

## § 2200.38

## 29 CFR Ch. XX (7–1–06 Edition)

after the receipt of notice of the docketing by the Commission of the petition for modification of the abatement date. The requirements set forth in § 2200.36(c)(2)–(c)(4) shall apply.

(5) Each objecting party shall file a response setting forth the reasons for opposing the abatement date requested in the petition, within 10 working days after the receipt of notice of the docketing by the Commission of the petition for modification of the abatement date.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987, as amended at 55 FR 22782, June 4, 1990]

### § 2200.38 Employee contests.

(a) *Secretary's statement of reasons.* Where an affected employee or authorized employee representative files a notice of contest with respect to the abatement period, the Secretary shall, within 10 days from his receipt of the notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

(b) *Response to Secretary's statement.* Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.

(c) *Expedited proceedings.* All contests under this section shall be handled as expedited proceedings as provided for in § 2200.103 of this part.

### § 2200.39 Statement of position.

At any time prior to the commencement of the hearing before the Judge, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard. The Judge may order the filing of a statement of position.

### § 2200.40 Motions and requests.

(a) *How to make.* A request for an order shall be made by motion. Motions shall be in writing or, unless the Judge directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before Judges, a motion may be made telephonically if it is reduced to

writing and filed as soon as possible but no later than 3 working days following the time the motion was made. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Prior to filing a motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(b) *When to make.* A motion filed in lieu of an answer pursuant to § 2200.34(b) shall be filed no later than twenty days after the service of the complaint. Any other motion shall be made as soon as the grounds therefor are known.

(c) *Responses.* Any party or intervenor upon whom a motion is served shall have ten days from service of the motion to file a response. A procedural motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may within five days of service of the ruling seek reconsideration.

(d) *Postponement not automatic upon filing of motion.* The filing of a motion, including a motion for a postponement, does not automatically postpone a hearing. See § 2200.62 with respect to motions for postponement.

[51 FR 32015, Sept. 8, 1986; 52 FR 13832, Apr. 27, 1987, as amended at 57 FR 41685, Sept. 11, 1992; 62 FR 35963, July 3, 1997]

### § 2200.41 [Reserved]

## Subpart D—Prehearing Procedures and Discovery

### § 2200.50 [Reserved]

### § 2200.51 Prehearing conferences and orders.

(a) *Scheduling conference.* (1) The Judge may, upon his or her discretion, consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 30 days after the filing of the answer, enter a scheduling order that limits the time: