaint

Paragraph (c) of section 210.12 relates to additional materials that must accompany each patent-based complaint. The Commission proposes revising paragraphs (c), (c)(1), and (c)(2) of section 210.12 by substituting the phrase "U.S. patent" for the phrase "U.S. letters patent" to reflect current usage as discussed above with regard to sections 210.12 and 210.13.

Paragraph (d), Material to Accompany Registered Trademark-based Complaints

Paragraph (d) of section 210.12 relates to additional materials that must accompany each registered trademark-based complaint. This paragraph currently requires a complaint to include one certified copy of the trademark's federal registration along with three additional copies. The Commission proposes revising this paragraph to add a requirement for one certified copy of the prosecution history for each involved U.S. registered trademark, plus three additional copies. Such information is currently required for patent-based complaints. See § 210.12(c)(2). The Commission believes such information will often be useful in crafting an exclusion order of appropriate scope, particularly in cases where all the respondents have defaulted.

Section 210.12(d) also currently requires that a complainant submit the following "additional material" regarding licenses with a registered trademark-based section 337 complaint: Three copies of each license agreement related to each trademark, or three

copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. The Commission proposes revising § 210.12(d) to eliminate the language of this paragraph regarding submission of license agreements as discussed above with regard to paragraphs (a)(9)(iv), (a)(10), and (c)(1).

Paragraph (f), Material To Accompany Copyright-Based Complaints

Section 210.12(f) currently requires that a complainant submit the following "additional material" regarding licenses with a copyright-based section 337 complaint: Three copies of each license agreement related to each copyright, or three copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. The Commission proposes revising § 210.12(f) to eliminate the language of this paragraph regarding submission of license agreements as discussed above with regard to paragraphs (a)(9)(iv), (a)(10), (c)(1), and (d).

Paragraph (g), Material To Accompany Mask Work-Based Complaints

Section 210.12(g) currently requires that a complainant submit the following "additional material" regarding licenses with a mask work-based section 337 complaint: Three copies of each license agreement related to each mask work, or three copies of any applicable standard license agreement with a corresponding list of licensees operating under the agreement. The Commission proposes revising § 210.12(g) to eliminate the language of this paragraph regarding submission of license agreements as discussed above with regard to paragraphs (a)(9)(iv), (a)(10), (c)(1), (d), and (f).

Paragraph (h), Material To Accompany Vessel Hull Design-Based Complaints

The Commission proposes adding a new provision, paragraph (h), under section 210.12 relating to additional material to accompany a registered vessel hull design-based complaint. The Commission proposes that a complainant that bases its complaint on a vessel hull design registered under 17 U.S.C. 1301 *et seq.* should be required to provide the same materials as does a complainant bringing an action under other copyright provisions (§ 210.12(f)) or under a federally registered mask work (§ 210.12(g)). Specifically, the proposal requires that a complainant provide one certified copy and three additional copies of the certificate of registration, issued by the Registrar of Copyrights under 17 U.S.C. 1314, and

identify any licensees under the registered vessel hull design. To accommodate the insertion of proposed new paragraph (h), and the insertion of proposed new paragraph (i) discussed below, the Commission also proposes redesignating existing § 210.12(h), which concerns the duty to supplement the complaint, as § 210.12(j).

Paragraph (i), Initial Disclosures

The Commission proposes adding a new provision, paragraph (i) under section 210.12 which provides for the service upon counsel for respondent of each document submitted with the complaint within five (5) business days of service of a notice of appearance and agreement to be bound by the terms of the protective order. Under the current rule, much of the information required to accompany a complaint, such as prosecution histories and license agreements, is submitted as part of an appendix rather than as an exhibit. Consequently, respondents often need to seek copies of these documents through discovery. The addition of new paragraph (i) was proposed by the ITCTLA to expedite the production of these documents and to provide the respondents with a fuller understanding of the allegations in the complaint. Such early document production may be particularly beneficial in investigations in which the domestic industry is based on an allegation of domestic licensing activity. The proposed new rule protects the complainant's confidential information by requiring service only on counsel for respondents who have agreed to be bound by the terms of the protective order.

Subpart D—Motions

Section 210.15

The Commission proposes to amend paragraph (a) of section 210.15 to eliminate reference to the Chief Administrative Law Judge. In current practice, the institution of an investigation and assignment of an administrative law judge occur simultaneously, and there is no Chief Administrative Law Judge. Similarly, the Commission also proposes revising paragraph (a) of section 210.20, section 210.58, and paragraph (b)(3) of section 210.75 to eliminate references to the Chief Administrative Law Judge. These revisions merely conform the rules to current practice.

Section 210.18

The Commission proposes that paragraph (a) of section 210.18 be revised to require that motions for summary determination be filed 60 days

prior to the start of any hearing provided for in § 210.36(a)(1), instead of 30 days before the hearing as the rule currently provides. In its report to the Commission, the ITCTLA proposed such an amendment and noted that the filing of summary determination motions only 30 days before the hearing is burdensome on the administrative law judge and the parties who are attempting to prepare for trial at that time. The ITCTLA commented that such motions often appear to be used as a tactic at that late stage, because, in practice, it is difficult for the administrative law judges to resolve summary determination motions in 30 days, and, in any event, initial determinations granting such motions are subject to review by the Commission for another 30–45 days. However, the ITCTLA also proposed that the administrative law judge be permitted to allow the filing of a summary determination motion out of time under “exceptional circumstances.” The Commission believes the ITCTLA’s proposal to amend section 210.18 in these respects is well founded, and proposes to amend section 210.18 accordingly.

The Commission also proposes that paragraph (a) of section 210.18 be revised to provide that the 60 day period begin on the day prior to the scheduled hearing whether or not it is a weekend or holiday, and that if the 60th day is a weekend or holiday, the motion must be filed on the next business day. This proposal also includes that, upon a showing of exceptional circumstances, a motion for summary determination may be filed out of time.

Section 210.20

The Commission proposes to amend paragraph (a) of section 210.20 to eliminate reference to the Chief Administrative Law Judge. This change is the same change previously discussed with respect to paragraph (a) of section 210.15. The Commission also proposes to amend paragraph (a) of section 210.20 to specify that if the administrative law judge is no longer employed by the Commission, the motion to declassify confidential documents under § 210.20(a) shall be addressed to the Commission.

Section 210.21

Section 210.21 relates to the termination of an investigation in whole or in part by withdrawal of the complaint. The Commission proposes that the rule be amended in two ways.

First, as currently written, the rule states that a party may move before the

administrative law judge “for an order to terminate” an investigation. However, under § 210.42(c), the administrative law judge is required to grant such a motion by initial determination and deny such a motion by order. Therefore, the Commission proposes to delete the language “for an order” in paragraphs (a)(1) and (a)(2) of section 210.21. The Commission also proposes removing the language “An order of”, which appears throughout section 210.21 in paragraphs (b)(2), (c), (c)(2)(ii), (d), and (e), for the same reason.

Second, current § 210.21(a)(1) allows the parties to keep a settlement agreement secret by having the complainant move to terminate the investigation based on withdrawal of the complaint under § 210.21(a)(1), in direct conflict with § 210.21(b), which requires that motions to terminate investigations based on settlement agreements must include the settlement agreement. The current rule, § 210.21(a)(1), states that “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 for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of withdrawal of the complaint. * * *” Thus the current rule allows for the parties to reach a settlement agreement and then keep the agreement secret by having the complainant move to terminate the investigation based on withdrawal of the complaint. As currently written, § 210.21(a)(1) does not require the complainant to acknowledge or provide the settlement agreement to the Commission. The Commission has a public policy interest in reviewing settlement agreements that form the basis for termination of an investigation. The Commission’s consideration of the public interest should not be dependent upon a party’s choice to designate the termination as one based on withdrawal of the complaint or as one based on a settlement agreement. Thus, the Commission proposes amending paragraph (a)(1) of section 210.21 to make clear that once an investigation has been instituted, any settlement agreement with respect to an investigation must be provided to the Commission even if the complainant is willing to terminate the investigation based on withdrawal of the complaint. In other words, the Commission proposes to amend § 210.21(a) to provide that a complainant requesting withdrawal of all or part of the complaint must affirmatively state that there are no agreements between the

parties concerning the subject matter of the investigation, or if there are any such agreements, they must be identified and provided to the Commission. This requirement would alleviate the potential problem discussed above, and would also be consistent with § 210.21(b)(1) requiring such language to terminate an investigation based on a settlement agreement, and proposed § 210.21(c) requiring such language to terminate an investigation based on a consent order.

Section 210.22

Section 210.22 provides a mechanism for designating an investigation “more complicated.” This rule was necessary when section 337 provided that Commission investigations were to be completed in no more than one year (18 months in “more complicated” cases). In 1994, the Uruguay Round Agreement Amendments removed statutory deadlines for Commission investigations under section 337, and accordingly there is no longer a need for this provision. While the temporary relief phase is still subject to statutory deadlines, sections 210.51 and 210.60 set forth the procedure for designating the temporary relief phase “more complicated.” Current section 210.22 has no relevance to current practice, and the Commission proposes that this section be removed in its entirety. Deletion of this section does not affect any other sections.

Section 210.25

Paragraph (f) of section 210.25 generally relates to sanctions motions before an administrative law judge and allows an administrative law judge to defer adjudication of a sanctions motion until “no later than 90 days after issuance of the [final] initial determination of violation of section 337 or termination of the investigation.” However, depending upon whether the Commission undertakes review or requires additional time to consider the final initial determination, the 90-day deadline for the administrative law judge’s recommended determination may expire on or before the Commission’s final initial determination is issued. Issuance of the recommended determination before the Commission issues its decision on the merits may be problematic because the Commission’s violation decision may vitiate, or at least call into question, the underpinnings of the sanctions motion. The Commission proposes revising § 210.25(f) to permit an administrative law judge to defer issuing an recommended determination on a sanctions motion until 30 days

after the issuance of the Commission's final determination.

Subpart E—Discovery and Compulsory Process

Section 210.28

Paragraph (d), Service of Deposition Transcripts on the Commission Staff

Paragraph (d) of section 210.28 relates to the taking of depositions and states that the person transcribing the depositions "shall forward one copy of a deposition transcript to each party present or represented at the taking of the deposition." The mandatory language of this rule does not comport with current practice at the Commission or in the U.S. district courts, where stenographers transcribe the deposition and make copies available (for purchase) to all parties to the investigation regardless of whether that party appeared at the deposition. See Federal Rule of Civil Procedure 30(f)(2). Also, under § 210.28(f) of the current rules, the Commission investigative attorney is the only attorney that "must" be served with a copy of the deposition, and the burden of such service is placed on the party taking the deposition, not directly on the stenographer. Moreover, Federal Rule of Civil Procedure 30(f)(2) states that "[u]pon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent."

Therefore, the Commission proposes that § 210.28(d) be amended to conform with the Federal Rules of Civil Procedure.

Paragraph (g), Admissibility of Depositions

Paragraph (g) of section 210.28 relates to the admissibility of depositions into the record of the investigation. Section 210.28(g) refers to the "filing" of depositions with the Commission investigative attorney. Since "filing" generally refers to providing documents to the Office of the Secretary for inclusion in the official record of the investigation, the word appears to be inappropriate. Therefore the Commission proposes revising § 210.28(g) to replace the phrase "filed with the Commission investigative attorney" with "served upon the Commission investigative attorney."

Paragraph (i)(4), Completion and Return of Depositions

Paragraph (i)(4) of section 210.28 relates to completion and return of depositions, and also refers to the "filing" of depositions. For the same reasons discussed above in connection

with § 210.28(g), the Commission proposes revising paragraph (i)(4) to refer to "service" rather than "filing" of depositions.

Sections 210.29, 210.30, and 210.31

Currently, the parties rely on administrative law judge ground rules for deadlines. The ITCTLA noted that waiting for the administrative law judge's ground rules to issue has resulted in delays in discovery in some investigations. Specifically, there have been delays concerning responses to interrogatories (paragraph (b)(2) of section 210.29), requests for documents and entry upon land (paragraph (b)(2) of section 210.30), and requests for admissions (paragraph (b) of section 210.31). Therefore, the Commission proposes to revise §§ 210.29(b)(2), 210.30(b)(2), and 210.31(b), in accordance with the ITCTLA's suggestion, to add a default provision that would impose a ten day deadline for responding to, respectively, interrogatories (paragraph (b)(2) of section 210.29), requests for documents and entry upon land (paragraph (b)(2) of section 210.30), and requests for admissions (paragraph (b) of section 210.31). The Commission also proposes to revise these rules to provide that the ten day deadline may be modified by the administrative law judge's ground rules.

Section 210.31

Paragraph (d) of section 210.31 states that admissions will be used only for the pending investigation and will not be used against the party "in any other proceeding," and section 210.3 defines an investigation as the original investigation into a violation of 19 U.S.C. 1337. In *Certain Lens-Fitted Film Packages*, Inv. 337-TA-406, an issue arose regarding the use of a stipulation in an underlying proceeding and whether that stipulation would be binding upon the party in the related enforcement and advisory opinion proceeding. In that case, the administrative law judge determined in an initial determination that a stipulation from the underlying investigation was binding on the parties in the related proceeding. The administrative law judge reasoned:

* * * complainant agreed to the stipulation in the underlying proceeding, which stipulation was binding in the underlying proceeding and was relied upon to resolve certain issues with the resultant issuance of the general exclusion order at issue in the current proceedings. Hence, since the current proceedings are ancillary proceedings to the underlying investigation and have been instituted to enforce the general exclusion

order from the underlying proceeding, the stipulation should be binding on the parties. *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406 (*Consolidated Enforcement and Advisory Opinion Proceedings*), *Enforcement Initial Determination* at 40 (Public Version, August 14, 2002).

Because the initial determination was not reviewed, this reasoning became part of the Commission's final determination. See *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, *Notice of Review-in-Part, Non-Review-in-Part, and Remand of Enforcement Initial Determination and Initial Advisory Opinion to the Presiding Administrative Law Judge* at 1 (August 7, 2002). The Commission believes that the same rationale should apply in all investigations and proposes that the rule be amended to allow the use of an admission against a party in related Commission proceedings, as defined in section 210.3, e.g., enforcement and advisory opinion proceedings.

Section 210.32

Paragraph (g) of section 210.32 establishes the procedure for obtaining judicial enforcement of a subpoena issued by the presiding administrative law judge. The Commission proposes revising this rule to require the presiding administrative law judge to certify nonconfidential copies of the subpoena for which judicial enforcement is sought, together with nonconfidential copies of any attachment to the subpoena. Nonconfidential copies of these documents are needed for submission to the court in support of the Commission's request for enforcement of the subpoena.

Section 210.34

Paragraph (c), Violation of Protective Order

Paragraph (c) of section 210.34 addresses violations of protective orders. For the following reasons, the Commission proposes to revise the undesignated text at the end of § 210.34(c) to provide that the identity of a person who has or is alleged to have violated an administrative protective order ("APO") is to be given the same treatment accorded to confidential business information ("CBI").

The Privacy Act, 5 U.S.C. 552a, requires that Federal agencies protect certain information in their possession concerning individuals. In particular, § 552a(b) of the statute imposes specific limits on the disclosure of such information. In addition to any statutory requirements, the Commission's interest in keeping an APO breacher's identity confidential is also animated by an

acknowledgment that many infractions involve inadvertent and minor disclosures of information by attorneys who practice before the Commission. The Commission has sought to balance the need to sanction transgressions with the concern that the severity of the punishment should not exceed the magnitude of the offense. Disclosing to the public a finding, or even an allegation, of an APO breach can have an adverse effect on the attorney in question, over and above the effect of the sanction itself. Treating the identity of APO breachers as CBI conforms to Commission practice in cases under Title VII of the Tariff Act of 1930. See 19 CFR 207.7 (provision governing disclosure of CBI subject to an APO under Title VII).

Investigations of alleged APO violations in section 337 cases currently involve participation by all parties in the underlying section 337 proceeding under § 210.34(d)(5). To further this participation, the Commission proposes to permit the parties to an investigation to learn the identity of an alleged breacher. However, the Commission proposes to revise the undesignated text at the end of § 210.34(c) to treat the identity of alleged APO breachers as confidential so that non-parties do not have access to such information.

In addition, the undesignated text at the end of paragraph (c) of section 210.34 provides for the issuance of sanctions when a signatory to an APO violates the APO. It is unclear from the current rule whether ALJs may issue sanctions, and if so, whether they are to do so by order, initial determination, or recommended determination. Accordingly, the Commission also proposes to revise this rule to require ALJs to rule on certain sanctions in the form of a recommended determination. This revision also clarifies that certain sanctions may be imposed only by the Commission and that the Commission must make an affirmative determination that such sanctions are warranted before they take effect.

The Commission also proposes to revise paragraph (c) of section 210.34 by adding the designation "Note to paragraph (c):" at the beginning of the undesignated text at the end of paragraph (c). This change is made for formal purposes, and to provide for clarity in any future reference to the text at the end of the paragraph.

Paragraph (d), Reporting Requests for Confidential Business Information

Paragraph (d) of section 210.34 imposes a reporting requirement for APO signatories concerning requests or orders requiring the signatory to

disclose information (CBI) covered by the APO to a person not entitled to receive it under the APO or under § 210.5(b) (which mirrors the provisions of 19 U.S.C. 1337(n) concerning persons who are authorized recipients of CBI submitted to the Commission or exchanged among the parties in investigations or related proceedings under section 337). Administrative protective order breach investigations in the section 337 area have made clear that many attorneys are unaware of the existence of this reporting requirement. To highlight the existence of the reporting requirement, the Commission proposes including the reporting requirement and sanctions in the title of the rule, and revising the text of section 210.34 to place the reporting requirement and applicable sanction in separate paragraphs (paragraph (d) and new paragraph (e), respectively). The Commission proposes redesignating § 210.34(d)(1) as § 210.34(d), redesignating § 210.34(d)(2) as § 210.34(e), and revising the heading of section 210.34 to reflect the importance of the reporting requirement and the applicable sanction. The Commission also proposes separating the text of revised § 210.34(d) into new paragraphs §§ 210.34(d)(1)–(5) for clarity, and adding a sentence at the end of section 210.34 to make it clear that the reporting requirement applies only to non-Commission requests for CBI.

The Commission also proposes to revise paragraph (d) of section 210.34 by adding the designation "Note to paragraph (d):" at the beginning of the undesignated text at the end of paragraph (d). This change is made for formal purposes, and to provide for clarity in any future reference to the text at the end of the paragraph.

Subpart F—Prehearing Conferences and Hearings

Section 210.35

Existing section 210.35 provides generally for prehearing conferences. The Commission proposes revising section 210.35 to include new § 210.35(a)(2) to expressly provide for prehearing settlement conferences. Accordingly, it is also proposed that existing §§ 210.35(a)(2)–(6) be renumbered as §§ 210.35(a)(3)–(7).

Section 210.38

Paragraph (a) of section 210.38 lists the items that constitute the record of section 337 investigations. Paragraph (d) of section 210.38 governs an administrative law judge's certification of the record to the Commission. Missing physical exhibits that the ALJ

presumably had returned to the submitting parties were a problem in connection with the transmittal of the record of *Certain Ammonium Octamolybdate Isomers*, Inv. No. 337–TA–477, Comm'n Op. (Jan. 2004) to a U.S. District Court in Colorado pursuant to 28 U.S.C. 1659(b). The Commission proposes amending §§ 210.38(a) and (d) to require the administrative law judge to certify all physical exhibits entered into evidence and amending § 210.38(d) to indicate that the administrative law judge may use his/her discretion as to whether substitution of a photographic reproduction of a large demonstrative exhibit would be appropriate.

Section 210.39

When civil litigation involving the parties to a section 337 investigation is pending concurrently with the investigation, a section 337 respondent who is a party to a civil action may move the court to stay the district court action, pursuant to 28 U.S.C. 1659(a), until the Commission's section 337 determination becomes final. After the stay is lifted, the Commission's section 337 record must be transmitted to the court and will be admissible in the civil action, pursuant to 28 U.S.C. 1659(b).

Section 210.39(b) provides for the transmission of a section 337 record to a U.S. District Court in accordance with 28 U.S.C. 1659(b). To make § 210.39(b) consistent with 28 U.S.C. 1659(b), the Commission proposes to revise the current wording of the rule to indicate that the Commission's record is to be transmitted to the court after the court dissolves the stay of the civil proceeding. To facilitate timely Commission compliance with a court order dissolving a stay of the civil action and requiring the Commission to transmit all or part of its section 337 record to the court pursuant to 28 U.S.C. 1659(b), the Commission proposes to amend § 210.39(b) to require the filing of written notice with the Secretary whenever (1) a section 337 party/civil action litigant asks the court to issue an order staying the civil action, and (2) whenever the district court issues an order dissolving the stay and directing the Commission to transmit all or part of the record to the court.

Subpart G—Determinations and Actions Taken

Section 210.42

Paragraph (a)(1) of section 210.42 generally relates to initial determinations on issues concerning violation of section 337. The Commission proposes changing paragraph (a)(1) for reasons explained

below with regard to sections 210.42 and 210.43.

Paragraph (a)(2) of section 210.42 generally relates to declassification of information. Section 210.42(a)(2) currently does not conform to section 210.20 because it does not make clear that initial determinations on declassification may issue after any decision on termination, not just after the final initial determination issues. The Commission proposes to change § 210.42(a)(2), which concerns initial determinations on declassification, to conform to section 210.20, which also concerns motions for declassification.

Sections 210.42 and 210.43

Review of Final Initial Determinations

Paragraphs (a) and (h) of section 210.42 and paragraph (d) of section 210.43 provide Commission deadlines for review of final initial determinations. The current rules concerning Commission review were promulgated in the 1970's when there were strict statutory deadlines for completion of Commission investigations, and final initial determinations, petitions, and responses were relatively short. Section 337 investigations during that time period also generally concerned less complicated technologies.

Final initial determinations, petitions, and responses to petitions have grown much lengthier over the last 30 years. At the same time, the number of section 337 complaints filed has grown tremendously, and the technology involved in the investigations has become steadily more complex. Recent experience indicates that these factors have combined to render insufficient the number of days allotted to the Commission to complete its investigations. Accordingly, the Commission proposes to amend §§ 210.42(h)(2) and 210.43(d)(1) such that the Commission will have two months to determine whether to review a final initial determination and two additional months for final disposition of the investigation. In this connection,

the Commission also proposes to amend § 210.42(a)(1)(i) such that the administrative law judge would issue his final initial determination no later than four (4) months before the target date for completion of the investigation, regardless of whether the target date has been set at over 15 months. In order to accomplish these changes in Commission practice, the Commission proposes revisions to §§ 210.42(a) and (h) and § 210.43(d)(1). In order to comport with the change to § 210.42(a)(1)(i) just discussed, the Commission also proposes to revise § 210.50(a) by providing that if the target date does not exceed 16 months from the date of institution the order of the administrative law judge shall be final.

The proposed amendment to § 210.43(d)(1), noted above, also includes a reference to the disposition of an initial determination under § 210.42(a)(2) regarding the declassification of CBI. The rules currently do not expressly provide for filing a petition for review of initial determinations concerning declassification. Because such initial determinations are frequently the subject of petitions and responses, the Commission proposes to revise § 210.42(h) to allow the Commission 45 days to determine whether to review initial determinations concerning declassification.

Review of Summary Initial Determinations

Under the current deadlines in paragraph (h) of section 210.42 and paragraph (d) of section 210.43, the Commission often has insufficient time to act on initial determinations granting summary determination that could terminate the investigation on the merits if it becomes the final determination of the Commission. The Commission proposes to add new paragraph (h)(6), and amend § 210.42(h)(3) to refer to new paragraph (h)(6), such that the Commission's time for determining whether to review these summary initial determinations would increase by 15

days, *i.e.*, from 30 days to 45 days. As a result of the addition of § 210.42(h)(6) and the change to § 210.42(h)(3), the Commission also proposes to amend § 210.43(d)(1), which concerns the grant or denial of a petition for review.

Section 210.42(i), Notice of Determination

Paragraph (i) of section 210.42 discusses the issuance, service, and **Federal Register** publication of notices announcing the Commission's decision on whether it will review an initial determination. The last sentence of § 210.42(i) indicates that the Commission will publish a notice in the **Federal Register** announcing whether the Commission has decided to review the initial determination only if that decision results in termination of the investigation in its entirety. Section 201.10, however, states that notices will be published in the **Federal Register**, as appropriate. In fact, the Commission routinely publishes notices concerning its decision on whether to review a final initial determination because the notice usually requests submissions from the public on the issues of remedy, the public interest, and bonding. In addition, § 210.49(b) (concerning publication of final determinations that result in the issuance of an order) and § 210.66(f) (concerning final disposition of an initial determination concerning temporary relief) require publication in the **Federal Register**. Accordingly, the Commission proposes to amend § 210.42(i) to clarify which notices related to initial determinations will be published in the **Federal Register**.

Section 210.43, Deadlines for Filing Petitions for Review of IDs

Section 210.43 provides deadlines for filing petitions for review of initial determinations and responses to petitions. Currently, §§ 210.43(a), 210.43(c), and 210.43(d) provide the following schedule for filing petitions for review of various types of initial determinations:

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
Violation §210.42(a)(1)	10 days from service of the initial determination on private parties.	5 business days from service of any petition.	45 days from service of the initial determination on private parties.
Forfeiture of respondent's bond §210.50(d)(3).	10 days from issuance of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination on private parties.
Forfeiture of complainant's temporary relief bond §210.70(c).	10 days from issuance of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination on private parties.

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
Other matters § 210.42(c)	5 business days from issuance of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination on private parties.
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.

As this chart shows, the methods for calculating filing dates for petitions for review are not uniform. This lack of uniformity has led to both confusion and gamesmanship by the private parties. Under the recent amendments to sections 210.6 and 210.7, all parties receive initial determinations by overnight delivery, and initial determinations may not be picked up from the Commission. While the amendments to sections 210.6 and 210.7 may have obviated concerns about gamesmanship, they do nothing to eliminate the confusion that sometimes exists concerning when a petition must be filed.

Because large initial determinations that are filed near the end of the business day are rarely ready for service on the day of issuance, and are almost always served on the following business day, the Commission proposes that all due dates be calculated from date of service. Thus, the Commission proposes amendments to all rules pertaining to due dates for petitions for review and responses such that all due dates will be counted from the date of service of the initial determination or response.

In view of the Commission's proposal to expand certain times for Commission review, it also proposes that petitions for review of

final initial determinations be due 12 days after service of a final initial determination and that replies to any such petitions be due eight days from the date of service of the petition. Further, the Commission proposes that the due date for filing a petition for review of a summary determination that would terminate the investigation if it became the final determination of the Commission be 10 days after service of the initial determination, and the date for filing a response to such a petition be five (5) business days after service of the petition. The due dates as so amended follow:

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
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.
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.
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.
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.
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.

Finally, the Commission proposes adding a chart to be designated as Appendix A at the end of Part 210 to summarize the proposed changes to the petition and response due dates discussed above, as well as the existing deadlines and due dates for formal enforcement proceedings as set forth in § 210.75(b).

Sections 210.43(b)(1) and (c), Petitions and Responses

Paragraph (b)(1) of section 210.43 describes the required content of a petition for review of an initial determination on a matter other than temporary relief. In view of the length of time required to consider lengthy petitions and responses, the Commission proposes amending § 210.43(b)(1) to require that any petition for review exceeding 50 pages in length be accompanied by a summary not to exceed ten pages, that responses to petitions should similarly require such summaries, and that there be a 100 page limit exclusive of the summaries for the length of petitions for review of final initial determinations on a matter other than temporary relief.

The Commission also proposes to revise paragraph (b)(1) of section 210.34 by adding

the designation "Note to paragraph (b)(1):" at the beginning of the undesignated text at the end of paragraph (b)(1). This change is made for formal purposes, and to provide for clarity in any future reference to the text at the end of the paragraph.

Paragraph (b)(3), Contingent Petition

Paragraph (b)(3) of section 210.43 currently provides that any petition for review of an initial determination on a matter other than temporary relief which the petitioner designates as a "contingent" petition for review shall be deemed to be a non-contingent petition and shall be processed accordingly. The Commission proposes to revise § 210.43(b)(3) to clarify issues which must be raised in petitions as well as to explain why it is sometimes necessary to file such petitions.

New Paragraph (b)(5), Service of Petition

Within the context of temporary relief, section 210.54, paragraph (b) of

section 210.56, and paragraph (c) of section 210.66 currently require the parties to serve certain documents on each other by "messenger, courier, express mail or equivalent means." The Commission has previously reasoned that such mandated cooperation between the parties is necessary to facilitate the filing of timely and useful responses by serving their initial comments on each other by the fastest means available. See 53 FR 33051, August 29, 1988. Because the same rationale applies in the case of petitions for review of initial determinations, the Commission proposes that new paragraph (b)(5) be added to the rules requiring that any petitions for review be served on the parties by hand or by overnight delivery service.

In view of the recent amendments to sections 210.6 and 210.7 previously discussed, the Commission proposes that the word "messenger" be used in proposed new § 210.43(b)(5), and that

the word "courier" be replaced with the words "overnight delivery" in current section 210.54, paragraph (b) of section 210.56, and paragraph (c) of section 210.66. Further, the Commission proposes that "express mail" be eliminated from these rules, as the term is generally the equivalent of "overnight delivery." The Commission therefore proposes to add new paragraph (b)(5) to section 210.43 to provide that petitions for review of an initial determination be served "by messenger, overnight delivery, or equivalent means."

Paragraph (d), Grant or Denial of Review

Paragraph (d)(1) of section 210.43 currently provides deadlines for Commission decisions, whether in whole or in part, on petitions for review of initial determinations. For the reasons discussed above with regard to section 210.43, the Commission proposes to revise paragraph (d)(1) to provide for Commission decisions to grant, whether in whole or in part, petitions for review of initial determinations under § 210.42(a)(1) within 60 days of service of the initial determination on the parties.

Section 210.45

Paragraph (c) of section 210.45 describes the action that the Commission may take upon review of an initial determination on a matter other than temporary relief. As noted by the ITCTLA, the Commission's right to take no position on some issues that are decided in an initial determination has been upheld by the U.S. Court of Appeals for the Federal Circuit in *Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984), where the Court declined to consider issues that were not decided by the Commission. The Commission frequently exercises its right to take no position on a particular issue, and thus proposes revising § 210.45(c) to reflect this practice, as suggested by the ITCTLA.

Section 210.49

Paragraph (b) of section 210.49 provides for publication and transmittal to the President of Commission section 337 determinations, along with actions taken relative to such determinations, to the President. The Commission proposes to amend § 210.49(b) to remove a confusing reference to subpart I, recognize the delegation of Presidential authority under 19 U.S.C. 1337(j)(1) to "an officer assigned the functions of the President" (*i.e.*, the United States Trade Representative as set forth in Presidential Memorandum, 70 FR 43251, July 26, 2005), and to add

language regarding Commission action taken pursuant to section 210.50.

Section 210.50

Paragraph (d) of section 210.50 governs the forfeiture or return of respondents' bonds posted pursuant to 19 U.S.C. 1337(e)(1) during the pendency of a temporary remedial order or pursuant to 19 U.S.C. 1337(j)(1) during the period of Presidential review for a temporary or permanent remedial order. Bond forfeiture proceedings may not be appropriate in cases where the Federal Circuit reverses a Commission finding of violation. Accordingly, the Commission proposes that the time for filing a motion for bond forfeiture be extended to 90 days after expiration of the Presidential period of review. Such an extension would encompass the 60 day period for filing an appeal. If no appeal is filed, the Commission could commence bond forfeiture proceedings immediately. The Commission also proposes to amend § 210.50(d) to clarify the procedure for filing a motion for return or forfeiture of a respondent's bond.

Section 210.51

Paragraph (a) of section 210.51 provides for the period for concluding investigations seeking permanent relief. Specifically, this paragraph currently provides that if the target date does not exceed 15 months from the date of institution the order of the administrative law judge shall be final. In light of the proposed changes to § 210.42(a)(1)(i) concerning issuance of final initial determinations no later than four (4) months before the target date for completion of the investigation by the administrative law judge discussed above, the Commission proposes to revise § 210.51(a) by providing that if the target date does not exceed 16 months from the date of institution, the order of the administrative law judge shall be final. The Commission also proposes to revise § 210.51(a) by providing that any extensions of the target date beyond 16 months, before the investigation is certified to the Commission, shall be by initial determination.

Subpart H—Temporary Relief

Section 210.54

Section 210.54 requires a complainant requesting temporary relief to expeditiously serve nonconfidential copies of the complaint, motion for temporary relief, and any materials attached thereto on all proposed respondents and on the embassies in Washington, DC "of each country from

which the allegedly unfair imports come." The Commission proposes four changes to this rule.

First, the Commission proposes to amend the rule to explicitly state that any supplemental information supplied to the Commission prior to institution of the investigation must also be served on the proposed respondents in the same manner as the original complaint, motion for temporary relief, and attachments thereto.

Second, the Commission proposes to change the rule's requirement for service on the embassies in Washington, DC "of each country from which the allegedly unfair imports come" because it is inconsistent with current practice. Currently, the address of the proposed respondent, rather than a determination of the exporting country, determines which embassies will be served. The language is also inconsistent with paragraph (a)(1) of section 210.11 and section 210.57 which require that the embassy of each foreign government representing the respondents be served with the complaint, motion for temporary relief, and any materials attached thereto. If no proposed respondent is listed as having a foreign address because it is unclear where the accused goods are being imported from, no embassy is served even though goods are being imported. Accordingly, the Commission proposes to revise section 210.54 to reflect that service will be made on the appropriate embassy.

Third, the Commission proposes to revise section 210.54 to reflect the changes previously discussed with respect to the revisions of sections 210.8 and 210.11 with regard to eliminating references to subsequent service of the motion for temporary relief by the Commission, and with regard to the changes concerning overnight delivery.

Fourth, the Commission proposes to revise 210.54 in the same manner as the changes previously discussed with respect to new paragraph (b)(5) of section 210.43 to require that parties be served "by messenger, overnight delivery, or equivalent means."

Section 210.55

Paragraph (b) of section 210.55 requires a complainant requesting temporary relief to file and serve new nonconfidential versions of the complaint, motion for temporary relief, or exhibits thereto if any of the original submissions contain excessive designations of confidentiality. The rule as currently written, however, does not specify that such service must be made in the same manner as the original submissions.

Section 210.54 requires service by hand or by overnight delivery of the complaint and motion for temporary relief to ensure that proposed temporary relief respondents have adequate notice of the allegations against them. *See* 53 FR 33049, August 29, 1988. The manner of service of a complaint and motion for temporary relief is specified in section 210.54 in order to give the respondent the benefit of at least 30 days to make necessary preliminary arrangements. 53 FR 33049, August 29, 1988. Overly redacted submissions do not serve this notice function, and so § 210.55(b) currently provides that a complainant must re-serve non-confidential copies of the original submissions if they do not give adequate notice. Because an overly redacted complaint and motion for temporary relief will not provide the respondents with the benefit of early notice, the Commission proposes to amend § 210.55(b) to require that the corrected versions of these filings should also be served in the same expeditious manner as the original documents.

Section 210.56

Paragraph (a), Sample Notice

Paragraph (a) of section 210.56 sets forth the notice that must accompany any motion for temporary relief, and is designed to notify proposed temporary relief respondents of the nature of Commission temporary relief proceedings. The Commission proposes to amend the sample notice in paragraph (a) of section 210.56 to change the year listed for the date in the notice so it no longer indicates a date in the 1900s, and instead indicates a date in the 2000s. The Commission also proposes amending § 210.56(a) to reflect the changes previously discussed with respect to the revisions of sections 210.8 and 210.11 with regard to eliminating references to subsequent service of the motion for temporary relief by the Commission.

Paragraph (b), Service of Supplementary Notice

Paragraph (b) of section 210.56 provides for the manner of service of supplementary notice on the parties. The Commission proposes to revise paragraph (b) of section 210.56 in the same manner as the changes previously discussed with respect to new paragraph (b)(5) of section 210.43, and section 210.54 discussed above, to require that parties be served “by messenger, overnight delivery, or equivalent means.”

Section 210.58

The Commission proposes to revise section 210.58 to eliminate reference to the Chief Administrative Law Judge. In current practice, the institution of an investigation and assignment of an administrative law judge occur simultaneously, and there is no Chief Administrative Law Judge. This change is the same as the changes previously discussed with respect to paragraph (a) of section 210.15 and paragraph (a) of section 210.20 to eliminate references to the Chief Administrative Law Judge, and merely conforms the rules to current practice.

Section 210.66

The last sentence of paragraph (c) of section 210.66 provides for the manner of service of comments pertaining to initial determinations concerning temporary relief. The Commission proposes to revise paragraph (c) of section 210.66 in the same manner as the changes previously discussed with respect to new paragraph (b)(5) of section 210.43, section 210.54, and paragraph (b) of section 210.56 to require that parties be served “by messenger, overnight delivery, or equivalent means.”

Section 210.67

Section 210.67 relates to the ability of the administrative law judge to compel discovery by respondents during the temporary relief phase of an investigation. Under the current rule, the administrative law judge “may compel discovery regarding bonding by respondents (as provided in § 210.61),” but the rule is silent with regard to compelling discovery regarding bonding by complainants. This differential treatment suggests that respondents’ and complainants’ bonds are to be treated differently, at least with respect to an administrative law judge’s ability to compel discovery. Such an interpretation is inconsistent with sections 210.61 and 210.66(a) and contradicts prior Commission commentary on the breadth of an administrative law judge’s ability to compel discovery in temporary relief proceedings. Therefore, the Commission proposes to amend the text of section 210.67 to permit an administrative law judge to compel discovery regarding bonding, regardless of whether by respondents or complainants. The Commission also proposes to revise the heading of section 210.67 to reflect this change.

Subpart I—Enforcement Procedures and Advisory Opinions

Section 210.70

Section 210.70, which governs forfeiture or return of complainant’s temporary relief bond, is currently in Subpart I, which concerns enforcement proceedings and advisory opinions. The Commission proposes to move this rule to Subpart H, which concerns temporary relief. This is a ministerial change made for organizational purposes.

Section 210.71

Paragraph (a)(1) of section 210.71 provides for information gathering and relates to the Commission’s power to require any person to report facts which will aid U.S. Customs and the Commission in enforcing Commission remedial orders. As currently written, the rule incorrectly suggests that U.S. Customs makes a determination as to whether the conditions that led to the order are changed, whereas the Commission actually determines whether the conditions that led to the order are changed in accordance with § 210.74(a). The Commission proposes to clarify this rule by deleting the reference to U.S. Customs’ determination of changed conditions.

Section 210.75

Section 210.75 provides generally for enforcement proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders. Paragraph (b) of section 210.75 provides specifically for formal, as opposed to informal (*see* paragraph (a) of section 210.75), enforcement proceedings. In addition to the changes discussed below, the Commission proposes adding a table including a summary of the existing deadlines and due dates for formal enforcement proceedings as set forth in § 210.75(b) as Appendix A at the end of Part 210.

Paragraph (b)(3), Public Hearings for Enforcement Proceedings

The Commission proposes to revise paragraph (b)(3) of section 210.75 to eliminate reference to the Chief Administrative Law Judge. In current practice, the institution of an investigation and assignment of an administrative law judge occur simultaneously, and there is no Chief Administrative Law Judge. This change is the same as the changes previously discussed with respect to paragraph (a) of section 210.15, paragraph (a) of section 210.20, and section 210.58 to eliminate references to the Chief

Administrative Law Judge, and merely conforms the rules to current practice.

Paragraph (b)(4), Enforcement Proceedings

Section 210.75 governs proceedings to enforce various Commission orders. Paragraph (b)(4) of section 210.75 lists the actions that the Commission may take at the conclusion of a formal enforcement proceeding. Paragraph (c) of section 210.75 addresses the initiation of civil actions by the Commission to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders. Among other things, §§ 210.75(b)(4) and (c) currently indicate that upon the conclusion of a formal enforcement proceeding, the Commission may bring civil actions in a U.S. District Court "requesting the imposition of a civil penalty or the issuance of injunctions incorporating the relief sought by the Commission." Those rule provisions are based on 19 U.S.C. 1337(f)(2) of the Tariff Act, but they do not track the statutory language of 19 U.S.C. 1337(f)(2) which states, that "[s]uch penalty shall accrue to the United States and may be recovered for the United States in a civil action brought by the Commission in the Federal District Court for the District of Columbia or for the district in which the violation occurs." Among other things, 19 U.S.C. 1337(f)(2) does not require the Commission to file a civil action requesting the imposition of a civil penalty. In fact, Commission practice, which has been upheld by the Federal Circuit, is to impose its own civil penalties. See *San Huan New Materials High Tech, Inc. v. U.S. Int'l Trade Comm'n*, 161 F.3d 1347 (Fed. Cir. 1998).

The Commission also proposes to revise §§ 210.75(b)(4) and (c) to include a reference to consent orders, since the Federal Circuit has upheld the Commission's long-standing interpretation of 19 U.S.C. 1337(f)(2) that consent orders, like cease and desist orders, are enforceable by civil penalty, imposed by the Commission, and recoverable in the district court in the event of nonpayment. The Commission therefore proposes to revise §§ 210.75(b)(4) and (c) to make these sections consistent with the language of the statute and Federal Circuit precedent.

Section 210.79

Paragraph (a) of section 210.79 describes the manner in which persons may request and the Commission will render advisory opinions. As used in the Commission rules, the term "person" means an individual,

partnership, corporation, association, or public or private organization. 19 CFR 201.2(j). The current language of the rule seems to allow only importers or would-be importers to request advisory opinions. In fact, advisory opinions issued by the Commission during the period January 1981 to May 2004 were all initiated in response to a request or a petition filed by an importer or a would-be importer.

In June 2004, however, the complainant in *Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Comm'n Op. (June 1999) requested an advisory opinion concerning disposable cameras that the U.S. Customs Service had allowed to enter for consumption, but that the complainant maintained were in violation of a Commission general exclusion order. The Commission granted Fuji's request and conducted advisory opinion proceedings. On appeal, the Commission argued that its advisory opinion authority is discretionary and not curtailed by the language of the rule. The Court did not comment on the position the Commission took on advisory opinions. See *Fuji Photo Film Co., Ltd. v. U.S. Int'l Trade Comm'n et al.*, 386 F.3d 1095 (Fed. Cir. 2004).

Accordingly, the Commission proposes to amend § 210.79(a) to make clear that, in accordance with current Commission practice, complainants, as well as importers, may request an advisory opinion from the Commission.

List of Subjects

19 CFR Part 201

Administration practice and procedure, Reporting and recordkeeping requirements.

19 CFR Part 210

Administration practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, the United States International Trade Commission proposes to amend 19 CFR parts 201 and 210 as follows:

PART 201—RULES OF GENERAL APPLICATION

1. The authority citation for part 201 continues to read as follows:

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.

2. Amend § 201.16 by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) to read as follows:

§ 201.16 Service of process and other documents.

* * * * *

(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.

* * * * *

PART 210—ADJUDICATION AND ENFORCEMENT

1. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

Subpart A—Rules of General Applicability

2. Amend § 210.3 by adding a definition of "U.S. Customs Service" in alphabetical order to read as follows:

§ 210.3 Definitions.

* * * * *

U.S. Customs Service means U.S. Customs and Border Protection.

3. Amend § 210.4 by revising paragraph (f)(1)(i) to read as follows:

§ 210.4 Written submission; representations; sanctions.

* * * * *

(f) *Specifications; filing of documents.* (1)(i) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with § 201.8 of this chapter, except for the provisions regarding the number of copies to be submitted. The required number of copies shall be governed by paragraph (f)(2) of this section. Written submissions may be produced by any process which produces a clear black image on white paper. Typed matter shall not exceed 6½ by 9½ 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.

* * * * *

4. Amend § 210.7 by:

a. Redesignating paragraph (b) as paragraph (c); and

b. Adding paragraphs (a)(3) and (b).

The additions and revisions read as follows:

§ 210.7 Service of process and other documents; publication of notices.

(a) * * *

(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.)

* * * * *

Subpart B—Initiation and Conduct of Investigations

5. Amend § 210.8 by adding introductory text and revising paragraph (a) to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

Upon receipt of complaint. A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies.

(a)(1) *Unless complainant requests temporary relief, the complainant shall file with the Secretary:*

(i) 12 copies of the nonconfidential version of the complaint along with 6 copies of the nonconfidential exhibits, and 6 copies of the confidential exhibits;

(ii) 12 copies of the confidential version of the complaint, if any;

(iii) For each proposed respondent, one copy of the nonconfidential version of the complaint and one copy of the confidential version of the complaint, if any, along with one copy of the nonconfidential exhibits and one copy of the confidential exhibits, and

(iv) For the government of the foreign country in which each proposed respondent is located as indicated in the Complaint, one copy of the nonconfidential version of the complaint.

Note to paragraph (a)(1): The same requirements apply for the filing of a supplement to the complaint.

(2) *If the complainant is seeking temporary relief, the complainant shall file with the Secretary:*

(i) 12 copies of the nonconfidential version of the complaint along with 6 copies of the nonconfidential exhibits, and 6 copies of the confidential exhibits;

(ii) 12 copies of the confidential version of the complaint, if any;

(iii) For each proposed respondent, one copy of the nonconfidential version of the complaint and one copy of the confidential version of the complaint, if any, along with one copy of the confidential exhibits;

(iv) 12 copies of the nonconfidential version of the motion for temporary relief along with 6 copies of any nonconfidential exhibits filed with the motion and 6 copies of the confidential exhibits, if any, filed with the motion;

(v) 12 copies of the confidential version of the motion for temporary relief, if any; and

(vi) For each proposed respondent, one copy of the confidential version of the motion along with one copy of the confidential exhibits filed with the motion.

Note to paragraph (a)(2): The same requirements apply for the filing of a supplement to the complaint or a supplement to the motion for temporary relief.

* * * * *

§ 210.10 [Amended]

6. Amend § 210.10 by removing the last two sentences of paragraph (a)(5)(i).

7. Revise § 210.11 to read as follows:

§ 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 party 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 party succeeds in serving the respondent by personal service, the party must notify the administrative law judge and file proof of such service with the Secretary.

Subpart C—Pleadings

8. Amend § 210.12 by:

a. Republishing the introductory text of paragraph (a);

b. Revising paragraphs (a)(1), (a)(6)(i) introductory text, (a)(6)(i)(C), and (a)(9);

c. Redesignating paragraph (a)(10) as paragraph (a)(11);

d. Adding new paragraph (a)(10);

e. Revising paragraph (c);

f. Revising the first sentence of paragraph (d);

g. Revising paragraphs (f), and (g);

h. Redesignating existing paragraph (h) as paragraph (j); and

i. Adding new paragraphs (h) and (i).

The additions and revisions read as follows:

§ 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)–(3);

* * * * *

(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:

* * * * *

(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

* * * * *

(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 an exemplary 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; and

* * * * *

(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. * * *

* * * * *

(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)–(h) within five days of service of a notice of appearance and agreement to be bound by the terms of the protective order; and

* * * * *

§ 210.13 [Amended]

9. Amend § 210.13 by removing the words "U.S. letters patent" and adding in their place the words "U.S. patent" in the following locations:

- a. § 210.13(b) introductory text,
- b. § 210.13(b)(1) (three occurrences), and
- c. § 210.13(b)(3).

Subpart D—Motions

§ 210.15 [Amended]

10. Amend § 210.15 by removing the first sentence of paragraph (a)(1).

11. Amend § 210.18 by revising paragraph (a) to read as follows:

§ 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 schedule 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.

* * * * *

12. Amend § 210.20 by revising paragraph (a) to read as follows:

§ 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 who is presiding or had last presided over the investigation. If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the Commission.

* * * * *

13. Amend § 210.21 by revising:

- a. Paragraph (a);
- b. The last sentence of paragraphs (b)(2), (c) introductory text, and (d);
- c. The third sentence of (c)(2)(ii); and
- d. Paragraph (e).

The revisions read as follows:

§ 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) * * *
(2) * * * Termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(c) * * * Termination by consent order need not constitute a determination as to violation of section 337.

(2) * * *

(ii) * * * Termination by consent order need not constitute a determination as to violation of section 337. * * *

* * * * *

(d) *Termination based upon arbitration agreement.* * * * 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.

§ 210.22 [Removed]

14. Remove and reserve § 210.22.

15. Amend § 210.25 by revising the second sentence of paragraph (f) to read as follows:

§ 210.25 Sanctions.

* * * * *

(f) * * * 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. * * *

Subpart E—Discovery and Compulsory Process

16. Amend § 210.28 by revising the fifth and sixth sentences of paragraph (d), revising the first sentence of paragraph (g), and revising paragraph (i)(4) to read as follows:

§ 210.28 Depositions.

* * * * *

(d) *Taking of deposition.* * * * 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. * * *

* * * * *

(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. * * *

* * * * *

(i) * * *
(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.

17. Amend § 210.29 by revising the fourth sentence of paragraph (b)(2) to read as follows:

§ 210.29 Interrogatories.

* * * * *

(b) * * *
(2) * * * 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. * * *

* * * * *

18. Amend § 210.30 by revising the first sentence of paragraph (b)(2) to read as follows:

§ 210.30 Request for production of documents and things and entry upon land.

* * * * *

(b) * * *
(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. * * *

* * * * *

19. Amend § 210.31 by revising the second sentence of paragraph (b) and the last sentence of paragraph (d) to read as follows:

§ 210.31 Requests for admission.

* * * * *

(b) *Answers and objections to requests for admission.* * * * 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. * * *

* * * * *

(d) *Effect of admissions; withdrawal or amendment of admission.* * * * 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.

20. Amend § 210.32 by revising paragraph (g) to read as follows:

§ 210.32 Subpoenas.

* * * * *

(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.

21. Amend § 210.34 by:

- a. Revising the section heading;
- b. Adding the designation "Note to paragraph (c):" to the undesignated text at the end of paragraph (c) and revising it;
- c. Revising paragraph (d); and
- d. Adding new paragraph (e).

The additions and revisions read as follows:

§ 210.34 Protective Orders; reporting requirement; sanctions and other actions.

* * * * *

- (c) * * *
- (5) * * *

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.

Subpart F—Prehearing Conferences and Hearings

22. Amend § 210.35 by redesignating existing paragraphs (a)(2) through (6) as (a)(3) through (7), respectively; and adding new paragraph (a)(2) to read as follows:

§ 210.35 Prehearing conferences.

- (a) * * *
- (2) Negotiation, compromise, or settlement of the case, in whole or in part;

* * * * *

23. Amend § 210.38 by revising paragraphs (a) and (d) to read as follows:

§ 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.

* * * * *

(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.

24. Amend § 210.39 by revising paragraph (b) to read as follows:

§ 210.39 In camera treatment of confidential information.

* * * * *

(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 request with the Commission Secretary on the same date that it is filed with the court.

* * * * *

Subpart G—Determinations and Actions Taken

25. Amend § 210.42 by revising paragraphs (a)(1)(i) and (2), (h)(2) and (3), and (i) to read as follows:

§ 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).

* * * * *

(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).

* * * * *

(h) * * *

(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.

* * * * *

(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.

26. Amend § 210.43 by:

- a. Revising paragraphs (a)(1);
- b. Adding the designation "Note to paragraph (b)(1):" to the undesignated text at the end of paragraph (b)(1) and revising it;
- c. Adding a sentence to the end of paragraph (b)(3);
- d. Adding new paragraph (b)(5); and
- e. Revising paragraphs (c) and (d)(1).

The additions and revisions read as follows:

§ 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.

* * * * *

(b) * * *

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.

* * * * *

(3) * * * 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.

* * * * *

(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.

* * * * *

27. Amend § 210.45 by revising paragraph (c) to read as follows:

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

* * * * *

(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**.

28. Amend § 210.49 by revising paragraph (b) to read as follows:

§ 210.49 Implementation of Commission action.

* * * * *

(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.

* * * * *

29. Amend § 210.50 by revising paragraphs (d)(1)(i) and (ii) to read as follows:

§ 210.50 Commission action, the public interest, and bonding by respondents.

* * * * *

(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.

* * * * *

§ 210.51 [Amended]

30. Amend § 210.51 in paragraph (a) by removing all occurrences of the number "15" and adding in its place the number "16".

Subpart H—Temporary Relief

31. Revise § 210.54 to read as follows:

§ 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 § 201.8(a)(1) and § 201.8(a)(2) of this chapter), the complainant must serve non-confidential copies of both documents (as well as nonconfidential 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.

32. Amend § 210.55 by revising paragraph (b) to read as follows:

§ 210.55 Content of service copies.

* * * * *

(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 nonconfidential 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.

33. Amend § 210.56 by revising:
a. The first and fourth paragraphs of the sample notice in paragraph (a); and
b. The second sentence of paragraph (b) to read as follows:

§ 210.56 Notice accompanying service copies.

(a) * * *

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.

* * * * *

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).

* * * * *

(b) * * * The supplementary notice shall be served by messenger, overnight delivery, or equivalent means. * * *

34. Revise § 210.58 to read as follows:

§ 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).) 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 on the complaint.

35. Amend § 210.66 by revising the last sentence of paragraph (c) to read as follows:

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

* * * * *

(c) * * * The parties shall serve their comments on other parties by messenger, overnight delivery, or equivalent means.

* * * * *

36. Amend § 210.67 by revising the section heading and paragraph (a) to read as follows:

§ 210.67 Remedy, the public interest, and bonding.

* * * * *

(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.

* * * * *

Subpart I—Enforcement Procedures and Advisory Opinions

§ 210.70 [Transferred]

37. Transfer § 210.70 from subpart I to subpart H.

38. Amend § 210.71 by revising paragraph (a)(1) to read as follows:

§ 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.

* * * * *

39. Amend § 210.75 by revising paragraphs (b)(3), (b)(4)(ii), and (c) to read as follows:

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

* * * * *

(b) * * *

(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 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) * * *

(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

* * * * *

(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.

40. Amend § 210.79 by revising paragraph (a) to read as follows:

§ 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.

* * * * *

41. Amend part 210 by adding Appendix A to read as follows:

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
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.
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.
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.
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.
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.
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.

Issued: December 14, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7-24591 Filed 12-19-07; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AB40

Fire Extinguishers in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA), is proposing to amend the current standard for the quantity and location of firefighting equipment and materials underground to ensure that they are readily available to quickly extinguish a fire. In lieu of the current requirements for rock dust and other firefighting materials, this proposed rule would allow the use of portable fire extinguishers in working sections of underground anthracite coal mines that have no electrical equipment at the face and produce less than 300 tons of coal per shift. The rule also would require an additional fire extinguisher in lieu of rock dust at temporary electrical installations in all underground coal mines.

DATES: All comments must be received at MSHA no later than midnight Eastern Standard Time on February 4, 2008.

ADDRESSES: (1) Identify all comments by "RIN 1219-AB40" and send them to MSHA as follows:

- Electronically through the Federal e-Rulemaking portal at <http://www.regulations.gov> or by e-mail to zzMSHA-comments@dol.gov.

- By facsimile to 202-693-9441.
- By mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. If comments are hand-delivered, please stop by the 21st floor first to check in with the receptionist.

(2) MSHA will post all comments on the internet without change, including any personal information they may contain. Rulemaking comments can be accessed via the internet at <http://www.msha.gov/regsinfo.htm> or in person at MSHA's public reading room