

§210.77

certify a recommended determination to the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 61 FR 43433, Aug. 23, 1996]

§210.77 Temporary emergency action.

(a) Whenever the Commission determines, pending a formal enforcement proceeding under §210.75(b), that without immediate action a violation of an exclusion order, cease and desist order, or consent order will occur and that subsequent action by the Commission would not adequately repair substantial harm caused by such violation, the Commission may immediately and without hearing or notice modify or revoke such order and, if it is revoked, replace the order with an appropriate exclusion order.

(b) Prior to taking any action under this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. The Commission shall, if it has not already done so, institute a formal enforcement proceeding under §210.75(b) at the time of taking action under this section or as soon as possible thereafter, in order to give the alleged violator and other interested parties a full opportunity to present information and views regarding the continuation, modification, or revocation of Commission action taken under this section.

§210.78 Notice of enforcement action to Government agencies.

(a) *Consultation.* The Commission may consult with or seek information from any Government agency when taking any action under this subpart.

(b) *Notification of Treasury.* The Commission shall notify the Secretary of the Treasury of any action under this subpart that results in a permanent or temporary exclusion of articles from

19 CFR Ch. II (4–1–13 Edition)

entry, or the revocation of an order to such effect, or the issuance of an order compelling seizure and forfeiture of imported articles.

§210.79 Advisory opinions.

(a) *Advisory opinions.* Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether any person's proposed course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed his request as fully and accurately as possible. Advisory opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code.

(b) *Revocation.* The Commission may at any time reconsider any advice given under this section and, where the public interest requires, revoke its prior advice. In such event the person will be given notice of the Commission's intent to revoke as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a person for violation of an exclusion order, cease and desist order, or consent order with respect to any action that was taken in good faith reliance upon the Commission's advice under this section, if all relevant facts were accurately presented to the Commission and such action was promptly discontinued upon notification of revocation of the Commission's advice.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008]

APPENDIX A TO PART 210—ADJUDICATION AND ENFORCEMENT

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
1. Violation §210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination.

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
2. Forfeiture of respondent's bond § 210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
3. Forfeiture of complainant's temporary relief bond § 210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
4. Summary initial determination that would terminate the investigation if it became the Commission's final determination § 210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
5. Other matters § 210.42(c) ...	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination on private parties.
6. Formal enforcement proceedings § 210.75(b).	By order of the Commission ..	By order of the Commission ..	90 days from service of the initial determination on private parties.

[73 FR 38327, July 7, 2008]

PART 212—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.

- 212.01 Purpose.
- 212.02 When the Act applies.
- 212.03 Proceedings covered.
- 212.04 Eligibility of applicants.
- 212.05 Standards for awards.
- 212.06 Allowable fees and expenses.
- 212.07 Rulemaking on maximum rates for attorney fees.

Subpart B—Information Required From Applicants

- 212.10 Contents of application.
- 212.11 Net worth exhibit.
- 212.12 Documentation of fees and expenses.
- 212.13 When an application may be filed.

Subpart C—Procedures for Considering Applications

- 212.20 Filing and service of documents.
- 212.21 Answer to application.
- 212.22 Reply.
- 212.23 Comments by other parties.
- 212.24 Settlement.
- 212.25 Further proceedings.
- 212.26 Determination.
- 212.27 Agency review.
- 212.28 Judicial review.
- 212.29 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 9391, Mar. 5, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 212.01 Purpose.

(a) The Equal Access to Justice Act, 5 U.S.C. 504 (called “the Act” in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called “adversary adjudications”) before an agency. Under the Act an eligible party may receive an award when it prevails over an agency, unless the agency’s position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the Commission proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 212.02 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 212.03 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the