

Subpart D—Motions**§ 210.15 Motions.**

(a) *Presentation and disposition.* (1) During the period between the institution of an investigation and the assignment of the investigation to a presiding administrative law judge, all motions shall be addressed to the chief administrative law judge. During the time that an investigation or related proceeding is before an administrative law judge, all motions therein shall be addressed to the administrative law judge.

(2) When an investigation or related proceeding is before the Commission, all motions shall be addressed to the Chairman of the Commission. A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. All motions shall be filed with the Secretary and shall be served upon each party.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses to motions.* Within 10 days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution, the proposed respondent, shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Motions for extensions.* As a matter of discretion, the administrative law judge or the Commission may waive the requirements of this section as to motions for extension of time, and may rule upon such motions *ex parte*.

§ 210.16 Default.

(a) *Definition of default.* (1) A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed

in § 210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.

(2) A party may be found in default as a sanction for abuse of process, under § 210.4(c), or failure to make or cooperate in discovery, under § 210.33(b).

(b) *Procedure for determining default.*

(1) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue upon his own initiative, an order directing that respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing, the administrative law judge shall issue an initial determination finding the respondent in default. An administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

(2) Any party may file a motion for issuance of, or the administrative law judge may issue on his own initiative, an initial determination finding a party in default for abuse of process under § 210.4(c) or failure to make or cooperate in discovery. A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(3) A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

(c) *Relief against a respondent in default.* (1) After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public health and welfare, competitive conditions in the