

## § 821.55

(f) *Effect of law judge's ruling.* If the law judge grants the petition, the effectiveness of the Administrator's order will be stayed until final disposition of the respondent's appeal by the law judge or the Board. In such cases, the remaining provisions of this subpart (§§ 821.55–821.57) shall continue to apply, and their applicability may not be waived by the respondent without the consent of the Administrator. If the petition is denied, the Administrator's order shall remain in effect, and the remaining provisions of this subpart shall continue to apply, unless respondent waives their applicability. The law judge's ruling on the petition shall be final, and is not appealable to the Board.

### § 821.55 Complaint, answer to complaint, motions, and discovery.

(a) *Complaint.* Within 3 days after receipt of the appeal, or within 3 days after service of a law judge's order disposing of a petition for review of the Administrator's emergency determination, whichever is later, the Administrator shall file with the Board via overnight delivery or facsimile, an original and 3 copies of the emergency or other immediately effective order as the complaint, and serve a copy on the respondent by the same means.

(b) *Answer to the complaint.* Within 5 days after service of the complaint upon respondent, he or she shall file an answer thereto, and serve a copy of the answer on the Administrator. Failure to deny any allegation or allegations of the complaint may be deemed an admission of the allegation or allegations not answered.

(c) *Motion to dismiss and motion for more definite statement.* No motion to dismiss or for a more definite statement shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(d) *Discovery.* Discovery is authorized in emergency or other immediately effective proceedings, and, given the short time available, parties are directed to cooperate to ensure timely

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completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in this subpart. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

### § 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Within 5 days of the receipt of respondent's appeal, or immediately upon the issuance of a law judge's order disposing of a petition for review of the Administrator's emergency determination (if later), the parties will be notified of the date, time and place of the hearing. The hearing shall be set for a date no later than 30 days after the filing of the appeal. To the extent not inconsistent with this section, the provisions of § 821.37(a) also apply.

(b) *Initial decision.* The initial decision shall be made orally on the record at the termination of the hearing and after opportunity for oral argument. The provisions of § 821.42(b) and (d) shall be applicable (covering content, furnishing a copy of the initial decision excerpted from the record, and issuance date).

(c) *Conduct of hearing.* The provisions of §§ 821.38, 821.39, and 821.40, covering evidence, argument and submissions, and record, shall be applicable.

(d) *Effect of law judge's initial decision.* If no appeal to the Board by either party, by motion or otherwise, is filed within the time allowed, the law judge's initial decision shall become final but shall not be deemed to be a precedent binding on the Board.

### § 821.57 Procedure on appeal.

(a) *Time within which to file a notice of appeal and content.* Within 2 days after the initial decision has been orally rendered, either party to the proceeding may appeal therefrom by filing with the Board and serving upon the other parties a notice of appeal. The time limitations for the filing of documents are not extended by the unavailability of the hearing transcript.