

Occupational Safety and Health Admin., Labor

§ 1955.5

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 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(c) Approval of a portion of a plan may be withdrawn under any of the paragraphs in this section when it is determined that that portion is reasonably separable from the remainder of the plan in a manner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, Fed-

eral 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.

(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

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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 FED-

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ERAL 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 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;