

## § 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

section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act;

(3) Amendments to the appropriate subpart of part 1952 of this chapter;

(4) A statement that the Assistant Secretary is not precluded from revoking his determination and reinstating his standards and enforcement authority under §1902.47 *et seq.*, if his continuing evaluations under section 18(f) of the Act show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to its plan to the Assistant Secretary as required by 29 CFR part 1953.

**§ 1902.44 Requirements applicable to State plans granted affirmative 18(e) determinations.**

(a) A State whose plan, or modification thereof, has been granted an affirmative 18(e) determination will be required to maintain a program within the scope of such determination which will be "at least as effective as" operations under the Federal program in providing employee safety and health protection at covered workplaces within the comparable scope of the Federal program. This requirement includes submitting all required reports to the Assistant Secretary, as well as submitting supplements to the Assistant Secretary for his approval whenever there is a change in the State's program, whenever the results of evaluations conducted under section 18(f) show that some portion of a State plan has an adverse impact on the operations of the State plan or whenever the Assistant Secretary determines that any alteration in the Federal program could have an adverse impact on the "at least as effective as" status of the State program. See part 1953 of this chapter.

(b) A substantial failure to comply with the requirements of this section may result in the revocation of the affirmative 18(e) determination and the resumption of Federal enforcement authority, and may also result in proceedings for the withdrawal of approval

of the plan or any portion thereof pursuant to part 1955 of this chapter.

**§ 1902.45 [Reserved]**

**§ 1902.46 Negative 18(e) determination.**

(a) This section sets out the procedures which shall be followed whenever the Assistant Secretary determines that a State's plan, or any separate portion thereof, has not met the criteria for an affirmative 18(e) determination.

(b) If the Assistant Secretary determines that a State plan, or a separable portion thereof, has not met the criteria of section 18(c) of the Act and that actual operations under the plan, or portion thereof, have not met the criteria for an affirmative determination set forth in §1902.37, he shall retain his standards authority under section 6 of the Act and his enforcement authority under sections 5(a)(2), 8, 9, 10, 13, and 17 of the Act for those issues covered under the plan or such portions of the plan which were subject to his negative determination.

(c) A decision under this section may result in the commencement of proceedings for withdrawal of approval of the plan or any separable portion thereof pursuant to part 1955 of this chapter.

(d) Where the Assistant Secretary determines that operations under a State plan or any separable portion thereof have not met the criteria for an affirmative 18(e) determination, but are not of such a nature as to warrant the initiation of withdrawal proceedings, the Assistant Secretary may, at his discretion, afford the State a reasonable time to meet the criteria for an affirmative 18(e) determination after which time he may initiate proceedings for withdrawal of plan approval. This discretionary authority will be applied in the following manner:

(1) Upon determining that a State shall be subject to a final 18(e) determination, the Assistant Secretary shall notify the agency designated by the State to administer its program, within the State of his decision that the State's program, or a separable portion thereof, shall be subject to a final 18(e) determination. The Assistant Secretary shall give the State a