

§ 102.25

Georgia, as the case may be. Motions shall briefly state the order or relief applied for and the grounds therefor. All motions filed with a Regional Director or an administrative law judge as set forth in this paragraph shall be filed therewith by transmitting three copies thereof together with an affidavit of service on the parties. All motions filed with the Board, including motions for default judgment, summary judgment, or dismissal, shall be filed with the Executive Secretary of the Board in Washington, DC, by transmitting eight copies thereof together with an affidavit of service on the parties. Unless otherwise provided in 29 CFR part 102, motions and responses thereto shall be filed promptly and within such time as not to delay the proceeding.

(b) All motions for summary judgment or dismissal shall be filed with the Board no later than 28 days prior to the scheduled hearing. Where no hearing is scheduled, or where the hearing is scheduled less than 28 days after the date for filing an answer to the complaint or compliance specification, whichever is applicable, the motion shall be filed promptly. Upon receipt of a motion for default judgment, summary judgment, or dismissal, the Board may deny the motion or issue a notice to show cause why the motion should not be granted. If a notice to show cause is issued, the hearing, if scheduled, will normally be postponed indefinitely. If a party desires to file an opposition to the motion prior to issuance of the notice to show cause in order to prevent postponement of the hearing, it may do so; Provided however, That any such opposition shall be filed no later than 21 days prior to the hearing. If a notice to show cause is issued, an opposing party may file a response thereto notwithstanding any opposition it may have filed prior to issuance of the notice. The time for filing the response shall be fixed in the notice to show cause. It is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing. The Board in its discretion may deny the motion where the motion itself fails to establish the absence of a

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genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist. If the opposing party files no opposition or response, the Board may treat the motion as conceded, and default judgment, summary judgment, or dismissal, if appropriate, shall be entered.

[69 FR 1676, Jan. 12, 2004]

§ 102.25 Ruling on motions.

An administrative law judge designated by the chief administrative law judge, by the associate chief judge in San Francisco, California, by the associate chief judge in New York, New York, or by the associate chief judge in Atlanta, Georgia, as the case may be, shall rule on all prehearing motions (except as provided in §§ 102.16, 102.22, 102.29, and 102.50), and all such rulings and orders shall be issued in writing and a copy served on each of the parties. The administrative law judge designated to conduct the hearing shall rule on all motions after opening of the hearing (except as provided in § 102.47), and any orders in connection therewith, if announced at the hearing, shall be stated orally on the record; in all other cases the administrative law judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties, or shall make his ruling in his decision. Whenever the administrative law judge has reserved his ruling on any motion, and the proceeding is thereafter transferred to and continued before the Board pursuant to § 102.50, the Board shall rule on such motion.

(49 Stat. 449; 29 U.S.C. 151-166, as amended by (61 Stat. 136; 29 U.S.C. Sup. 151-167), (65 Stat. 601; 29 U.S.C. 158, 159, 168), (73 Stat. 519; 29 U.S.C. 141-168), (88 Stat. 395-397; 29 U.S.C. 152, 158, 169, 183))

[45 FR 51193, Aug. 1, 1980, as amended at 62 FR 1668, Jan. 13, 1997]

§ 102.26 Motions, rulings, and orders part of the record; rulings not to be appealed directly to the Board without special permission; requests for special permission to appeal.

All motions, rulings, and orders shall become a part of the record, except