§ 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 § 210.42(c) that terminates the investigation in its entirety on summary determination must be filed within 10 business days after service of the initial determination.

(2) Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination (unless the Commission chooses to review the issue on its own initiative under § 210.44).

(b) Content of the petition. (1) A petition for review filed under this section shall identify the party seeking review and shall specify the issues upon which review of the initial determination is sought, and shall, with respect to each such issue, specify one or more of the following grounds upon which review is sought:

(i) That a finding or conclusion of material fact is clearly erroneous;

(ii) That a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or

(iii) That the determination is one affecting Commission policy.

NOTE TO PARAGRAPH (b)(1): The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy. If a petition filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the petition not to exceed ten pages. Petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits.

(2) Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination (unless the Commission chooses to review the issue on its own initiative under § 210.44).

(3) Any petition designated by the petitioner as a “contingent” petition for review shall be deemed to be a petition under paragraph (a)(1) of this section and shall be processed accordingly. In order to preserve an issue for review by the Commission or the U.S. Court of Appeals for the Federal Circuit that was decided adversely to a party, the issue must be raised in a petition for review, whether or not the Commission’s determination on the ultimate issue, such as a violation of section 337, was decided adversely to the party.

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

(5) Service of petition. All petitions for review of an initial determination shall be served on the other parties by messenger, overnight delivery, or equivalent means.

(c) Responses to the petition. Any party may file a response within eight (8) days after service of a petition of a final initial determination under § 210.42(a)(1), and within five (5) business days after service of all other types of petitions, except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted. If a response to a petition for review filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the response not to exceed ten pages. Responses to petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits.
(d) Grant or denial of review. (1) The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to §210.42(a)(1) within 60 days of the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to §210.42(a)(2) or §210.42(c), which grants a motion for summary determination that would terminate the investigation in its entirety if it becomes the final determination of the Commission, §210.50(d)(3), or §210.70(c) within 45 days after the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to §210.42(c), except as noted above, within 30 days after the service of the initial determination on the parties, or by such other time as the Commission may order. (2) The Commission shall decide whether to grant a petition for review, based upon the petition and response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. A petition will be granted and review will be ordered if it appears that an error or abuse of the kind described in §210.43(b)(1) is present or the initial determination raises a policy matter which the Commission thinks it necessary or appropriate to address.

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

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

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

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

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