

§ 1902.34

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

§ 1902.34 Certification of completion of developmental steps.

(a) Upon the completion of all of the developmental steps in a State's plan, which is to be accomplished not later than three years following commencement of plan operations after approval of the plan by the Assistant Secretary under section 18(c), the Assistant Regional Director shall certify, as provided in paragraph (b) of this section, that all developmental steps in the plan have been met and that the State's program is to be evaluated on the basis of its eligibility for an 18(e) determination after at least one year of evaluations of the plan.

(b) Upon determining that a State has completed all of its developmental steps, the Assistant Regional Director shall prepare a certification which he shall promptly forward to the Assistant Secretary. The certification shall include, but shall not be limited to, the following:

(1) A list of all developmental steps or revisions thereof, plan amendments or changes which result in the completion of the steps or revisions thereof, and the dates the Assistant Secretary's or the Assistant Regional Director's approval of each change was published in the FEDERAL REGISTER;

(2) Substantive changes, if any, in the State program which were approved by the Assistant Secretary and their dates of publication in the FEDERAL REGISTER;

(3) Documentation that the legal basis for the applicable State merit system has been approved by the U.S. Civil Service Commission and that the actual operations of the State merit system has been found acceptable by the Occupational Safety and Health Administration with the advice of the U.S. Civil Service Commission; and

(4) A description of the issues which are covered by the State plan. Where applicable, the certification shall include a description of those separable portions of the plan which have been certified for 18(e) evaluation purposes as well as those portions of the plan which were not certified by the Assistant Regional Director.

(c) After a review of the certification and the State's plan, if the Assistant Secretary finds that the State has

completed all the developmental steps specified in the plan, he shall publish the certification in the FEDERAL REGISTER and amend the appropriate subpart of part 1952 of this chapter to reflect this finding.

§ 1902.35 Effect of certification.

Publication of the certification acknowledging the completion of all of the developmental steps in a State's plan will automatically initiate the evaluation of a State's plan for the purposes of an 18(e) determination. Evaluation for the purposes of an 18(e) determination will continue for at least one year after the publication of the certification in the FEDERAL REGISTER. Federal enforcement authority under sections 5(a)(2), 8, 9, 10, 11(c), 13, and 17 of the Act and Federal standards authority under section 6 of the Act will not be relinquished during the evaluation period. Evaluation conducted for 18(e) determination purposes will be based on the criteria set forth in §§ 1902.37 and 1902.38.

BASIS FOR 18(e) DETERMINATIONS

§ 1902.36 General provisions.

(a) In making his evaluation of the actual operations of a State's plan for the purposes of an 18(e) determination, the Assistant Secretary shall consider all relevant data which will aid him in making an effective determination. In his evaluation he shall consider whether the requirements of section 18(c) of the Act and the criteria for State plans outlined in subpart B of this part as well as those in § 1902.37 are being applied in actual operations for a reasonable period of time in a manner which warrants the termination of concurrent Federal enforcement authority and standards in issues covered under the plan.

(b) The Assistant Secretary's evaluation for an 18(e) determination will be addressed to consideration of whether the criteria and indices in § 1902.37(a) are being applied by the State in such a manner as to render its program in operation at least as effective as operations under the Federal program. In considering the question of such application, the Assistant Secretary shall also consider the factors provided

under §1902.37(b). The Assistant Secretary's evaluation may include such other information on the application of the criteria and indices in §1902.37 such as information developed from comments received from the public and the results of any hearings which may have been held under §1902.40 concerning the proposed 18(e) determination.

§ 1902.37 Factors for determination.

(a) The Assistant Secretary shall determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§1902.3 and 1902.4 of this part.

(b) In determining whether a State has applied the criteria and indices of effectiveness in paragraph (a) of this section in actual operations, the Assistant Secretary will, among other things related to the application of the criteria and indices, consider whether:

(1) The State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

(2) The State has adhered to the procedures which it has adopted and which have been approved either under the State plan or in State plan changes or under any other procedures for approval authorized by the Assistant Secretary.

(3) The State has timely adopted all Federal standards, and amendments thereto, for issues covered under the plan or has timely developed and promulgated standards which are at least as effective as the comparable Federal standards and amendments thereto.

(4) If the State has adopted Federal standards, the State's interpretation and application of such standards have been consistent with the applicable Federal interpretation and application. Where the State has developed and promulgated its own standards, such standards have been interpreted and applied in a manner which is at least as effective as the interpretation and application of comparable Federal standards. This requirement acknowledges that State standards may have been approved by the Assistant Regional Director, but emphasizes the requirement that the standards are to be at least as effective as the comparable Federal standards in actual operations.

(5) If any State standard, whether it is an adopted Federal standard or a standard developed by a State, has been subject to administrative or judicial challenge, the State has taken the necessary administrative, judicial or legislative action to correct any deficiencies in its program resulting from such challenge.

(6) In granting permanent variances from a standard the State has assured that the employer provides conditions of employment which are as safe and healthful as those which would prevail if he complied with the standard.

(7) In granting temporary variances from a standard, the State has ensured that the recipient of the variance has come into compliance with the standard as early as possible.

(8) The State inspection program is being implemented in a manner which allows a sufficient allocation of resources to be directed toward target industries and target health hazards as designated by the State while providing adequate attention to all other workplaces covered under the plan, or any modification thereof.

(9) The State exercises the authority through appropriate means, to enforce its right of entry and inspection wherever such right of entry or inspection is refused.

(10) Inspections of workplaces are conducted by State inspectors in a competent manner, following approved enforcement procedures. This includes a requirement that the inspectors obtain adequate information to support any citations which may be issued.

(11) The State issues citations, proposed penalties and notices for failure to abate in a timely manner.

(12) The State proposes penalties in a manner at least as effective as under the Federal program, including the proposing of penalties for first instance violations and the consideration of factors comparable to those required to be considered under the Federal program.

(13) The State ensures the abatement of hazards for which a citation has been issued, including the issuance of notices of failure to abate and appropriate penalties.

(14) Wherever appropriate, the State agency has sought administrative and