AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

and indices of section 18(c) of the Act and subpart B of this part so as to warrant the withdrawal of the application of discretionary Federal enforcement and standards authority from issues covered by the plan, or by any modification thereof.

Assistant Regional Director means the Assistant Regional Director for Occupational Safety and Health for the region in which a State is located.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health.

Commencement of a case under section 18(e) of the Act means, for the purpose of retaining Federal jurisdiction despite an affirmative 18(e) determination, the issuance of a citation, and in the case of an imminent danger, the initiation of enforcement proceedings under section 13 of the Act.

Commencement of plan operations means the beginning of operations under a plan following the approval of the plan by the Assistant Secretary and in no case may be later than the effective date of the initial funding grant provided under section 23(g) of the Act.

Development step includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereof, for each plan contained in 29 CFR part 1952. A developmental step also includes those items specified in the plan as approved under section 18(c) of the Act for completion by the State, as well as those items which under the approval decision were subject to evaluations. (See e.g., approval of Colorado and Michigan plans, 38 FR 25172, 38 FR 27388, respectively), and changes deemed necessary as a result thereof to make the State program at least as effective as the Federal program within the 3 years developmental period. (See 29 CFR 1953.10(a)).

Initial approval means approval of a State plan, or any modification thereof, under section 18(c) of the Act and subpart C of this part.

Person means any individual, partnership, association, corporation, business trust, legal representative, organized group of individuals, or any agency, authority or instrumentality of the United States or of a State.

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).)

§ 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 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 continuing 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.

COMPLETION OF 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 1953.11 of this chapter sets forth the procedures for the submission and consideration of developmental changes by the Assistant Secretary. Generally, whenever a State completes a developmental step, it must submit the resulting change as a supplement to its plan together with relevant documentation to the Assistant Secretary for his approval. The Assistant Secretary'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.