

§ 1955.4

(iii) Inability to complete the developmental steps within the indicated three year period.

(3) Whenever the Assistant Secretary determines that in the operation or administration of a State plan, or as a result of any modifications to a plan, there is a failure to comply substantially with any provision of the plan, including assurances contained in the plan, a withdrawal proceeding shall be instituted in a State which has received final approval under section 18(e) of the Act, and may be instituted in a State which has received initial approval under section 18(c) of the Act. Examples of a lack of substantial compliance include but are not limited to the following:

(i) Where a State over a period of time consistently fails to provide effective enforcement of standards;

(ii) Where the rights of employees are circumscribed in such a manner as to diminish the effectiveness of the program;

(iii) Where a State, without good cause, fails to continue to maintain its program in accordance with the appropriate changes in the Federal program;

(iv) Where a State fails to comply with the required assurances on a sufficient number of qualified personnel and/or adequate resources for administration and enforcement of the program; or

(v) Where, on the basis of actual operations, the Assistant Secretary determines that the criteria in section 18(c) of the Act are not being met, that the period of concurrent authority under section 18(e) of the Act should not be extended, and that final approval under section 18(e) of the Act should not be given.

(b) A State may, at any time both before or after a determination under section 18(e) of the Act, voluntarily withdraw its plan, or any portion thereof, by notifying the Assistant Secretary in writing setting forth the reasons for such withdrawal. Such notification shall be accompanied by a letter terminating the application for related grants authorized under section 23(g) of the Act in accordance with 29 CFR 1951.25(d). Upon receipt of the State notice the Assistant Secretary shall cause to be published in the FEDERAL

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REGISTER a notice of withdrawal of approval of the State plan or portion thereof (see Montana notice 39 FR 2361, June 27, 1974).

(c) Approval of a portion of a plan may be withdrawn under any of the paragraphs in this section when it is determined that that portion is reasonably separable from the remainder of the plan in a manner consistent with the provisions in §1902.2(c) of this chapter defining the scope of a State plan. As an example, such a partial withdrawal of approval would be considered appropriate where a State fails to adopt, without good cause shown, Federal standards within a separable issue, such as occupational health.

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

§ 1955.4 Effect of withdrawal of approval.

(a) After receipt of notice of withdrawal of approval of a State plan, such plan, or any part thereof, shall cease to be in effect and the provisions of the Federal Act shall apply within that State. But the State, in accordance with section 18(f) of the Act, may retain jurisdiction in any case commenced before receipt of the notice of withdrawal of approval of the plan, in order to enforce standards under the plan, whenever the issues involved in the case or cases pending do not relate to the reasons for withdrawal of the plan.

(b) Such notice of withdrawal of approval shall operate constructively as notice of termination of all related grants authorized under section 23(g) of the Act in accordance with 29 CFR 1951.25(c).

§ 1955.5 Petitions for withdrawal of approval.

(a) At any time following the initial approval of a State plan under section 18(c) of the Act, any interested person may petition the Assistant Secretary in writing to initiate proceedings for withdrawal of approval of the plan under section 18(f) of the Act and this part. The petition shall contain a statement of the grounds for initiating a withdrawal proceeding, including facts to support the petition.