revise paragraph (e)(3) to provide as follows:

1. If the firm wishes to continue to retain the CBI but to change custodians, the proposed new custodian must be a attorney in the firm who is already a signatory to the APO. The change is to be effected by serving a notice on the parties, the appropriate thirdparty suppliers (if any), and the Secretary.

2. If there are no lawyers left in the firm who are signatories to the APO and the firm wishes to continue to retain the CBI but to change custodians, the firm must file a motion with the Commission and serve copies on the parties and third-party suppliers. The motion must request APO signatory status for the proposed new custodian as well as leave to designate that attorney as the firm's new custodian. The motion will not be granted unless information contained in the materials held by the firm is still entitled to confidential treatment and the Commission still has a duty to enforce the governing APO with respect to that information.

The Commission is particularly interested in receiving comments on (1) whether it should revise paragraph (e)(3) of final rule 210.34 to codify a procedure for changing custodians, and, (2) if so, whether that procedure should consist of the steps enumerated above or should entail different steps.

Paragraph (e)(4). Although proposed paragraph (e)(1) establishes prescribed periods for post-investigation retention of CBI, the Commission believes that parties and third-party suppliers should not be precluded from negotiating time limits or other conditions that are more strict than the maximums set by the Commission. The Commission also believes, however, that the proposed rules should avoid imposing unnecessary burdens on the Commission for monitoring APO compliance.

Proposed paragraph (e)(4) of final rule 210.34 accordingly states that parties and third-party suppliers may agree to retention periods, uses, custodial arrangements, or other conditions which differ from those imposed by proposed paragraphs (e)(1)–(e)(3). Paragraph (e)(4) goes on to say, however, that the Commission will not be responsible for policing the retention, uses, custodial arrangements, and other conditions relating to the subject CBI in accordance with such an agreement. That policy is consistent with Commission precedent.¹⁶

Paragraph (e)(4) further provides that when agreements are entered to retention periods, uses, custodial arrangements, or other conditions which differ from those imposed by proposed paragraphs (e)(1)-(e)(3), a copy of the agreement must be filed with the Commission or with the presiding ALJ (as the case may be). One purpose of this filing requirement is to give the Commission or the ALJ notice as to which of the APO provisions have been superceded by the agreement. Another purpose is to avoid placing the Commission or the ALJ in the position of having to adjudicate whether in fact an agreement was entered, if a dispute over that issue should arise at a later date.

PART 210—ADJUDICATIVE PROCEDURES

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

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

2. For the reasons set forth in the preamble, the Commission proposes to amend § 210.5 by adding a new paragraph (f) which reads as follows:

§210.5 Confidential business information.

(f) Disposition of confidential business information. Materials containing confidential business information that are subject to a protective order issued under $\S 210.34(a)$ of this part shall be retained, used, expurgated, returned to the supplier, or destroyed as provided in $\S 210.34(e)$.

3. For the reasons set forth in the preamble, the Commission proposes to amend § 210.34 by adding paragraph (e) which reads as follows:

§210.34 Protective orders.

(e) *Disposition of confidential information.* (1) Unless the Commission or an administrative law judge orders or a written agreement between parties and suppliers states otherwise, confidential information acquired pursuant to a protective order issued under paragraph (a) of this section shall be expurgated, returned to the supplier, or destroyed as provided below.

(i) All discovery materials containing confidential information may be retained until all appeals are exhausted. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to each supplier and the Commission.

(ii) All materials in the possession of expert witnesses that contain confidential information may be retained until all appeals are exhausted. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to the supplier and the Commission.

(iii) All materials on the evidentiary record that contain confidential information may be retained until all appeals are exhausted or all remedial orders issued in the investigation or a related proceeding have expired, whichever is later. Within 30 days thereafter, the materials shall be returned to the supplier or destroyed and written certification of such return or destruction shall be provided to each supplier and the Commission.

(iv) Except as provided in paragraph (e)(1)(viii) of this section, all pleadings containing confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the pleadings for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information in the pleadings will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the pleadings beyond the prescribed five-year period. Such motions must be filed at least 60 days before the five-year period expires.

(v) Except as provided in paragraph (e)(1)(viii) of this section, all notices, orders, initial determinations, recommended determinations, opinions, and other documents issued by an administrative law judge or the Commission that contain confidential information may be retained indefinitely. Notwithstanding such retention, the Commission shall not be responsible for enforcing the governing protective order with respect to the aforesaid materials for more than five years after the exhaustion of all appeals or the expiration of all remedial orders, whichever is later. If information in the materials will still be confidential after the five-year period has expired, the supplier of the information may file a motion to have the Commission extend its enforcement of the protective order with respect to the materials beyond the prescribed five-year period. Such

¹⁶ See, e.g., Inv. No. 337–TA–265, Certain Dental Prophylaxis Methods, Equipment, and Components Thereof, Initial Determination at 5–6 (Jan. 22, 1988), unreviewed by the Commission, 53 FR 6709 (Mar. 2, 1988); Certain Doxorubicin and Preparations Containing Same, Inv. No. 337–TA–300, Commission Memorandum Opinion at 7–8, (May 31, 1991); Electric Power Tools, Battery Cartridges,

and Battery Chargers, Commission Memorandum Opinion (July 2, 1991) at 3–4.