

## § 821.18

### § 821.18 Motion for more definite statement.

(a) A party, in lieu of an answer, may file a motion requesting that the allegations in the complaint or the petition be made more definite and certain. The motion shall point out the defects complained of and the details desired. If the motion is granted and the law judge's order is not complied with within 15 days after notice, the law judge shall strike the allegation or allegations in any complaint or petition to which the motion is directed. If the motion is denied, the moving party shall file an answer within 10 days after the denial.

(b) A party may file a motion to clarify an answer in the event that it fails to respond clearly either to the complaint or to the petition for review. Such a motion may be granted at the discretion of the law judge.

[49 FR 28249, July 11, 1984]

### § 821.19 Depositions and other discovery.

(a) *Initiation of discovery.* After a petition for review or a complaint is filed, any party may take the testimony of any person, including a party, by deposition, upon oral examination or written questions, without seeking prior Board approval. Reasonable notice shall be given in writing to the other parties of record stating the name of the witness and the time and place of the taking of the deposition. A copy of any notice of deposition shall be served on the Office of Administrative Law Judges. In other respects, the taking of any deposition shall be in compliance with the provisions of 49 U.S.C. 46104.

(b) *Exchange of information by parties.* At any time before hearing, at the instance of either party, the parties or their representatives may exchange information, such as witness lists, exhibit lists, curricula vitae and bibliographies of expert witnesses, and other data. In the event of a dispute, either the assigned law judge or another law judge delegated this responsibility (if a law judge has not yet been assigned) may issue an order directing compliance with any ruling made with respect to discovery. Any party may also use written interrogatories, requests to

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admit, or other discovery tools. Copies of discovery requests and responses shall be served on the law judge assigned to the proceeding.

(c) *Use of the Federal Rules of Civil Procedure.* Those portions of the Federal Rules of Civil Procedure that pertain to depositions and discovery may be used as a general guide for discovery practice in proceedings before the Board where appropriate. The Federal Rules and the case law that construes them shall be considered by the Board and its law judges as instructive rather than controlling.

(d) *Failure to provide or preserve evidence.* The failure of any party to comply with an order of an administrative law judge compelling discovery or to cooperate in a timely request for the preservation of evidence may result in a negative inference against that party with respect to the matter sought and not provided or preserved, a preclusion order, or dismissal.

[49 FR 28250, July 11, 1984, as amended at 59 FR 59047, Nov. 15, 1994; 65 FR 42639, July 11, 2000]

### § 821.20 Subpoenas, witness fees, and appearances of Board Members, officers, or employees.

(a) *Subpoenas.* Subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence for the purpose of taking depositions or at a hearing may be issued by the chief law judge prior to the assignment of a law judge, or by the law judge to whom the case is assigned, upon application by any party. The application shall show the general relevance and reasonable scope of the evidence sought. Any person upon whom a subpoena is served may, within 7 days after service but in any event prior to the return date thereof, file with the chief law judge or the law judge, as the case may be, a motion to quash or modify the subpoena, and such filing shall stay the subpoena pending final action by the chief law judge or the law judge on the motion.

(b) *Witness fees.* Witnesses shall be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears. The