

(i) That the ruling involves an important question of law or policy as to which there is substantial ground for difference of opinion; and

(ii) That an immediate appeal from the ruling may materially advance the ultimate termination of the proceeding.

(2) The allowance of such an interlocutory appeal shall not stay the proceeding before the administrative law judge unless the Secretary so orders.

#### § 1955.22 Summary decision.

(a)(1) Where no genuine issue of material fact is found to have been raised, the administrative law judge shall issue an initial decision to become final 30 days after service thereof upon each party unless, within those 30 days, any party has filed written exceptions to the decision with the Secretary. Requests for extension of time to file exceptions may be granted if the requests are received by the Secretary no later than 25 days after service of the decision.

(2) If any timely exceptions are filed, the Secretary may set a time for filing any response to the exceptions with supporting reasons. All exceptions and responses thereto shall be served on all the parties.

(b)(1) The Secretary, after consideration of the decision, the exceptions, and any supporting briefs filed therewith and any responses to the exceptions with supporting reasons, shall issue a final decision.

(2) An initial decision and a final decision under this section shall include a statement of:

(i) Findings of fact and conclusions of law and the reasons and bases therefor on all issues presented;

(ii) Reference to any material fact based on official notice; and

(iii) The terms and conditions of the rule or order made.

The final decision shall be published in the FEDERAL REGISTER and served on all the parties.

(c) Where a genuine material question of fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing. A notice of such hearing shall be published in the FED-

ERAL REGISTER at least 30 days prior to the hearing date.

### Subpart D—Preliminary Conference and Discovery

#### § 1955.30 Submission of documentary evidence.

(a) Where there has been no consent finding or summary decision under subpart C of this part and a formal hearing is necessary, the administrative law judge shall set a date by which all documentary evidence, which is to be offered during the hearing, shall be submitted to the administrative law judge and served on the other parties. Such submission date shall be sufficiently in advance of the hearing as to permit study and preparation for cross-examination and rebuttal evidence. Documentary evidence not submitted in advance may be received into evidence upon a clear showing that the offering party had good cause for failure to produce the evidence sooner.

(b) The authenticity of all documents submitted in advance shall be deemed admitted unless written objections are filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later date upon clear showing of good cause for failure to have filed such written objections.

#### § 1955.31 Preliminary conference.

(a) Upon his own motion, or the motion of a party, the administrative law judge may direct the parties to meet with him for a conference or conferences to consider:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;

(3) Stipulations of fact, and of the authenticity, of the contents of documents;

(4) Limitations on the number of parties and of witnesses;

(5) Scope of participation of petitioners under § 1955.17 of this part;

(6) Establishment of dates for discovery; and

(7) Such other matters as may tend to expedite the disposition of the proceedings, and to assure a just conclusion thereof.

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(b) The administrative law judge shall enter an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered. Such order shall limit the issues for hearing to those not disposed of by admissions or agreements, and control the subsequent course of the hearing, unless modified at the hearing to prevent manifest injustice.

**§ 1955.32 Discovery.**

(a)(1) At any time after the commencement of a proceeding under this part, but generally before the preliminary conference, if any, a party may request of any other party admissions that relate to statements or opinions of fact, or of the application of law to fact, including the genuineness of any document described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection or copying. The matter shall be deemed admitted unless within 30 days after service of the request, or within such shorter or longer time as the administrative law judge may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(2) If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify his answer or deny only a part of the matter on which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as the reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.

(3) The party who has requested the admission may move to determine the

sufficiency of the answers or objections. Unless the administrative law judge determines that an objection is justified, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the requests be made at a preliminary conference, or at a designated time prior to the hearing. Any matter admitted under this section is conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission. Copies of all requests and responses shall be served on all parties and filed with the administrative law judge.

(b)(1) The testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the administrative law judge or having power to administer oaths.

(2) Any party desiring to take the deposition of a witness may make application in writing to the administrative law judge setting forth:

(i) The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

(ii) The name and address of each witness; and

(iii) The subject matter concerning which each witness is expected to testify.

(3) Such notice as the administrative law judge may order shall be given by the party taking the deposition to every other party.

(c)(1) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing and shall be read to or by the witness unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness and certified by