(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

SOURCE: 40 FR 54782, Nov. 26, 1975, unless otherwise noted.

GENERAL

§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
§ 1902.32 General policies.

(a) Sections 18(e) and (f) of the Act provide for the continuing evaluation and monitoring of State plans approved under section 18(c) of the Act. The Assistant Secretary’s decision whether to grant an affirmative 18(e) determination will be based, in part, on the results of these evaluations. Section 18(e) provides that a period of not less than 3 years shall have passed before the Assistant Secretary may make a determination that the State program in actual operations is applying the criteria of section 18(c) of the Act. In the case of a developmental plan, § 1902.2(b) of this part requires that the Assistant Secretary must have at least one year in which to evaluate the plan’s actual operations following the completion of all developmental steps specified in the plan. Thus, to be considered for an 18(e) determination, at least three years shall have passed following commencement of operations after the initial approval of a State’s occupational safety and health plan by the Assistant Secretary. In the case of a developmental plan, at least one year shall have passed following the completion of all developmental steps, but, in any event, at least three years must have passed following initial approval of the plan before discretionary Federal enforcement authority and standards may be withdrawn from issues covered by an approved plan.

(b) In making an 18(e) determination, the Assistant Secretary will determine if actual operations under a State’s plan, or under a separable portion of the plan, indicate that the State is applying the criteria of section 18(c) of the Act and the indices of effectiveness of subpart B of this part in a manner which renders operations under the plan “at least as effective as” operations under the Federal program in

Separable portion of a plan for purposes of an 18(e) determination generally means more than one industrial, occupational or hazard grouping as defined in § 1902.2(c)(1) which is administratively practicable and reasonably separable from the remainder of the plan. (See 29 CFR 1952.6(a).

[40 FR 54782, Nov. 26, 1975, as amended at 67 FR 60128, Sept. 25, 2002]

§ 1902.32 General policies.

(a) Sections 18(e) and (f) of the Act provide for the continuing evaluation and monitoring of State plans approved under section 18(c) of the Act. The Assistant Secretary’s decision whether to grant an affirmative 18(e) determination will be based, in part, on the results of these evaluations. Section 18(e) provides that a period of not less than 3 years shall have passed before the Assistant Secretary may make a determination that the State program in actual operations is applying the criteria of section 18(c) of the Act. In the case of a developmental plan, § 1902.2(b) of this part requires that the Assistant Secretary must have at least one year in which to evaluate the plan’s actual operations following the completion of all developmental steps specified in the plan. Thus, to be considered for an 18(e) determination, at least three years shall have passed following commencement of operations after the initial approval of a State’s occupational safety and health plan by the Assistant Secretary. In the case of a developmental plan, at least one year shall have passed following the completion of all developmental steps, but, in any event, at least three years must have passed following initial approval of the plan before discretionary Federal enforcement authority and standards may be withdrawn from issues covered by an approved plan.

(b) In making an 18(e) determination, the Assistant Secretary will determine if actual operations under a State’s plan, or under a separable portion of the plan, indicate that the State is applying the criteria of section 18(c) of the Act and the indices of effectiveness of subpart B of this part in a manner which renders operations under the plan “at least as effective as” operations under the Federal program in

Separable portion of a plan for purposes of an 18(e) determination generally means more than one industrial, occupational or hazard grouping as defined in § 1902.2(c)(1) which is administratively practicable and reasonably separable from the remainder of the plan. (See 29 CFR 1952.6(a)).
providing safe and healthful employment and places of employment within the State. In making this determination, the Assistant Secretary may consider such information which he deems appropriate for an informed decision.

(c) If the Assistant Secretary makes an affirmative 18(e) determination, the Federal enforcement provisions of sections 5(a) (2), 8 (except for the purposes of continuation of evaluations under section 18(f) of the Act), 9, 10, 13 and 17 and standards promulgated under section 6 of the Act shall not apply with respect to those occupational safety and health issues covered under the plan which have been given an affirmative 18(e) determination. However, the Assistant Secretary may retain jurisdiction over proceedings commenced under sections 9, 10 and 13 of the Act before the date of his determination. In addition, the Assistant Secretary shall retain his jurisdiction under the anti-discrimination provisions of section 11(c) of the Act.

(d) If the Assistant Secretary determines that a State plan, or any portion thereof, has not met the criteria for an 18(e) determination, he shall retain his authority under the enforcement provisions of sections 5(a) (2), 8, 9, 10, 13, and 17 and his standards authority under section 6 of the Act in the issues found ineligible for an 18(e) determination. In addition, his decision may result in the commencement of proceedings for withdrawal of approval of the plan, or any separable portion thereof, under 29 CFR part 1955.

(e) Once a State's plan, or any modification thereof, has been given an affirmative 18(e) determination, the State is required to maintain a program which will meet the requirements of section 18(c) and will continue to be "at least as effective as" the Federal program operations in the issues covered by the determination. As the Federal program changes and thereby becomes more effective, the State is correspondingly required to adjust its program at a level which would provide a program for workplace safety and health which would be "at least as effective as" the improvements in the Federal program. A failure to comply with this requirement may result in the revocation of the affirmative 18(e) determination and the resumption of Federal enforcement and standards authority and/or in the commencement of proceedings for the withdrawal of approval of the plan, or any portion thereof, pursuant to 29 CFR part 1955.

(f) The Assistant Secretary may reconsider and, if necessary, rescind or revoke all or a separable portion of an affirmative 18(e) determination and reinstate concurrent Federal enforcement authority if he finds that a State does not maintain its commitment to provide a program for employee safety and health protection meeting the requirements of section 18(c) of the Act. This authority is designed to be used in instances where operations under a State program are found to be less effective than under the Federal program because of unusual circumstances which are temporary in nature. The Assistant Secretary may also use this procedure to reinstate Federal enforcement authority in conjunction with plan withdrawal proceedings in order to ensure that there is no serious gap in his commitment to assure safe and healthful working conditions so far as possible for every employee.

Completed Developmental Steps—Certification

§ 1902.33 Developmental period.

Upon the commencement of plan operations after the initial approval of a State's plan by the Assistant Secretary, a State has three years in which to complete all of the developmental steps specified in the plan as approved. Section 1953.4 of this chapter sets forth the procedures for the submission and consideration of developmental changes by OSHA. Generally, whenever a State completes a developmental step, it must submit the resulting plan change as a supplement to its plan to OSHA for approval. OSHA's approval of such changes is then published in the Federal Register and the pertinent subparts of part 1952 of this chapter are amended to reflect the completion of a developmental step.

[67 FR 60128, Sept. 25, 2002]

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29 CFR Ch. XVII (7–1–07 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 plan after approval 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 have 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 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 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 as the Assistant Secretary may determine.

§ 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
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, Dec. 15, 1977]
§ 1902.40 Informal hearing.

(a) Any hearing conducted under this section shall be legislative in type. However, fairness may require an opportunity for cross-examination on pertinent issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for participation and comment by interested persons which can be carried out expeditiously and without rigid procedures which might unduly impede or protract the 18(e) determination process.

(b) Although the hearing shall be informal and legislative in type, this section is intended to provide more than the bare essentials of informal proceedings under 5 U.S.C. 553. The additional requirements are the following:

1. The presiding officer shall be a hearing examiner appointed under 5 U.S.C. 3105.
2. The presiding officer shall provide an opportunity for cross-examination on pertinent issues.
3. The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.
4. The officer presiding at a hearing shall have all the power necessary or appropriate to conduct a fair and full hearing, including the powers:
   1. To regulate the course of the proceedings;
   2. To dispose of procedural requests, objections, and comparable matters;
   3. To confine the presentation to the issues specified in the notice of hearing, or, where appropriate, to matters pertinent to the issue before the Assistant Secretary;
   4. To regulate the conduct of those present at the hearing by appropriate means;
   5. To take official notice of material facts not appearing in the evidence in the record, as long as the parties are afforded an opportunity to show evidence to the contrary;
   6. In his discretion, to keep the record open for a reasonable and specified time to receive additional written recommendations with supporting reasons and any additional data, views,
§ 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 modification 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 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 discretion 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
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 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.

§ 1902.49 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.
(b) The decision revoking the determination shall also reflect the Assistant Secretary’s determination that concurrent Federal enforcement and standards authority will be reinstated within the State for a reasonable time until he has withdrawn his approval of the plan, or any separable portion thereof, pursuant to part 1955 of this chapter or he has determined that the State has met the criteria for an 18(e) determination pursuant to the applicable procedures of this subpart.

§ 1902.53 Publication of decisions.
All decisions on the reconsideration of an affirmative 18(e) determination shall be published in the FEDERAL REGISTER.

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

Sec.
1903.1 Purpose and scope.
1903.2 Posting of notice; availability of the Act, regulations and applicable standards.
1903.3 Authority for inspection.
1903.4 Objection to inspection.
1903.5 Entry not a waiver.
1903.6 Advance notice of inspections.
1903.7 Conduct of inspections.
1903.8 Representatives of employers and employees.
1903.9 Trade secrets.
1903.10 Consultation with employees.
1903.11 Complaints by employees.
1903.12 Inspection not warranted; informal review.
1903.13 Imminent danger.
1903.14 Citations; notices of de minimis violations; policy regarding employee rescue activities.
1903.14a Petitions for modification of abatement date.
1903.15 Proposed penalties.
1903.16 Posting of citations.
1903.17 Employer and employee contests before the Review Commission.
1903.18 Failure to correct a violation for which a citation has been issued.
1903.19 Abatement verification.
1903.20 Informal conferences.
1903.21 State administration.
1903.22 Definitions.

AUTHORITY: Sections 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), 5 U.S.C. 553; Secretary of Labor’s Order No. 1–90 (55 FR 9033) or 6–96 (62 FR 111), as applicable.

§ 1903.2 Posting of notice; availability of the Act, regulations and applicable standards.
(a)(1) Each employer shall post and keep posted a notice or notices, to be