

(b)(1) The Assistant Secretary may request the petitioner for additional facts and may take such other actions as are considered appropriate such as:

(i) Publishing the petition for public comment;

(ii) Holding informal discussion on the issues raised by the petition with the State and other persons affected; or

(iii) Holding an informal hearing in accordance with §1902.13 of this chapter.

(2) Any such petition shall be considered and acted upon within a reasonable time. Prompt notice shall be given of the denial in whole or in part of any petition and the notice shall be accompanied by a brief statement of the grounds for the denial. A denial of a petition does not preclude future action on those issues or any other issues raised regarding a State plan.

Subpart B—Notice of Formal Proceeding

§1955.10 Publication of notice of formal proceeding.

(a) The Assistant Secretary, prior to any notice of a formal proceeding under this subpart, shall by letter, provide the State with an opportunity to show cause within 45 days why a proceeding should not be instituted for withdrawal of approval of a plan or any portion thereof. When a State fails to show cause why a formal proceeding for withdrawal of approval should not be instituted, the State shall be deemed to have waived its right to a formal proceeding under paragraph (b) of this section and the Assistant Secretary shall cause to be published in the FEDERAL REGISTER a notice of withdrawal of approval of the State plan.

(b)(1) Whenever the Assistant Secretary, on the basis of a petition under §1955.5 or on his own initiative, determines that approval of a State plan or any portion thereof should be withdrawn, and the State has not waived its right under §1955.3(b) or paragraph (a) of this section to a formal proceeding, he shall publish a notice of proposed withdrawal in the FEDERAL REGISTER as set out in §1955.11 and cause such notice, in the form of a complaint, to be

served on the State in accordance with §1955.15.

(2) Not later than 5 days following the publication of the notice in the FEDERAL REGISTER, the State agency shall publish, or cause to be published, within the State reasonable notice containing a summary of the information in the Federal notice, as well as the location or locations where a copy of the full notice is available for inspection and public copying.

(3) Two copies of such notice shall be served on the Assistant Secretary in accordance with §1955.15.

(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

§ 1955.12

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 admin-

29 CFR Ch. XVII (7-1-06 Edition)

istrative 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.

(b) Contumacious conduct at any proceeding before the administrative law judge shall be ground for summary exclusion from the proceeding. If a witness or party refuses to answer a question after being so directed, or refuses to obey an order to provide or permit discovery, the administrative law judge may make such orders with regard to the refusal as are just and proper, including the striking of all testimony previously given by such witness on related matters.

§ 1955.14 Ex parte communications.

(a) Except to the extent required for the disposition of *ex parte* matters, the administrative law judge shall not consult any interested person or party or their representative on any fact in issue or on the merits of any matter before him except upon notice and opportunity for all parties to participate.

(b)(1) Written or oral communications from interested persons outside the Department of Labor involving any substantive or procedural issues in a proceeding directed to the administrative law judge, the Secretary of Labor, the Assistant Secretary, the Associate Assistant Secretary for Regional Programs, the Solicitor of Labor, or the Associate Solicitor for Occupational Safety and Health, or their staffs shall be deemed *ex parte* communications and are not to be considered part of any record or the basis for any official decision, unless the communication is made by motion to the administrative law judge and served upon all the parties.

(2) To facilitate implementation of this requirement, the above-mentioned