

## § 1902.14

## 29 CFR Ch. XVII (7-1-06 Edition)

### § 1902.14 Formal hearing.

Any formal hearing provided for under § 1902.11 (e) and (f) shall be commenced upon the publication of reasonable notice in the FEDERAL REGISTER and similar notice by the State. The hearing shall conform with the requirements of 5 U.S.C. 556 and 557. The terms for filing proposed findings and conclusions and exceptions to any tentative decision, or objections to a tentative decision, shall be set forth in the notice.

### § 1902.15 Certification of the record of a hearing.

Upon completion of any formal or informal hearing, the transcript thereof, together with written submissions, exhibits filed during the hearing, and any post-hearing presentations shall be certified by the officer presiding at the hearing to the Assistant Secretary.

#### PROCEDURE FOR PROPOSED OR POSSIBLE REJECTION OF PLAN

### § 1902.17 The proceeding.

Whenever as a result of (a) an initial examination of a plan, or (b) written or oral comments concerning a plan submitted in an informal rulemaking proceeding concerning a proposed approval of a plan or any subject or issue concerning the plan, the Assistant Secretary proposes to reject a plan or rejection remains in issue for any reason, he shall follow the procedures prescribed in the remaining sections of this subpart.

### § 1902.18 Previous hearing or other opportunity for comment on plan.

(a) Whenever an informal hearing has been held under §§ 1902.11 and 1902.13, any evidence submitted in such a hearing shall be considered and may be relied upon whenever it is found that no party will be prejudiced thereby because

(1) Of a lack of an opportunity for cross-examination afforded in the informal hearing on the issues involved, or

(2) The veracity and demeanor of witnesses are not important with respect to the type of evidence involved (e.g., extensive technical or statistical data), or

(3) For any other reason.

(b) Any written comments received in response to a notice issued under § 1902.11 shall be a part of the record of the proceeding.

(c) Whenever a formal hearing has been held under § 1902.14 the Assistant Secretary shall hold no additional hearing, and shall proceed to issue a tentative decision under § 1902.21.

### § 1902.19 Notice of hearing.

(a) Whenever the Assistant Secretary has issued no previous notice concerning the plan, or only informal rule making proceedings have been conducted concerning the plan, the Assistant Secretary shall publish in the FEDERAL REGISTER an appropriate notice concerning the plan and provide an opportunity for formal hearing and decision on the possible rejection of the plan and on any subsidiary issues. The notice also shall set forth such rules as may be necessary so as to assure compliance with 5 U.S.C. 556 and 557 in the conduct of the proceeding. The time for filing proposed findings and conclusions and exceptions to any tentative decision shall be set forth in the notice.

(b) Not later than 5 days following the publication of the notice in the FEDERAL REGISTER, required by paragraph (a) of this section, the applying State agency shall publish, or cause to be published, within the State reasonable notice containing the same information.

#### DECISIONS

### § 1902.20 Decision following informal proceeding.

(a) This section deals with a situation where the Assistant Secretary has

(1) Afforded interested persons an opportunity to submit written data, views, or arguments concerning a proposal, subject, or issue concerning a plan; or

(2) Has in addition provided an informal hearing concerning a proposal, subject, or issue concerning a plan.

(b)(1)(i) After consideration of all relevant information which has been presented, if the Assistant Secretary approves a plan he shall issue a decision to that effect.

(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