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(ix) Provides that the State agency (or agencies) will have the necessary legal authority for the enforcement of standards, by such means as provisions for appropriate compulsory process to obtain necessary evidence or testimony in connection with inspection and enforcement proceedings.

(x) Provides for prompt notice to employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance of a written citation to the employer and posting of the citation at or near the site of the violation; further provides for advising the employer of any proposed sanctions, by such means as a notice to the employer by certified mail within a reasonable time of any proposed sanctions.

(xi) Provides for effective sanctions against employers who violate State standards and orders, such as those prescribed in the Act.

(xii) Provides for an employer to have the right of review of violations alleged by the State, abatement periods, and proposed penalties and for employees or their representatives to have an opportunity to participate in review proceedings, by such means as providing for administrative or judicial review, with an opportunity for a full hearing on the issues.

(xiii) Provides that the State will undertake programs to encourage voluntary compliance by employers and employees by such means as conducting training and consultation with employers and employees.

(d) Additional indices. Upon his own motion or after consideration of data, views and arguments received in any proceeding held under subpart C of this part, the Assistant Secretary may prescribe additional indices for any State plan which shall be in furtherance of the purpose of this part, as expressed in § 1902.1.

§ 1902.5 Intergovernmental Cooperation Act of 1968.

This part shall be construed in a manner consistent with the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201–4233) and any regulations pursuant thereto.

§ 1902.6 Consultation with the National Institute for Occupational Safety and Health.

The Assistant Secretary will consult, as appropriate, with the Director of the National Institute for Occupational Safety and Health with regard to plans submitted by the States under this part.

Subpart C—Procedures for Submission, Approval and Rejection of State Plans

§ 1902.10 Submission.

(a) An authorized representative of the State agency or agencies responsible for administering the plan shall submit the plan with 10 copies to the appropriate Assistant Regional Director of the Occupational Safety and Health Administration, U.S. Department of Labor. The State plan shall include (1) Supporting papers conforming to the requirements specified in subpart B of this part, and (2) the State occupational safety and health standards to be included in the plan, including copies of any specific or enabling State laws and regulations relating to such standards. If any of the representations concerning the requirements of subpart B of this part are dependent upon any judicial or administrative interpretations of the State standards or enforcement provisions, the State shall furnish citations to any pertinent judicial decisions and the text of any pertinent administrative decisions.

(b) Upon receipt of the State plan the Assistant Regional Director shall make a preliminary examination of the plan. If his examination reveals any defect in the plan, the Assistant Regional Director shall offer assistance to the State agency and shall provide the agency an opportunity to cure such defect. After his preliminary examination, and after affording the State agency such opportunity to cure defects, the Assistant Regional Director shall submit the plan to the Assistant Secretary.

(c) Upon receipt of the plan from the Assistant Regional Director, the Assistant Secretary shall examine the plan and supporting materials. If the
examination discloses no cause for rejecting the plan, the Assistant Secretary shall follow the procedure prescribed in §1902.11. If the examination discloses cause for rejection of the plan, the Assistant Secretary shall follow the procedure prescribed in §1902.17.

PROCEDURE FOR PROPOSED OR POSSIBLE APPROVAL OF PLAN

§ 1902.11 General notice.

(a) Upon receipt of a State plan submitted by an Assistant Regional Director under §1902.10 whenever the Assistant Secretary proposes to approve the plan, or to give notice that such approval is an issue before him, he shall publish in the Federal Register a notice meeting the requirements of the remaining paragraphs of this section. No later than 5 days following the publication of the notice in the Federal Register, the applying State agency shall publish, or cause to be published, within the State reasonable notice containing the same information.

(b) The notice shall indicate the submission of the plan and its contents, and any proposals, subjects, or issues involved.

(c) The notice shall provide that the plan, or copies thereof, shall be available for inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, 1726 M Street NW., Washington, DC 20210, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(d) The notice shall afford interested persons an opportunity to submit in writing, data, views, and arguments on the proposal, subjects, or issues involved within 30 days after publication of the notice in the Federal Register. Thereafter the written comments received or copies thereof shall be available for public inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, 1726 M Street NW., Washington, DC 20210, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(e) Upon his own initiative, the Assistant Secretary may give notice of an informal or formal hearing affording an opportunity for oral comments concerning the plan.

(f) In the event no notice of hearing is provided under paragraph (e) of this section it shall be provided that any interested person may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized written objections thereto are filed within 30 days following publication of the notice in the Federal Register. If the Assistant Secretary finds that substantial objections have been filed, he shall afford a formal or informal hearing on the subjects and issues involved under §1902.13 or §1902.14, or shall commence a proceeding under §1902.17.

§ 1902.12 Opportunity for modifications and clarifications.

The Assistant Secretary may afford the State an opportunity to modify or clarify its plan on the basis of any comments received under §1902.11 or §1902.13, before commencing a proceeding to reject the plan. In this connection, the State may informally discuss any issues raised by such comments with the staff of the Office of Federal and State Operations. The Assistant Secretary may afford an additional opportunity for public comment, particularly when such an opportunity would not unduly delay final action on the plan and when the comments could be expected to elicit new relevant matter.

§ 1902.13 Informal hearing.

Any informal hearing shall be legislative in type. The procedures for informal hearings may take a variety of forms. The appropriateness of any particular form will turn largely upon the proposals, subjects, or issues involved. The rules of procedure for each hearing shall be published with the notice thereof.

[38 FR 12605, May 14, 1973]
§ 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.

§ 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 the applying State agency shall publish, or cause to be published, within the State reasonable notice containing the same information.

§ 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 participating 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

§ 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:

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