

## § 1902.41

and arguments from any person who has participated in the oral proceeding.

(d) Upon the completion of the oral presentations, the transcripts thereof, together with written submissions on the proceedings, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing to the Assistant Secretary.

### § 1902.41 Decision.

(a) Within a reasonable time generally within 120 days after the expiration of the period provided for the submission of written data, views, and arguments on the issues on which no hearing is held, or within a reasonable time, generally not to exceed 120 days after the certification of the record of a hearing, the Assistant Secretary shall publish his decision in the FEDERAL REGISTER. His decision shall state whether or not an affirmative 18(e) determination has been made for the State plan or any separable portion thereof, or whether he intends to withdraw approval of the plan or any portion thereof pursuant to part 1955 of this chapter. The action of the Assistant Secretary shall be taken after consideration of all information, including his evaluations of the actual operations of the plan, and information presented in written submissions and in any hearings held under this subpart.

(b) Any decision under this section shall incorporate a concise statement of its grounds and purpose and shall respond to any substantial issues which may have been raised in written submissions or at the hearing.

(c) All decisions resulting in an affirmative 18(e) determination shall contain provisions amending the appropriate subparts of part 1952 of this chapter.

(d) All decisions concerning the Assistant Secretary's determination under section 18(e) of the Act shall be published in the FEDERAL REGISTER.

### § 1902.42 Effect of affirmative 18(e) determination.

(a) In making an affirmative 18(e) determination, the Assistant Secretary determines that a State has applied the provisions of its plan, or any modifica-

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tion thereof, in accordance with the criteria of section 18(c) of the Act and that the State has applied the provisions of this part in a manner which renders the actual operations of the State program "at least as effective as" operations under the Federal program.

(b) In the case of an affirmative 18(e) determination of a separable portion(s) of a plan, the Assistant Secretary determines that the State has applied the separable portion(s) of the plan in accordance with the criteria of section 18(c) of the Act in a manner comparable to Federal operations covering such portions and that the criteria of this part are being applied in a manner which renders the actual operations of such separable portion(s) of the State program "at least as effective as" operations of such portions under the Federal program.

(c) Upon making an affirmative 18(e) determination, the standards promulgated under section 6 of the Act and the enforcement provisions of section 5(a)(2), 8 (except for the purpose of continuing evaluations under section 18(f) of the Act), 9, 10, 13 and 17 of the Act shall not apply with respect to those occupational safety and health issues covered under the plan for which an affirmative 18(e) determination has been granted. The Assistant Secretary shall retain his authority under the above sections for those issues covered in the plan which have not been granted an affirmative 18(e) determination.

(d) The Assistant Secretary will retain jurisdiction under the citation and contest provisions of sections 9 and 10 of the Act and the imminent-danger provisions of section 13 where such proceedings have been commenced prior to the date of his determination.

### § 1902.43 Affirmative 18(e) decision.

(a) In publishing his affirmative 18(e) decision in the FEDERAL REGISTER the Assistant Secretary's notice shall include, but shall not be limited to the following:

(1) Those issues under the plan over which the Assistant Secretary is withdrawing his standards and enforcement authority;

(2) A statement that the Assistant Secretary retains his authority under