

§ 1905.14

other action as may be appropriate to give actual notice to affected employees. Any request for a hearing shall include a short and plain statement of:

(i) How the proposed modification or revocation would affect the requesting party; and

(ii) What the requesting party would seek to show on the subjects or issues involved.

(b) *Renewal.* Any final rule or order issued under section 6(b) (6) (A) or 16 of the Act may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

(c) *Multi-state variances.* Where a Federal variance has been granted with multi-state applicability, including applicability in a State operating under a State plan approved under section 18 of the Act, from a standard, or portion thereof, identical to a State standard, or portion thereof, without filing the information required in §1905.10(b)(11) or §1905.11(b)(8) of this chapter, such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligations with regard to the State standard, or portion thereof, upon filing the information required under §1905.10(b)(11) or §1905.11(b)(8) of this chapter, provided no objections of substance are found to be interposed by the State authority under §1905.14 of this chapter.

[36 FR 12290, June 30, 1971, as amended at 40 FR 25449, June 16, 1975]

§ 1905.14 Action on applications.

(a) *Defective applications.* (1) If an application filed pursuant to §1905.10(a), §1905.11(a), §1905.12(a), or §1905.13 does not conform to the applicable section, the Assistant Secretary may deny the application.

(2) Prompt notice of the denial of an application shall be given to the applicant.

(3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.

(4) A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

(b) *Adequate applications.* (1) If an application has not been denied pursuant to paragraph (a) of this section, the As-

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sistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of the filing of the application.

(2) A notice of the filing of an application shall include:

(i) The terms, or an accurate summary, of the application;

(ii) A reference to the section of the Act under which the application has been filed;

(iii) An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and

(iv) Information to affected employers, employees, and appropriate State authority having jurisdiction over employment or places of employment covered in the application of any right to request a hearing on the application.

(3) Where the requested variance, or any proposed modification or extension thereof, involves a Federal standard, or any portion thereof, identical to a State standard, or any portion thereof, as provided in §§1905.10(b)(11) and 1905.11(b)(8) of this chapter, the Assistant Secretary will promptly furnish a copy of the application to the appropriate State authority and provide an opportunity for comment, including the opportunity to participate as a party, on the application by such authority, which shall be taken into consideration in determining the merits of the proposed action.

(4) A copy of each final decision of the Assistant Secretary with respect to an application filed under §1905.10, §1905.11, or §1905.13 shall be furnished, within 10 days of issuance, the State authorities having jurisdiction over the employment or place of employment covered in the application.

[36 FR 12290, June 30, 1971, as amended at 40 FR 25449, June 16, 1975]

§ 1905.15 Requests for hearings on applications.

(a) *Request for hearing.* Within the time allowed by a notice of the filing of an application, any affected employer, employee, or appropriate State agency having jurisdiction over employment or places of employment covered in an application may file with the Assistant Secretary, in quadruplicate, a request for a hearing on the application.

(b) *Contents of a request for a hearing.* A request for a hearing filed pursuant to paragraph (a) of this section shall include:

(1) A concise statement of facts showing how the employer or employee would be affected by the relief applied for;

(2) A specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and

(3) Any views or arguments on any issue of fact or law presented.

[36 FR 12290, June 30, 1971, as amended at 40 FR 25450, June 16, 1975]

§ 1905.16 Consolidation of proceedings.

The Assistant Secretary on his own motion or that of any party may consolidate or contemporaneously consider two or more proceedings which involve the same or closely related issues.

Subpart C—Hearings

§ 1905.20 Notice of hearing.

(a) *Service.* Upon request for a hearing as provided in this part, or upon his own initiative, the Assistant Secretary shall serve, or cause to be served, a reasonable notice of hearing.

(b) *Contents.* A notice of hearing served under paragraph (a) of this section shall include:

(1) The time, place, and nature of the hearing;

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

(3) A specification of issues of fact and law; and

(4) A designation of a hearing examiner appointed under 5 U.S.C. 3105 to preside over the hearing.

(c) *Referral to hearing examiner.* A copy of a notice of hearing served pursuant to paragraph (a) of this section shall be referred to the hearing examiner designated therein, together with the original application and any written request for a hearing thereon filed pursuant to this part.

§ 1905.21 Manner of service.

Service of any document upon any party may be made by personal deliv-

ery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

§ 1905.22 Hearing examiners; powers and duties.

(a) *Powers.* A hearing examiner designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, 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 and to determine its scope;

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

(5) To consider and rule upon procedural requests;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To make, or to cause to be made, an inspection of the employment or place of employment involved.

(8) To make decisions in accordance with the Act, this part, and the Administrative Procedure Act (5 U.S.C. Ch. 5); and

(9) To take any other appropriate action authorized by the Act, this part, or the Administrative Procedure Act.

(b) *Private consultation.* Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) *Disqualification.* (1) When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.

(2) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the Chief Hearing Examiner of the Department of Labor a motion to disqualify and remove the hearing examiner, such motion to be supported