

## § 1902.38

judicial review of adverse adjudications. This factor also addresses whether the State has taken the appropriate and necessary administrative, legislative or judicial action to correct any deficiencies in its enforcement program resulting from an adverse administrative or judicial determination.

(15) Insofar as it is available, analysis of the annual occupational safety and health survey by the Bureau of Labor Statistics, as well as of other available Federal and State measurements of program impact on worker safety and health, which analysis also takes into consideration various local factors, indicates that trends in worker safety and health injury and illness rates under the State program compare favorably to those under the Federal program.

[40 FR 54782, Nov. 26, 1975; 40 FR 58143, Dec. 15, 1975]

### PROCEDURES FOR 18(e) DETERMINATION

## § 1902.38 Evaluation of plan following certification.

(a) Following the publication in the FEDERAL REGISTER under § 1902.34 of the certification acknowledging the completion of all developmental steps specified in the plan, or any portion thereof, the Assistant Secretary will evaluate and monitor the actual operations under the State plan for at least 1 year before determining whether the State is eligible for an 18(e) determination. The evaluation will assess the actual operation of the State's fully implemented program in accordance with the criteria in § 1902.37 and take into account any information available to the Assistant Secretary affecting the State's program.

(b) The Assistant Regional Director shall prepare a semi-annual report of his evaluation of the actual operations under the State plan or any portion thereof in narrative form. The Assistant Regional Director's evaluation report will be transmitted to the Assistant Secretary who will then transmit the report to the State. The State shall be afforded an opportunity to respond to each evaluation report.

[40 FR 54782, Nov. 26, 1975, as amended at 42 FR 58746, Nov. 11, 1977]

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

## § 1902.39 Completion of evaluation.

(a) After evaluating the actual operations of the State plan, or any portion thereof, for at least 1 year following publication of the certification in the FEDERAL REGISTER under § 1902.34, the Assistant Secretary shall notify the State whenever he determines that the State will be eligible for an 18(e) determination. In addition, a State may request an 18(e) determination following the evaluation period noted above. In no case shall this determination of eligibility be later than 2 years following the publication of the certification of the completion of developmental steps in the FEDERAL REGISTER under § 1902.34. In the case of a plan which was not developmental, the determination of eligibility shall not be sooner than 3 years following the date of commencement of operations under the plan.

(b) After it has been determined that a State will be eligible for an 18(e) determination, the Assistant Regional Director shall prepare a final report of his evaluation of the actual operations under a State's plan or portion thereof which may be subject to the 18(e) determination. The Assistant Regional Director's report shall be transmitted to the Assistant Secretary. The Assistant Secretary shall transmit such report to the State and the State shall have an opportunity to respond to the report.

(c) Whenever it has been determined that a State's plan, or separable portion thereof, is eligible for an 18(e) determination, the Assistant Secretary shall publish a notice in the FEDERAL REGISTER. The notice shall meet the requirements of the remaining paragraphs of this section. No later than 10 days following the publication of the notice in the FEDERAL REGISTER, the affected State agency shall publish, or cause to be published, within the State, reasonable notice containing the same information.

(d) The notice shall indicate that the plan, or any separable portion thereof, is in issue before the Assistant Secretary for a determination as to whether the criteria in section 18(c) of the Act are being applied in actual operation, and indicate the particular substantive issues, if any, for consideration in making such determination.