

§ 1955.11

29 CFR Ch. XVII (7–1–05 Edition)

(c) Not less than 30 days following publication of the notice in the FEDERAL REGISTER, the State shall submit a statement of those items in the notice which are being contested and a brief statement of the facts relied upon, including whether the use of witnesses is intended. This statement shall be served on the Assistant Secretary in accordance with §1955.15. When a State fails to respond to the notice of proposed withdrawal under paragraph (b)(1) of this section, the State shall be deemed to have waived its right to a formal proceeding and the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of withdrawal of approval.

§ 1955.11 Contents of notice of formal proceeding.

(a) A notice of a formal proceeding published under § 1955.10 shall include:

(1) A statement on the nature of the proceeding and addresses for filing all papers;

(2) The legal authority under which the proceeding is to be held;

(3) A description of the issues and the grounds for the Assistant Secretary's proposed withdrawal of approval;

(4) A specified period, generally not less than 30 days after publication of the notice in the FEDERAL REGISTER, for the State to submit a response to the statement of issues in the notice;

(5) A provision for designation of an administrative law judge under 5 U.S.C. 3105 to preside over the proceeding.

(b) A copy of the notice of the proceeding stating the basis for the Assistant Secretary's determination that approval of the plan, or any portion thereof, should be withdrawn shall be referred to the administrative law judge.

§ 1955.12 Administrative law judge; powers and duties.

(a) The administrative law judge appointed under 5 U.S.C. 3105 and designated by the Chief Administrative Law Judge to preside over a proceeding shall have all powers necessary and appropriate to conduct a fair, full, and impartial proceeding, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To provide for discovery, including the issuance of subpoenas authorized by section 8(b) of the Act and 5 U.S.C. 555(d) and 556(c)(2), and to determine the scope and time limits of the discovery;

(4) To regulate the course of the proceeding and the conduct of the parties and their counsel;

(5) To consider and rule upon procedural requests, e.g. motions for extension of time;

(6) To hold preliminary conferences for the settlement or simplification of issues;

(7) To take official notice of material facts not appearing in the evidence in the record in accordance with § 1955.40(c);

(8) To render an initial decision;

(9) To examine and cross-examine witnesses;

(10) To take any other appropriate action authorized by the Act, the implementing regulations, or the Administrative Procedure Act, 5 U.S.C. 554-557 (hereinafter called the APA).

(b) On any procedural question not otherwise regulated by this part, the Act, or the APA, the administrative law judge shall be guided to the extent practicable by the pertinent provisions of the Federal Rules of Civil Procedure.

§ 1955.13 Disqualification.

(a) If an administrative law judge deems himself disqualified to preside over a particular proceeding, he shall withdraw by notice on the record directed to the Chief Administrative Law Judge. Any party who deems an administrative law judge, for any reason, to be disqualified to preside, or to continue to preside, over a particular proceeding may file a motion to disqualify and remove the administrative law judge, provided the motion is filed prior to the time the administrative law judge files his decision. Such motion must be supported by affidavits setting forth the alleged ground for disqualification. The Chief Administrative Law Judge shall rule upon the motion.