

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

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reasonable time, generally not less than 1 year, in which to meet the criteria for an affirmative 18(e) determination.

(2) The Assistant Secretary shall also publish a notice in the FEDERAL REGISTER outlining his reasons for not making an affirmative 18(e) determination at the time. The notice will also set forth the reasonable time the State was granted to meet the criteria for an affirmative 18(e) determination and set forth such conditions as the Assistant Secretary deems proper for the continuation of the State's plan or such portions subject to this action.

(3) The State shall be afforded an opportunity to agree to the conditions of the Assistant Secretary's decision.

(4) Upon the expiration of the time granted to a State to meet the criteria for an affirmative 18(e) determination under paragraph (d)(2) of this section, the Assistant Secretary may initiate proceedings to determine whether a State shall be granted an affirmative 18(e) determination. The procedures outlined in this subpart shall be applicable to any proceedings initiated under this paragraph.

PROCEDURE FOR RECONSIDERATION AND REVOCATION OF AN AFFIRMATIVE 18(e) DETERMINATION

§ 1902.47 Reconsideration of an affirmative 18(e) determination.

(a) The Assistant Secretary may at any time reconsider on his own initiative or on petition of an interested person his decision granting an affirmative 18(e) determination.

(b) Such reconsideration shall be based on results of his continuing evaluation of a State plan after it has been granted an affirmative 18(e) determination.

§ 1902.48 The proceeding.

Whenever, as a result of his reconsideration, the Assistant Secretary proposes to revoke his affirmative 18(e) determination, he shall follow the procedures in the remaining sections of this subpart.

§ 1902.49 General notice.

(a) Whenever the Assistant Secretary proposes to revoke an affirmative 18(e)

determination, he shall publish a notice in the FEDERAL REGISTER meeting 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, reasonable notice within the State containing the same information.

(b) The notice shall indicate the reasons for the proposed action.

(c) The notice shall afford interested persons including the affected State, an opportunity to submit in writing, data, views, and arguments on the proposal within 35 days after publication of the notice in the FEDERAL REGISTER. The notice shall also provide that any interested person may request an informal hearing concerning the proposed revocation whenever particularized written objections thereto are filed within 35 days following publication of the notice in the FEDERAL REGISTER. If the Assistant Secretary finds that substantial objections have been filed, he shall afford an informal hearing on the proposed revocation under § 1902.50.

(d) The Assistant Secretary may, upon his own initiative, give notice of an informal hearing affording an opportunity for oral comments concerning the proposed revocation.

§ 1902.50 Informal hearing.

Any informal hearing shall be legislative in type. The rules of procedure for each hearing shall be those contained in § 1902.40 and will be published with the notice thereof.

§ 1902.51 Certification of the records of a hearing.

Upon completion of an 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.

§ 1902.52 Decision.

(a) After consideration of all relevant information which has been presented, the Assistant Secretary shall issue a decision on the continuation or revocation of the affirmative 18(e) determination.