

## §511.24

such motion. Where a motion would affect only a single party, or an identifiable group of parties, the Presiding Officer or Administrator may limit the response to the motion to the affected party or parties. Failure to respond to a written motion may, in the discretion of the Presiding Officer be deemed as consent to the granting of the relief sought in the motion. The moving party shall have no right to reply, except as permitted by the Presiding Officer or the Administrator.

(d) *Rulings on motions for dismissal.* When a motion to dismiss a complaint or motion for other relief is granted with the result that the proceeding before the Presiding Officer is terminated, the Presiding Officer shall issue an Initial Decision and Order thereon in accordance with the provisions of §511.51. If such a motion is granted as to all issues alleged in the complaint in regard to some, but not all, of the respondents, or is granted as to any part of the allegations in regard to any or all of the respondents, the Presiding Officer shall enter an order on the record and consider the remaining issues in the Initial Decision. The Presiding Officer may elect to defer ruling on a motion to dismiss until the close of the case.

### §511.24 Interlocutory appeals.

(a) *General.* Rulings of the Presiding Officer may not be appealed to the Administrator prior to the Initial Decision, except as provided herein.

(b) *Exceptions—(1) Interlocutory appeals to Administrator.* The Administrator may, in his or her discretion, entertain interlocutory appeals where a ruling of the Presiding Officer:

(i) Requires the production or disclosure of records claimed to be confidential;

(ii) Requires the testimony of a supervisory official of the agency other than one especially cognizant of the facts of the matter in adjudication;

(iii) Excludes an attorney from participation in a proceeding pursuant to §511.42(b).

(2) *Procedures for interlocutory appeals.* Within ten (10) days of issuance of a ruling, any party may petition the Administrator to entertain an interlocutory appeal on a ruling in the cat-

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egories enumerated above. The petition shall not exceed fifteen (15) pages. Any other party may file a response to the petition within ten (10) days of its service. The response shall not exceed fifteen (15) pages. The Administrator shall thereupon act upon the petition, or the Administrator shall request such further briefing or oral presentation as he may deem necessary.

(3) *Interlocutory appeals from all other rulings—(i) Grounds.* Interlocutory appeals from all other rulings by the Presiding Officer may proceed only upon motion to the Presiding Officer and a determination by the Presiding Officer 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 differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation, or that subsequent review will be an inadequate remedy.

(ii) *Form.* If the Presiding Officer determines, in accordance with paragraph (b)(3)(i) of this section that an interlocutory appeal may proceed, a petition for interlocutory appeal may be filed with and acted upon by the Administrator in accordance with paragraph (b)(2) of this section.

(c) *Proceedings not stayed.* A petition for interlocutory appeal under this part shall not stay the proceedings before the Presiding Officer unless the Presiding Officer shall so order, except that a ruling of the Presiding Officer requiring the production of records claimed to be confidential shall be automatically stayed for a period of (10) days following the issuance of such ruling to allow an affected party the opportunity to file a petition for an interlocutory appeal pursuant to §511.24(b)(2). The filing of such a petition shall automatically extend the stay of such a ruling pending the Administrator's action on such petition.

### §511.25 Summary decision and order.

(a) *Motion.* Any party may move, with a supporting memorandum, for a Summary Decision and Order in its favor upon all or any of the issues in controversy. Complaint Counsel may so move at any time after thirty (30)

days following issuance of a complaint, and any other party may so move at any time after issuance of a complaint. Any such motion by any party shall be filed at least twenty (20) days before the date fixed for the adjudicatory hearing.

(b) *Response to motion.* Any other party may, within ten (10) days after service of the motion, file a response thereto with a supporting memorandum.

(c) *Grounds.* A Summary Decision and Order shall be granted if the pleadings and any testimony upon oral examination, answers to interrogatories, admissions, and/or affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a Summary Decision and Order as a matter of law.

(d) *Legal effect.* A Summary Decision and Order upon all the issues being adjudicated shall constitute the Initial Decision of the Presiding Officer, and may be appealed to the Administrator in accordance with § 511.53. A Summary Decision, interlocutory in character, may be rendered on fewer than all issues and may not be appealed prior to issuance of the Initial Decision, except in accordance with § 511.24.

(e) *Case not fully adjudicated on motion.* A Summary Decision and Order that does not dispose of the whole case shall include a statement of those material facts as to which there is no substantial controversy, and of those material facts that are actually and in good faith controverted. The Summary Order shall direct such further proceedings as are just.

#### § 511.26 Settlement.

(a) *Applicability.* This section applies only to cases of alleged violations of section 507(3) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94-163, 89 Stat. 911 (15 U.S.C. section 2007(3)). Settlement in other cases may be made only in accordance with subpart G of this part.

(b) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(c) *Form.* Offers of settlement shall be in the form of a consent agreement and order, shall be signed by the party submitting the offer or his representative,

and may be signed by any other party. Each offer of settlement shall be accompanied by a motion to transmit to the Administrator the proposed agreement and order, outlining the substantive provisions of the agreement, and the reasons why it should be accepted.

(d) *Contents.* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps, and of all rights to seek judicial review or otherwise to contest the validity of the order;

(3) A description of the alleged non-compliance, or violation;

(4) Provisions to the effect that the allegations of the complaint are resolved by the proposed consent agreement and order;

(5) A listing of the acts or practices from which the respondent shall refrain;

(6) A detailed statement of the corrective action(s) which the respondent shall execute and the civil penalty, if any, that respondent shall pay.

(e) *Transmittal.* The Presiding Officer shall transmit to the Administrator for decision all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph (d) of this section. The Presiding Officer may, but need not, recommend acceptance or rejection of such offers. Any party or participant may object to a proposed consent agreement by filing a motion and supporting memorandum with the Administrator.

(f) *Stay of proceedings.* When an offer of settlement has been agreed to by the parties and has been transmitted to the Administrator, the proceedings shall be stayed until the Administrator has ruled on the offer. When an offer of settlement has been made and transmitted to the Administrator but has not been agreed to by all parties, the proceedings shall not be stayed pending the Administrator's decision on the offer.

(g) *Administrator's ruling.* The Administrator will rule upon all transmitted