

(ii) In the event the plan is approved under §1902.2(b), the decision shall state that the plan does not fully meet the criteria set forth in §1902.3, and shall summarize the schedule and any other measures for bringing the plan up to the level of such criteria.

(iii) The decision shall also reflect the Assistant Secretary's intention as to continued Federal enforcement of Federal standards in areas covered by the plan. Provisions for continued Federal enforcement shall take into consideration:

(a) Whether the plan is approved under §1902.2(a) or §1902.2(b);

(b) The schedule for coming up to Federal standards in any §1902.2(b) plan; and

(c) Any other relevant matters.

(2) After consideration of all relevant information contained in any written or oral comments received in any informal proceeding, if the Assistant Secretary proposes to disapprove a plan, or the disposition of a subject or issue permits the possible disapproval of a plan, he shall publish a notice to that effect, and commence a proceeding meeting the requirements of §1902.19.

**§ 1902.21 Tentative decision following formal proceeding.**

(a) On the basis of the whole record of any hearing held under §1902.14 or §1902.19, the Assistant Secretary shall issue a tentative decision either approving or disapproving the plan. The tentative decision shall include a statement of the findings and conclusions and reasons or bases therefor on all material issues of fact, law, or discretion which have been presented. The tentative decision shall be published in the FEDERAL REGISTER.

(b) The State agency and other interested persons participating in the hearing may waive the tentative decision. In such event the Assistant Secretary shall issue a final decision under §1902.22.

**§ 1902.22 Final decision following formal proceeding.**

(a) Except when interested persons participating in the hearing have waived the tentative decision under §1902.21(b) interested persons partici-

pating in the hearing shall have an opportunity to file exceptions to a tentative decision and objections to such exceptions within periods of time to be specified in the tentative decision. An original and four copies of any exception or objections shall be filed.

(b)(1) Thereafter the Assistant Secretary shall issue a final decision ruling upon each exception and objection filed. The final decision shall be published in the FEDERAL REGISTER.

(2) Any final decision approving a plan shall contain the provisions prescribed in §1902.20(b)(1)(iii) concerning Federal enforcement in areas covered by the plan.

**§ 1902.23 Publication of decisions.**

All decisions approving or disapproving a plan shall be published in the FEDERAL REGISTER.

**Subpart D—Procedures for Determinations Under Section 18(e) of the Act**

SOURCE: 40 FR 54782, Nov. 26, 1975, unless otherwise noted.

GENERAL

**§ 1902.30 Purpose and scope.**

This subpart contains procedures and criteria under which the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 36 FR 8754) will make his determination on whether to grant final approval to State plans in accordance with the provisions of section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act).

**§ 1902.31 Definitions.**

As used in this subpart, unless the context clearly indicates otherwise:

*Act* means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

*Affirmative 18(e) determination* means an affirmative determination under section 18(e) of the Act that the State plan or any modification thereof, is in actual operation meeting the criteria