

Countdown to Deadline for Comment Submission to the ITC

A photograph of a modern building with a curved, glass-and-steel facade, showing multiple floors and windows, set against a clear blue sky.

3 MIN READ

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Five days remain to submit comments to the ITC's Proposed Amendments to the Rules of Practice and Procedure for Section 337 investigations: <https://www.regulations.gov/>, Docket No. MISC-049. The proposed rule changes include:

- Amending 19 C.F.R. § 210.12 to make clear that bare assertions without factual allegations supporting the existence of each element of the cause of action underlying the alleged unfair act or method of competition do not meet the requirements of paragraph 210.12(a)(2), to require disclosure of known domestic patent applications in addition to foreign patent applications corresponding to the asserted patents, and to formalize the requirement that a complaint seeking a general exclusion order must plead factual allegations sufficient to show that such an order is available under paragraph 337(d)(2).
- Amending 19 C.F.R. § 210.10(a)(1) to add that the Commission will not institute an investigation if the complaint or any exhibits or attachments contain excessive designations of confidentiality not warranted under paragraph 201.6(a) and section 210.5. The Commission may require the complainant to file new non-confidential versions, and the 30-day period for deciding whether to institute an investigation will begin from the date that the new non-confidential versions are filed.

- Requiring responses to amended complaints and notices of investigation to be filed 10 days from service of the order granting a motion to amend the complaint and/or notice of investigation for respondents in the investigation, and 20 days from service of the amended complaint and notice of investigation for respondents added to the investigation by amendment.
- Clarifying that the period for filing a request for an interlocutory appeal of a sanctions order is governed by paragraph 210.24(b)(1). If an interlocutory appeal of a previously issued order is denied, or the sanctions order is issued concurrently with the ID concerning violation, then the period for filing a petition for review of a sanctions order is governed by the period in which a petition for review of the ID terminating the investigation may be filed in paragraph 210.43(a). If the ALJ defers adjudicating a motion for sanctions until after the issuance of a final ID, the Commission proposes deadlines of 10 days for comments and 5 days for responses.
- Amending 19 C.F.R. § 210.27(b) to replace “reasonably calculated to lead to the discovery of admissible evidence” with “proportional to the needs of the investigation,” consistent with the 2015 amendment to Fed. R. Civ. P. 26(b), and to require any objection to a request for production under 19 C.F.R. § 210.30 to state whether any responsive materials are being withheld on the basis of that objection, consistent with Fed. R. Civ. P. 34.
- Amending the deposition limit for complainants from 5 fact depositions per respondent to a total of 20 fact depositions, regardless of the number of respondents, with depositions of non-party witnesses included in the limits of paragraph 210.28(a), and adding the limit of 1 day/7 hours per witness, consistent with Fed. R. Civ. P. 30(d).
- Clarifying that proposed findings of fact and law should be part of the substantive briefs for motions for summary determination under paragraph 210.18(a) or motions for termination under 210.21(a), rather than a separate document.
- Amending 19 C.F.R. § 210.40 to expressly allow a party to file a notice of supplemental authority before the ALJ issues a final initial determination if pertinent and significant authorities come to the party’s attention after all briefs have been filed.
- Providing that an ID granting a motion for summary determination under 19 C.F.R. § 210.18 that would terminate the investigation in its entirety shall become the final determination of the Commission 45 days after the date of service of the ID unless the Commission has ordered review of the ID or any of the issues therein, or the Commission orders a different deadline for determining whether to review.
- Removing the requirement to submit paper copies (except for complaints and any amendments/supplements) and requiring all documents to be electronically filed on EDIS.

Comments to the proposed rule changes submitted by paper will require a signed original and fourteen copies of each set of comments to be submitted to Lisa R. Barton, Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436.

Consistent with all ITC filings, the cut-off time for comments submission is 5:15 pm Eastern of the deadline date.



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