

§ 1954.21

(2) In determining whether an investigation shall be conducted and in determining the timing of such investigation, the Assistant Regional Director shall consider such factors as:

(i) The extent to which the complaint affects any substantial number of persons;

(ii) The number of complaints received on the same or similar issues and whether the complaints relate to safety and health conditions at a particular establishment;

(iii) Whether the complainant has exhausted applicable State remedies; and

(iv) The extent to which the subject matter of the complaint is pertinent to the effectuation of Federal policy.

§ 1954.21 Processing and investigating a complaint.

(a) Upon receipt of a complaint about State program administration, the Assistant Regional Director will acknowledge its receipt and may forward a copy of the complaint to the designee under the State plan and to such other person as may be necessary to complete the investigation. The complainant's name and the names of other complainants mentioned therein will be deleted from the complaint and the names shall not appear in any record published, released or made available.

(b) In conducting the investigation, the Assistant Regional Director may obtain such supporting information as is appropriate to the complaint. Sources for this additional information may include "spot-check" follow-up inspections of workplaces, review of the relevant State files, and discussion with members of the public, employers, employees and the State.

(c) On the basis of the information obtained through the investigation, the Assistant Regional Director shall advise the complainant of the investigation findings and in general terms, any corrective action that may result. A copy of such notification shall be sent to the State and it shall be considered part of the evaluation of the State plan.

(d) If the Assistant Regional Director determines that there are no reasonable grounds for an investigation to be made with respect to a complaint under this Subpart, he shall notify the

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complaining party in writing of such determination. Upon request of the 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: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

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 29 CFR 1953.10(a)).

(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