

have the burden of proof as to whether it meets 29 CFR 2510.3-40.

§ 2570.158 Decision of the Administrative Law Judge.

For section 3(40) finding proceedings, this section shall apply instead of 29 CFR 18.57.

(a) *Proposed findings of fact, conclusions of law, and order.* Within twenty (20) days of filing the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion under 29 CFR 18.55, proposed findings of fact, conclusions of law, and order together with the supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision based on oral argument in lieu of briefs.* In any case in which the administrative law judge believes that written briefs or proposed findings of fact and conclusions of law may not be necessary, the administrative law judge shall notify the parties at the opening of the hearing or as soon thereafter as is practicable that he or she may wish to hear oral argument in lieu of briefs. The administrative law judge shall issue his or her decision at the close of oral argument, or within 30 days thereafter.

(c) *Decision of the administrative law judge.* Within 30 days, or as soon as possible thereafter, after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law, with reasons therefore, upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations found at 29 CFR 2510.3-

40 and shall be limited to whether the petitioner, based on the facts presented at the time of the proceeding, is a plan established or maintained under or pursuant to collective bargaining for the purposes of section 3(40) of ERISA.

§ 2570.159 Review by the Secretary.

(a) A request for review by the Secretary of an appealable decision of the administrative law judge may be made by any party. Such a request must be filed within 20 days of the issuance of the final decision or the final decision of the administrative law judge will become the final agency order for purposes of 5 U.S.C. 701 *et seq.*

(b) A request for review by the Secretary shall state with specificity the issue(s) in the administrative law judge's final decision upon which review is sought. The request shall be served on all parties to the proceeding.

(c) The review by the Secretary shall not be a de novo proceeding but rather a review of the record established by the administrative law judge.

(d) The Secretary may, in his or her discretion, allow the submission of supplemental briefs by the parties to the proceeding.

(e) The Secretary shall issue a decision as promptly as possible, affirming, modifying, or setting aside, in whole or in part, the decision under review, and shall set forth a brief statement of reasons therefor. Such decision by the Secretary shall be the final agency action within the meaning of 5 U.S.C. 704.

PART 2575—ADJUSTMENT OF CIVIL PENALTIES UNDER ERISA TITLE I

Subpart A—Adjustment of Civil Penalties Under ERISA Title I

Sec.

2575.100 In general.

2575.209b-1 Adjusted civil penalty under section 209(b).

2575.502c-1 Adjusted civil penalty under section 502(c)(1).

2575.502c-2 Adjusted civil penalty under section 502(c)(2).

2575.502c-3 Adjusted civil penalty under section 502(c)(3).

2575.502c-5 Adjusted civil penalty under section 502(c)(5).

2575.502c-6 Adjusted civil penalty under section 502(c)(6).