

§210.24

judge's decision granting a motion for suspension shall be in the form of an initial determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994]

§210.24 Interlocutory appeals.

Rulings by the administrative law judge on motions may not be appealed to the Commission prior to the administrative law judge's issuance of an initial determination, except in the following circumstances:

(a) *Appeals without leave of the administrative law judge.* The Commission may in its discretion entertain interlocutory appeals, except as provided in §210.64, when a ruling of the administrative law judge:

(1) Requires the disclosure of Commission records or requires the appearance of Government officials pursuant to §210.32(c)(2); or

(2) Denies an application for intervention under §210.19. Appeals from such rulings may be sought by filing an application for review, not to exceed 15 pages, with the Commission within five days after service of the administrative law judge's ruling. An answer to the application for review may be filed within five days after service of the application. The application for review should specify the person or party taking the appeal, designate the ruling or part thereof from which appeal is being taken, and specify the reasons and present arguments as to why review is being sought. The Commission may, upon its own motion, enter an order staying the return date of an order issued by the administrative law judge pursuant to §210.32(c)(2) or may enter an order placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues that will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals with leave of the administrative law judge.* (1) Except as otherwise provided in paragraph (a) of this section, §210.64, and paragraph (b)(2) of this section, applications for review of a ruling by an administrative law judge may be allowed only upon request

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made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be an inadequate remedy.

(2) Applications for review of a ruling by an administrative law judge under §210.5(e)(1) as to whether information designated confidential by the supplier is entitled to confidential treatment under §210.5(b) may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof.

(3) A written application for review under paragraph (b)(1) or (b)(2) of this section shall not exceed 15 pages and may be filed within five days after service of the administrative law judge's determination. An answer to the application for review may be filed within five days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal. Unless otherwise ordered by the Commission, Commission review, if permitted, shall be confined to the application for review and answer thereto, without oral argument or further briefs.

(c) *Investigation not stayed.* Application for review under this section shall not stay the investigation before the administrative law judge unless the administrative law judge or the Commission shall so order.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994]

§210.25 Sanctions.

(a)(1) Any party may file a motion for sanctions for abuse of process under §210.4(d)(1), abuse of discovery under §210.27(d)(3), failure to make or cooperate in discovery under §210.33 (b) or (c), or violation of a protective order under §210.34(c). A motion alleging abuse of process should be filed promptly after the requirements of §210.4(d)(1)(i) have been satisfied. A motion alleging abuse

of discovery, failure to make or cooperate in discovery, or violation of a protective order should be filed promptly after the allegedly sanctionable conduct is discovered.

(2) The administrative law judge (when the investigation or related proceeding is before him) or the Commission (when the investigation or related proceeding is before it) also may raise the sanction issue sua sponte. (See also §§ 210.4(d)(1)(ii), 210.27(d)(3), 210.33(c), and 210.34(c).)

(b) A motion for sanctions shall be addressed to the presiding administrative law judge, if the allegedly sanctionable conduct occurred and is discovered while the administrative law judge is presiding in an investigation or in a related proceeding. During an investigation, the administrative law judge's ruling on the motion shall be in the form of an order, if it is issued before or concurrently with the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation. In a related proceeding, the administrative law judge's ruling shall be in the form of an order, regardless of the point in time at which the order is issued.

(c) A motion for sanctions shall be addressed to the Commission, if the allegedly sanctionable conduct occurred while the Commission is presiding or is filed after the subject investigation or related proceeding is terminated. The Commission may assign the motion to an administrative law judge for issuance of a recommended determination. The deadlines and procedures that will be followed in processing the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(d) If an administrative law judge's order concerning sanctions is issued before the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation, it may be appealed under § 210.24(b)(1) with leave from the administrative law judge, if the requirements of that section are satisfied. If the order is issued concurrently with the initial determination, the order may be appealed by filing a petition meeting

the requirements of § 210.43(b). The periods for filing such petitions and responding to the petitions will be specified in the Commission notice issued pursuant to § 210.42(i), if the initial determination has granted a motion for termination of the investigation, or in the Commission notice issued pursuant to § 210.46(a), if the initial determination concerns violation of section 337. The Commission will determine whether to adopt the order after disposition of the initial determination concerning violation of section 337 or termination of the investigation.

(e) If the administrative law judge's ruling on the motion for sanctions is in the form of a recommended determination pursuant to paragraph (c) of this section, the deadlines and procedures for parties to contest the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(f) If a motion for sanctions is filed with the administrative law judge during an investigation, he may defer his adjudication of the motion until after he has issued a final initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of investigation. If the administrative law judge defers his adjudication in such a manner, his ruling on the motion for sanctions must be in the form of a recommended determination and shall be issued no later than 30 days after issuance of the Commission's final determination on violation of section 337 or termination of the investigation. To aid the Commission in determining whether to adopt a recommended determination, any party may file written comments with the Commission 14 days after service of the recommended determination. Replies to such comments may be filed within seven days after service of the comments. The Commission will determine whether to adopt the recommended determination after reviewing the parties' arguments and taking any other steps the Commission deems appropriate.

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