

§ 1902.5

(ix) Provides that the State agency (or agencies) will have the necessary legal authority for the enforcement of standards, by such means as provisions for appropriate compulsory process to obtain necessary evidence or testimony in connection with inspection and enforcement proceedings.

(x) Provides for prompt notice to employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance of a written citation to the employer and posting of the citation at or near the site of the violation; further provides for advising the employer of any proposed sanctions, by such means as a notice to the employer by certified mail within a reasonable time of any proposed sanctions.

(xi) Provides effective sanctions against employers who violate State standards and orders, such as those prescribed in the Act.

(xii) Provides for an employer to have the right of review of violations alleged by the State, abatement periods, and proposed penalties and for employees or their representatives to have an opportunity to participate in review proceedings, by such means as providing for administrative or judicial review, with an opportunity for a full hearing on the issues.

(xiii) Provides that the State will undertake programs to encourage voluntary compliance by employers and employees by such means as conducting training and consultation with employers and employees.

(d) *Additional indices.* Upon his own motion or after consideration of data, views and arguments received in any proceeding held under subpart C of this part, the Assistant Secretary may prescribe additional indices for any State plan which shall be in furtherance of the purpose of this part, as expressed in § 1902.1.

§ 1902.5 Intergovernmental Cooperation Act of 1968.

This part shall be construed in a manner consistent with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201-4233), and any regulations pursuant thereto.

29 CFR Ch. XVII (7-1-05 Edition)

§ 1902.6 Consultation with the National Institute for Occupational Safety and Health.

The Assistant Secretary will consult, as appropriate, with the Director of the National Institute for Occupational Safety and Health with regard to plans submitted by the States under this part.

Subpart C—Procedures for Submission, Approval and Rejection of State Plans

§ 1902.10 Submission.

(a) An authorized representative of the State agency or agencies responsible for administering the plan shall submit the plan with 10 copies to the appropriate Assistant Regional Director of the Occupational Safety and Health Administration, U.S. Department of Labor. The State plan shall include (1) Supporting papers conforming to the requirements specified in subpart B of this part, and (2) the State occupational safety and health standards to be included in the plan, including copies of any specific or enabling State laws and regulations relating to such standards. If any of the representations concerning the requirements of subpart B of this part are dependent upon any judicial or administrative interpretations of the State standards or enforcement provisions, the State shall furnish citations to any pertinent judicial decisions and the text of any pertinent administrative decisions.

(b) Upon receipt of the State plan the Assistant Regional Director shall make a preliminary examination of the plan. If his examination reveals any defect in the plan, the Assistant Regional Director shall offer assistance to the State agency and shall provide the agency an opportunity to cure such defect. After his preliminary examination, and after affording the State agency such opportunity to cure defects, the Assistant Regional Director shall submit the plan to the Assistant Secretary.

(c) Upon receipt of the plan from the Assistant Regional Director, the Assistant Secretary shall examine the plan and supporting materials. If the

examination discloses no cause for rejecting the plan, the Assistant Secretary shall follow the procedure prescribed in §1902.11. If the examination discloses cause for rejection of the plan, the Assistant Secretary shall follow the procedure prescribed in §1902.17.

PROCEDURE FOR PROPOSED OR POSSIBLE
APPROVAL OF PLAN

§ 1902.11 General notice.

(a) Upon receipt of a State plan submitted by an Assistant Regional Director under §1902.10 whenever the Assistant Secretary proposes to approve the plan, or to give notice that such approval is an issue before him, he shall publish in the FEDERAL REGISTER a notice meeting the requirements of the remaining paragraphs of this section. No later than 5 days following the publication of the notice in the FEDERAL REGISTER, the applying State agency shall publish, or cause to be published, within the State reasonable notice containing the same information.

(b) The notice shall indicate the submission of the plan and its contents, and any proposals, subjects, or issues involved.

(c) The notice shall provide that the plan, or copies thereof, shall be available for inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, 1726 M Street NW., Washington, DC 20210, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(d) The notice shall afford interested persons an opportunity to submit in writing, data, views, and arguments on the proposal, subjects, or issues involved within 30 days after publication of the notice in the FEDERAL REGISTER. Thereafter the written comments received or copies thereof shall be available for public inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, 1726 M Street NW., Washington, DC 20210, office of the Assistant Regional Director in whose region the State is located,

and an office of the State which shall be designated by the State for this purpose.

(e) Upon his own initiative, the Assistant Secretary may give notice of an informal or formal hearing affording an opportunity for oral comments concerning the plan.

(f) In the event no notice of hearing is provided under paragraph (e) of this section it shall be provided that any interested person may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized written objections thereto are filed within 30 days following publication of the notice in the FEDERAL REGISTER. If the Assistant Secretary finds that substantial objections have been filed, he shall afford a formal or informal hearing on the subjects and issues involved under §1902.13 or §1902.14, or shall commence a proceeding under §1902.17.

§ 1902.12 Opportunity for modifications and clarifications.

The Assistant Secretary may afford the State an opportunity to modify or clarify its plan on the basis of any comments received under §1902.11 or §1902.13, before commencing a proceeding to reject the plan. In this connection, the State may informally discuss any issues raised by such comments with the staff of the Office of Federal and State Operations. The Assistant Secretary may afford an additional opportunity for public comment, particularly when such an opportunity would not unduly delay final action on the plan and when the comments could be expected to elicit new relevant matter.

[38 FR 12605, May 14, 1973]

§ 1902.13 Informal hearing.

Any informal hearing shall be legislative in type. The procedures for informal hearings may take a variety of forms. The appropriateness of any particular form will turn largely upon the proposals, subjects, or issues involved. The rules of procedure for each hearing shall be published with the notice thereof.