

Title 29: Labor

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

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Subpart A—General Provisions and Conditions

Source: 37 FR 25931, Dec. 6, 1972, unless otherwise noted.

§ 1952.1 Purpose and scope.

(a) This part sets forth the Assistant Secretary's approval of State plans submitted under section 18 of the Act and part 1902 of this chapter. Each approval of a State plan is based on a determination by the Assistant Secretary that the plan meets the requirements of section 18(c) of the Act and the criteria and indices of effectiveness specified in part 1902.

(b) This subpart contains general provisions and conditions which are applicable to all State plans, regardless of the time of their approval. Separate subparts are used for the identification of specific State plans, indication of locations where the full plan may be inspected and copied, and setting forth any special conditions and special policies which may be applicable to a particular plan.

§ 1952.2 Definitions.

(a) *Act* means the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

(b) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health.

§ 1952.3 Developmental plans.

Any developmental plan; that is, a plan not fully meeting the criteria set forth in §1902.3 of this chapter at the time of approval, must meet the requirements of §1902.2(b) of this chapter.

§ 1952.4 Injury and illness recording and reporting requirements.

(a) Injury and illness recording and reporting requirements promulgated by State-Plan States must be substantially identical to those in 29 CFR part 1904 "Recording and Reporting Occupational Injuries and Illnesses." State-Plan States must promulgate recording and reporting requirements that are the same as the Federal requirements for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements that are promulgated by State-Plan States may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, States must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives. State-Plan States must extend the scope of their regulation to State and local government employers.

(b) A State may not grant a variance to the injury and illness recording and reporting requirements for private sector employers. Such variances may only be granted by Federal OSHA to assure nationally consistent workplace injury and illness statistics. A State may only grant a variance to the injury and illness recording and reporting requirements for State or local government entities in that State after obtaining approval from Federal OSHA.

(c) A State must recognize any variance issued by Federal OSHA.

(d) A State may, but is not required, to participate in the Annual OSHA Injury/Illness Survey as authorized by 29 CFR 1904.41. A participating State may either adopt requirements identical to 1904.41 in its recording and reporting regulation as an enforceable State requirement, or may defer to the Federal regulation for

enforcement. Nothing in any State plan shall affect the duties of employers to comply with 1904.41, when surveyed, as provided by section 18(c)(7) of the Act.

[66 FR 6135, Jan. 19, 2001]

§ 1952.5 Availability of the plans.

(a) A complete copy of each State plan including any supplements thereto, shall be kept at:

(1) Office of Federal and State Operations, OSHA, Room 305, Railway Labor Building, 400 First Street, NW., U.S. Department of Labor, Washington, DC 20210; and

(2) The office of the nearest Regional Administrator, Occupational Safety and Health Administration. The addresses of the Regional Administrators are listed in the "United States Government Organization Manual," 1972/73, p. 310. The copy shall be available for public inspection and copying.

(b) A complete copy of the State plan of a particular State, including any supplements thereto, shall be kept at the office of the State office listed in the appropriate subpart of this part 1952.

§ 1952.6 Partial approval of State plans.

(a) The Assistant Secretary may partially approve a plan under part 1902 of this chapter whenever:

(1) The portion to be approved meets the requirements of part 1902;

(2) The plan covers more than one occupational safety and health issue; and

(3) Portions of the plan to be approved are reasonably separable from the remainder of the plan.

(b) Whenever the Assistant Secretary approves only a portion of a State plan, he may give notice to the State of an opportunity to show cause why a proceeding should not be commenced for disapproval of the remainder of the plan under subpart C of part 1902 before commencing such a proceeding.

§ 1952.7 Product standards.

(a) Under section 18(c)(2) of the Act, a State plan must not include standards for products which are distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. In §1902.3(c)(2) of this chapter this is interpreted as not being applicable to customized products, or parts not normally available on the open market, or to the optional parts, or additions to products which are ordinarily available with such optional parts, or additions.

(b) In situations where section 18(c)(2) is considered applicable, and provision is made for the adoption of product standards, the requirements of section 18(c)(2), as they relate to undue burden on interstate commerce, shall be treated as a condition subsequent in light of the facts and circumstances which may be involved.

§ 1952.8 Variations, tolerances, and exemptions affecting the national defense.

(a) The power of the Secretary of Labor under section 16 of the Act to provide reasonable limitations and variations, tolerances, and exemptions to and from any or all provisions of the Act as he may find necessary and proper to avoid serious impairment of the national defense is reserved.

(b) No action by a State under a plan shall be inconsistent with action by the Secretary under this section of the Act.

§ 1952.9 Variances affecting multi-state employers.

(a) Where a State standard is identical to a Federal standard addressed to the same hazard, an employer or group of employers seeking a temporary or permanent variance from such standard, or portion thereof, to be applicable to employment or places of employment in more than one State, including at least one State with an approved plan, may elect to apply to the Assistant Secretary for such variance under the provisions of 29 CFR part 1905, as amended.

(b) Actions taken by the Assistant Secretary with respect to such application for a variance, such as interim orders, with respect thereto, the granting, denying, or issuing any modification or extension thereof, will be deemed prospectively an authoritative interpretation of the employer or employers' compliance obligations with regard to the State standard, or portion thereof, identical to the Federal standard, or portion thereof, affected by the action in the employment or places of employment covered by the application.

(c) Nothing herein shall affect the option of an employer or employers seeking a temporary or permanent variance with applicability to employment or places of employment in more than one State to apply for such variance either to the Assistant Secretary or the individual State agencies involved. However, the filing with, as well as granting, denial, modification, or revocation of a variance request or interim order by, either authority (Federal or State) shall preclude any further substantive consideration of such application on the same material facts for the same employment or place of employment by the other authority.

(d) Nothing herein shall affect either Federal or State authority and obligations to cite for noncompliance with standards in employment or places of employment where no interim order, variance, or modification or extension thereof, granted under State or Federal law applies, or to cite for noncompliance with such Federal or State variance action.

[40 FR 25450, June 16, 1975]

§ 1952.10 Requirements for approval of State posters.

(a)(1) In order to inform employees of their protections and obligations under applicable State law, of the issues not covered by State law, and of the continuing availability of Federal monitoring under section 18(f) of the Act, States with approved plans shall develop and require employers to post a State poster meeting the requirements set out in paragraph (a)(5) of this section.

(2) Such poster shall be substituted for the Federal poster under section 8(c)(1) of the Act and §1903.2 of this chapter where the State attains operational status for the enforcement of State standards as defined in §1954.3(b) of this chapter.

(3) Where a State has distributed its poster and has enabling legislation as defined in §1954.3(b)(1) of this chapter but becomes nonoperational under the provisions of §1954.3(f)(1) of this chapter because of failure to be at least as effective as the Federal program, the approved State poster may, at the discretion of the Assistant Secretary, continue to be substituted for the Federal poster in accordance with paragraph (a)(2) of this section.

(4) A State may, for good cause shown, request, under 29 CFR part 1953, approval of an alternative to a State poster for informing employees of their protections and obligations under the State plans, provided such alternative is consistent with the Act, 29 CFR 1902.4(c)(2)(iv) and applicable State law. In order to qualify as a substitute for the Federal poster under this paragraph, such alternative must be shown to be at least as effective as the Federal poster requirements in informing employees of their protections and obligations and address the items listed in paragraph (a)(5) of this section.

(5) In developing the poster, the State shall address but not be limited to the following items:

(i) Responsibilities of the State, employers and employees;

(ii) The right of employees or their representatives to request workplace inspections;

- (iii) The right of employees making such requests to remain anonymous;
 - (iv) The right of employees to participate in inspections;
 - (v) Provisions for prompt notice to employers and employees when alleged violations occur;
 - (vi) Protection for employees against discharge or discrimination for the exercise of their rights under Federal and State law;
 - (vii) Sanctions;
 - (viii) A means of obtaining further information on State law and standards and the address of the State agency;
 - (ix) The right to file complaints with the Occupational Safety and Health Administration about State program administration;
 - (x) A list of the issues as defined in §1902.2(c) of this chapter which will not be covered by State plan;
 - (xi) The address of the Regional Office of the Occupational Safety and Health Administration; and
 - (xii) Such additional employee protection provisions and obligations under State law as may have been included in the approved State plan.
- (b) Posting of the State poster shall be recognized as compliance with the posting requirements in section 8(c)(1) of the Act and §1903.2 of this chapter, provided that the poster has been approved in accordance with subpart B of part 1953. Continued Federal recognition of the State poster is also subject to pertinent findings of effectiveness with regard to the State program under 29 CFR part 1954.

[39 FR 39036, Nov. 5, 1974]

§ 1952.11 State and local government employee programs.

(a) Each approved State plan must contain satisfactory assurances that the State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions which program is as effective as the standards contained in an approved plan.

(b) This criteria for approved State plans is interpreted to require the following elements with regard to coverage, standards, and enforcement:

(1) *Coverage.* The program must cover all public employees over which the State has legislative authority under its constitution. "To the extent permitted by its law," specifically recognizes the situation where local governments exclusively control their own employees, such as under certain "home rule" charters.

(2) *Standards.* The program must be as effective as the standards contained in the approved plan applicable to private employers. Thus, the same criteria and indices of standards effectiveness contained in §§1902.3(c) and 1902.4 (a) and (b) of this chapter would apply to the public employee program. Where hazards are unique to public employment, all appropriate indices of effectiveness, such as those dealing with temporary emergency standards, development of standards, employee information, variances, and protective equipment, would be applicable to standards for such hazards.

(3) *Enforcement.* Although section 18(c)(6) of the Act requires State public employee programs to be "as effective as standards" contained in the State plan, minimum enforcement elements are required to ensure an "effective and comprehensive" public employee program as follows: (See notice of approval of the North Carolina Plan, 38 FR 3041).

- (i) Regular inspections of workplaces, including inspections in response to valid employee complaints;
- (ii) A means for employees to bring possible violations to the attention of inspectors;
- (iii) Notification to employees, or their representatives, of decisions that no violations are found as a result of complaints by such employees or their representatives, and informal review of such decisions;
- (iv) A means of informing employees of their protections and obligations under the Act;
- (v) Protection for employees against discharge of discrimination because of the exercise of rights under the Act;
- (vi) Employee access to information on their exposure to toxic materials or harmful physical agents and prompt notification to employees when they have been or are being exposed to such materials or agents at concentrations or levels above those specified by the applicable standards;
- (vii) Procedures for the prompt restraint or elimination of imminent danger situations;
- (viii) A means of promptly notifying employers and employees when an alleged violation has occurred, including the proposed abatement requirements;
- (ix) A means of establishing timetables for the correction of violations;
- (x) A program for encouraging voluntary compliance; and
- (xi) Such other additional enforcement provisions under State law as may have been included in the State plan.

(c) In accordance with §1902.3(b)(3), the State agency or agencies designated to administer the plan throughout the State must retain overall responsibility for the entire plan. Political subdivisions may have the responsibility and authority for the development and enforcement of standards: *Provided*, That the designated State agency or agencies have adequate authority by statute, regulation, or agreement to insure that the commitments of the State under the plan will be fulfilled.

These commitments supersede and control any delegation of authority to State or local agencies. (See Notice of Approval of Colorado Plan, 38 FR 25172.)

[40 FR 58451, Dec. 17, 1975]

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