

§ 1954.22

complainant, or the State, the Assistant Regional Director, at his discretion, may hold an informal conference. After considering all written and oral views presented the Assistant Regional Director shall affirm, modify, or reverse his original determination and furnish the complainant with written notification of his decision and the reasons therefore. Where appropriate the State may also receive such notification.

§ 1954.22 Notice provided by State.

(a)(1) In order to assure that employees, employers, and members of the public are informed of the procedures for complaints about State program administration, each State with an approved State plan shall adopt not later than July 1, 1974, a procedure not inconsistent with these regulations or the Act, for notifying employees, employers and the public of their right to complain to the Occupational Safety and Health Administration about State program administration.

(2) Such notification may be by posting of notices in the workplace as part of the requirement in §1902.4(c)(2)(iv) of this chapter and other appropriate sources of information calculated to reach the public.

(b) [Reserved]

PART 1955—PROCEDURES FOR WITHDRAWAL OF APPROVAL OF STATE PLANS

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AUTHORITY: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

SOURCE: 40 FR 23467, May 30, 1975, unless otherwise noted.

Subpart A—General

§ 1955.1 Purpose and scope.

(a) This part contains rules of practice and procedure for formal administrative proceedings on the withdrawal of initial or final approval of State plans in accordance with section 18(f) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).

(b) These rules shall be construed to secure a prompt and just conclusion of the proceedings subject thereto.

§ 1955.2 Definitions.

(a) As used in this part unless the context clearly requires otherwise:

(1) *Act* means the Occupational Safety and Health Act of 1970;

(2) *Assistant Secretary* means Assistant Secretary of Labor for Occupational Safety and Health;

(3) *Commencement of a case* under section 18(f) of the Act means, for the purpose of determining State jurisdiction

following a final decision withdrawing approval of a plan, the issuance of a citation.

(4) *Developmental step* includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereto, for each plan contained in 29 CFR part 1952. A developmental step also includes those items in the plan as approved under section 18(c) of the Act, as well as those items in the approval decision which are subject to evaluations (*see e.g.*, approval of Michigan plan), which were deemed necessary to make the State program at least as effective as the Federal program within the 3 year developmental period. (*See* part 1953 of this chapter.

(5) *Final approval* means approval of the State plan, or any modification thereof under section 18(e) of the Act and subpart D of 29 CFR part 1902.

(6) *Initial approval* means approval of a State plan, or any modification thereof under section 18(c) of the Act and subpart C of 29 CFR part 1902;

(7) *Party* includes the State agency or agencies designated to administer and enforce the State plan that is the subject of withdrawal proceedings, the Department of Labor, Occupational Safety and Health Administration (hereinafter called OSHA), represented by the Office of the Solicitor and any person participating in the proceedings pursuant to §1955.17;

(8) *Person* means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or an agency, authority, or instrumentality of the United States or of a State;

(9) *Secretary* means Secretary of Labor;

(10) *Separable portion of a plan* for purposes of withdrawal of approval generally means an issue as defined in 29 CFR 1902.2(c), i.e. "an industrial, occupational or hazard grouping which is at least as comprehensive as a corresponding grouping contained in (i) one or more sections in subpart B or R of part 1910 of this chapter, or (ii) one or more of the remaining subparts of part 1910": *Provided*, That wherever the Assistant Secretary has determined that other industrial, occupational or hazard groupings are administratively

practicable, such groupings shall be considered separable portions of a plan.

(b) [Reserved]

[40 FR 23467, May 30, 1975, as amended at 67 FR 60129, Sept. 25, 2002]

§ 1955.3 General policy.

(a) The following circumstances shall be cause for initiation of proceedings under this part for withdrawal of approval of a State plan, or any portion thereof.

(1) Whenever the Assistant Secretary determines that under §1902.2(b) of this chapter a State has not substantially completed the developmental steps of its plan at the end of three years from the date of commencement of operations, a withdrawal proceeding shall be instituted. Examples of a lack of substantial completion of developmental steps include but are not limited to the following:

(i) A failure to develop the necessary regulations and administrative guidelines for an "at least as effective" enforcement program;

(ii) Failure to promulgate all or a majority of the occupational safety and health standards in an issue covered by the plan; or

(iii) Failure to enact the required enabling legislation.

(2) Whenever the Assistant Secretary determines that there is no longer a reasonable expectation that a State plan will meet the criteria of §1902.3 of this chapter involving the completion of developmental steps within the three year period immediately following commencement of operations, a withdrawal proceeding shall be instituted. Examples of a lack of reasonable expectation include but are not limited to the following:

(i) A failure to enact enabling legislation in the first two years following commencement of operations where the remaining developmental steps are dependent on the passage of enabling legislation and cannot be completed within one year; or

(ii) Repeal or substantial amendment of the enabling legislation by the State legislature so that the State program fails to meet the criteria in §1902.3 of this chapter; or