

**SUPPORTING STATEMENT FOR
THE COLLECTION OF INFORMATION REQUIREMENTS OF
OCCUPATIONAL SAFETY AND HEALTH STATE PLANS
(29 CFR Parts 1902, 1953, 1954, 1956)
OMB CONTROL No. 1218-0247 (April 2016)**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Section 18 of the Occupational Safety and Health Act of 1970 (the Act) encourages the states to assume responsibility for the development and enforcement of state occupational safety and health standards through the mechanism of an approved State Plan. Absent a plan approved by the Occupational Safety and Health Administration (OSHA), states are preempted from asserting authority over any occupational safety and health issue with respect to which a federal standard has been promulgated. Section 18 of the Act establishes the basic criteria for State Plan approval; provides for the discretionary exercise of concurrent federal enforcement jurisdiction for a period of time following initial approval; provides that state standards and enforcement must be, and continue to be, “at least as effective” as the federal program, including any changes thereto; and requires OSHA to make a continuing evaluation of the State Plan to take action to withdraw plan approval should there be a failure to substantially comply with any provision of the State Plan.

Section 18(b) provides that any state that desires to assume responsibility for the development and enforcement of occupational safety and health standards relating to issues covered by corresponding standards promulgated by OSHA under Section 6 of the Act shall submit a plan for doing so to the Secretary, who has delegated authority under the OSHA Act to the Assistant Secretary for Occupational Safety and Health. If the Assistant Secretary approves a State Plan submitted under Section 18(b), he may, but is not required to, exercise his enforcement authority with respect to federal standards corresponding to standards approved under the plan until he determines, in accordance with Section 18(e) of the Act, on the basis of actual operations under the plan, that the state is applying the criteria of Section 18(c) of the Act. Notwithstanding plan approval and a determination under Section 18(e) that the Section 18(c) criteria are being followed, the Assistant Secretary shall make a continuing evaluation, as provided in Section 18(f) of the Act, of the manner in which the state is carrying out the plan.

After the Assistant Secretary has approved a plan, he may approve one or more grants under Section 23(g) of the Act to assist the state in administering and enforcing its program for occupational

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safety and health in accordance with appropriate procedures to be promulgated by the Assistant Secretary.

OSHA promulgated a series of regulations, primarily in the 1970s, implementing the provisions of Section 18 of the Act. These regulations are:

- 29 CFR Part 1902, State Plans for the Development and Enforcement of State Standards
- 29 CFR Part 1952, Approved State Plans for the Enforcement of State Standards ¹
- 29 CFR Part 1953, Changes to State Plans
- 29 CFR Part 1954, Procedures for the Evaluation and Monitoring of Approved State Plans
- 29 CFR Part 1955, Procedures for Withdrawal of Approval of State Plans ²
- 29 CFR Part 1956, State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States Without Approved Private Employee Plans

29 CFR Part 1953 was revised in 2002. In 2015, a Direct Final Rule (DFR) revising 29 CFR Part 1956 was published, along with minor cross-reference revisions throughout Parts 1902, 1953, 1954, and other parts associated with the OSHA-approved State Plans (29 CFR 1903, 1952 and 29 CFR 1955). The references to the State Plan regulations in this Information Collection Request (ICR) reflect these revisions.

Pursuant to the Act and regulations, the states with OSHA-approved State Plans operate programs that are parallel to OSHA; they operate under authority of state law, not under a delegation of federal authority. In other words, the state's implementation of its occupational safety and health law is an exercise of its own sovereignty. They are carrying out their historic police powers over safety and health. The approval of a State Plan only means that the bar of pre-emption is lifted and that OSHA provides partial funding for the State Plan.

The states have primary responsibility for occupational safety and health standards and enforcement with regard to all private-sector employees and employers in the state, except as limited by the State Plan. They also must extend coverage to state and local government employees - workers not otherwise covered by OSHA. States may also obtain OSHA approval for State Plans limited in scope to state and local government employees only.

¹ 29 CFR Part 1952 does not contain collection of information requirements. Prior to the publication of the Direct Final Rule, Streamlining of Provisions on State Plans for Occupational Safety and Health, Part 1952 contained collection of information requirements which have now been moved to 29 CFR Part 1902.

²

OSHA does not consider the administrative proceedings described in 29 CFR Part 1955, Procedures for Withdrawal of Approval of State Plans, to be covered by PRA-95 because they fall within the exception provided by 44 U.S.C. 3518(c)(1)(B)(ii).

In carrying out their State Plans, states conduct workplace inspections, issue citations, propose penalties, adjudicate contested cases, and maintain records on these activities in much the same manner and through the same data systems as OSHA. The documentation and activity data collected are the “usual and customary” information that any state agency would collect as part of its routine operation, management, and accountability for any state regulatory activity. The state agencies conduct these activities under state law. Thus, there is no OSHA-imposed paperwork burden associated with the day-to-day promulgation of standards and regulations and the enforcement of the state occupational safety and health law. (The state programs operate in much the same manner as OSHA and their enforcement paperwork and data collection activities parallel those conducted by OSHA.)³

However, in order to fulfill its responsibilities under the Act - to grant initial, final, and continued approval and ensure program effectiveness - OSHA, through its State Plan regulations, requires the states to provide specific documentation describing how their programs are and continue to be “at least as effective” as the federal program in structure and in operation. It is these State Plan document development and maintenance requirements, including the negotiations between OSHA and the state as to content and requirements, which constitute information collections for which approval of the associated paperwork burdens is sought.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The State Plan regulations (29 CFR Parts 1902, 1953, 1954, and 1956) contain a number of collection of information requirements. The collection of information requirements used by OSHA and the states with or seeking OSHA-approved State Plans. The following sections describe the information collected under each requirement, as well as how the information is used.

A. Establishment of a State Plan (29 CFR Part 1902, Subparts A-D; 29 CFR Part 1956, Subparts A-D):

1. 29 CFR 1902, Subpart A -- General

³ It should be noted that the Collection of Information analysis prepared for each new Federal OSHA standard includes in its calculations the workplace paperwork burden associated with compliance with equivalent state standards. That information is not included in this ICR. In terms of burdens on employers, collection of information requirements associated with state standards which differ from the federal are not subject to the provisions of the Paperwork Reduction Act (PRA-95). However, the burden on states to provide to OSHA documentation associated with state standards which differ from the federal standards is covered under PRA-95 and this is analyzed in this ICR.

General Policies (§1902.2)

29 CFR 1902.2(a) - Policy. The Assistant Secretary will approve a State Plan which provides for an occupational safety and health program with respect to covered issues that in his judgment meets or will meet the criteria set forth in 1902.3. Included among these criteria is the requirement that the State Plan provide for the development and enforcement of standards relating to issues covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under Section 6 of the Act on the same issues. In determining whether a State Plan satisfies the requirement of effectiveness, the Assistant Secretary will measure the plan against the indices of effectiveness set forth in 1902.4.

29 CFR 1902.2(b) - *Developmental plan*. A State Plan for an occupational safety and health program may be approved although, upon submission, it does not fully meet the criteria set forth in §1902.3, if it includes satisfactory assurances by the state that it will take the necessary steps to bring the state program into conformity with these criteria within the three-year period immediately following the commencement of the plan's operation. In such case, the State Plan shall include the specific actions it proposes to take and a time schedule for their accomplishment not to exceed three years, at the end of which the State Plan will meet the criteria in §1902.3. A developmental plan shall include the date or dates within which intermediate and final action will be accomplished. If necessary program changes require legislative action by a state, a copy of a bill or a draft of legislation that will be or has been proposed for enactment shall be submitted, accompanied by (1) a statement of the governor's support of the legislation and (2) a statement of legal opinion that the proposed legislation will meet the requirements of the Act and this part in a manner consistent with the state's constitution and laws. On the basis of the state's submission, the Assistant Secretary will approve the plan if he finds that there is a reasonable expectation that the State Plan will meet the criteria in §1902.3 within the indicated three-year period. In such case, the Assistant Secretary shall not make a determination under Section 18(e) of the Act that a state is fully applying the criteria in §1902.3 until the state has completed all the developmental steps specified in its plan which are designed to make it at least as effective as the federal program and the Assistant Secretary has had at least one year to evaluate the plan on the basis of actual operations. If at the end of three years from the date of commencement of the plan's development, the state is found by the Assistant Secretary, after affording the state notice and opportunity for a hearing, not to have substantially completed the developmental steps of the plan, the Assistant Secretary shall withdraw the approval of the plan.

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29 CFR 1902.2(c)(2) - Each State Plan shall describe the occupational safety and health issue or issues and the state standard or standards applicable to each such issue or issues over which it desires to assume enforcement responsibility in terms of the corresponding federal industrial, occupational, or hazard groupings and set forth the reasons, supported with appropriate data, for any variations the state proposes from the coverage of federal standards.

29 CFR 1902.2(c)(3) - The State Plan shall apply to all employers and employees within the affected industry, occupational, or hazard grouping unless the Assistant Secretary finds that the state has shown good cause why any group or groups of employers or employees should be excluded. Any employers or employees so excluded shall be covered by applicable federal standards and enforcement provisions in the Act.

2. 29 CFR 1902, Subpart B -- Criteria for State Plans

Specific Criteria for State Plans (§1902.3)

29 CFR 1902.3(a) - General. A State Plan must meet the specific criteria set forth in this section.

29 CFR 1902.3(b)(1) - Designation of state agency. The State Plan shall designate a state agency or agencies as the agency or agencies responsible for administering the plan throughout the state.

29 CFR 1902.3(b)(2) - The plan shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to administration of the plan.

29 CFR 1902.3(b)(3) - A state agency or agencies must be designated with overall responsibility for administering the plan throughout the state. However, political subdivisions of the state may have the responsibility and authority for the development and enforcement of standards, provided that the state agency or agencies are given adequate authority by statute, regulation, or agreement, to ensure that the commitments of the state under the plan will be fulfilled.

29 CFR 1902.3(c)(1) - Standards. The State Plan shall include or provide for the development or adoption of, and contain assurances that the state will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under Section 6 of the Act. Indices of the effectiveness of standards and procedures for the development or adoption of

standards against which the Assistant Secretary will measure the State Plan in determining whether it is approvable are set forth in §1902.4(b).

29 CFR 1902.3 (d)(1) - Enforcement. The State Plan shall provide a program for the enforcement of the state standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the state's enforcement program will continue to be at least as effective as the federal program. Indices of the effectiveness of a state's enforcement plan against which the Assistant Secretary will measure the State Plan in determining whether it is approvable are set forth in §1902.4(c).

29 CFR 1902.3 (d)(2) - The State Plan shall require employers to comply with all applicable state occupational safety and health standards covered by the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

29 CFR 1902.3(e) - Right of entry and inspection. The State Plan shall contain adequate assurance that inspectors will have a right to enter and inspect covered workplaces which is, or will be, at least as effective as that provided in Section 8 of the Act. Where such entry or inspection is refused, the state agency or agencies shall have the authority, through appropriate legal process, to compel such entry and inspection.

29 CFR 1902.3(f) - Prohibition against advance notice. The State Plan shall contain a prohibition against advance notice of inspections. Any exceptions must be expressly authorized by the head of the designated agency or agencies or his representative and such exceptions may be no broader than those authorized under the Act and the rules published in Part 1903 of this chapter relating to advance notice.

29 CFR 1902.3(g) - Legal authority. The State Plan shall contain satisfactory assurances that the designated agency or agencies have, or will have, the legal authority necessary for the enforcement of its standards.

29 CFR 1902.3(h) - Personnel. The State Plan shall provide assurance that the designated agency or agencies have, or will have, a sufficient number of adequately trained and qualified personnel necessary for the enforcement of the standards. For this purpose qualified personnel means persons employed on a merit basis, including all persons engaged in the development of standards and the administration of the State Plan. Conformity with the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Labor, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 (Pub. L.

91-648; 84 Stat. 1915) modifying or superseding such standards, will be deemed to meet this requirement.

29 CFR 1902.3(i) - Resources. The State Plan shall contain satisfactory assurances through the use of budget, organizational description, and any other appropriate means that the state will devote adequate funds to the administration and enforcement of the program. The Assistant Secretary will make periodic evaluations of the adequacy of the state resources devoted to the plan.

29 CFR 1902.3(j) - Employer records and reports. The State Plan shall provide assurances that employers covered by the plan will maintain records and make reports to the Assistant Secretary in the same manner and to the same extent as if the plan were not in effect.

29 CFR 1902.3(k) - State agency reports to the Assistant Secretary. The State Plan shall provide assurances that the designated agency or agencies shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require. The agency or agencies shall establish specific goals, consistent with the goals of the Act, including measures of performance, output and results which will determine the efficiency and effectiveness of the state program, and shall make periodic reports to the Assistant Secretary on the extent to which the state, in implementation of its plan, has attained these goals. Reports will also include data and information on the implementation of the specific inspection and voluntary compliance activities included within the State Plan. Further, these reports shall contain such statistical information pertaining to work-related deaths, injuries, and illnesses in employments and places of employment covered by the plan as the Assistant Secretary may from time to time require.

Indices of Effectiveness (§1902.4)

29 CFR 1902.4(a) - General. In order to satisfy the requirements of effectiveness under §1902.3 (c)(1) and (d)(1), the State Plan shall:

29 CFR 1902.4(a)(1) - Establish the same standards, procedures, criteria and rules as have been established by the Assistant Secretary under the Act, or;

29 CFR 1902.4(a)(2) - Establish alternative standards, procedures, criteria, and rules which will be measured against each of the indices of effectiveness in Paragraphs (b) and (c) of this section to determine whether the alternatives are at least as effective as the federal program with respect to the subject of each index. For each index the state must demonstrate by the presentation of

factual or other appropriate information that its plan is or will be at least as effective as the federal program.

29 CFR 1902.4(b)(1) - Standards. The indices for measurement of a State Plan with regard to standards follow in Paragraph (b)(2) of this section. The Assistant Secretary will determine whether the State Plan satisfies the requirements of effectiveness with regard to each index as provided in Paragraph (a) of this section.

29 CFR 1902.4(b)(2) - The Assistant Secretary will determine whether the State Plan:

29 CFR 1902.4(b)(2)(i) - Provides for state standards with respect to specific issues which are or will be at least as effective as the standards promulgated under Section 6 of the Act relating to the same issues. In the case of any state standards dealing with toxic materials or harmful physical agents, they should adequately assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life, by such means as, in the development and promulgation of standards, obtaining the best available evidence through research, demonstrations, experiments, and experience under this and other safety and health laws.

29 CFR 1902.4(b)(2)(ii) - Provides an adequate method to assure that its standards will continue to be at least as effective as federal standards, including federal standards relating to issues covered by the plan, which become effective subsequent to any approval of the plan.

29 CFR 1902.4(b)(2)(iii) - Provides a procedure for the development and promulgation of standards which allows for the consideration of pertinent factual information and affords interested persons, including employees, employers and the public, an opportunity to participate in such processes, by such means as establishing procedures for consideration of expert technical knowledge, and providing interested persons, including employers, employees, recognized standards-producing organizations, and the public an opportunity to submit information requesting the development or promulgation of new standards or the modification or revocation of existing standards and to participate in any hearings. This index may also be satisfied by such means as the adoption of federal standards, in which case the procedures at the federal level before adoption of a standard under Section 6 may be considered to meet the conditions of this index.

29 CFR 1902.4(b)(2)(iv) - Provides authority for the granting of variances from state standards, upon application of an employer or employers which correspond to variances authorized under the Act, and for consideration of the views of interested parties, by such means as giving

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affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to applications for variances.

29 CFR 1902.4(b)(2)(v) - Provides for prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, by such means as the authority to promulgate emergency temporary standards.

29 CFR 1902.4(b)(2)(vi) - Provides that state standards contain appropriate provision for the furnishing to employees of information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure, by such means as labeling, posting, and, where appropriate, medical examination at no cost to employees, with the results of such examinations being furnished only to appropriate state officials and, if the employee so requests, to his physician.

29 CFR 1902.4(b)(2)(vii) - Provides that state standards, where appropriate, contain specific provision for the protection of employees from exposure to hazards, by such means as containing appropriate provision for use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure.

29 CFR 1902.4(c)(1) - Enforcement. The indices for measurement of a State Plan with regard to enforcement follow in Paragraph (c)(2) of this section. The Assistant Secretary will determine whether the State Plan satisfies the requirements of effectiveness with regard to each index as provided in Paragraph (a) of this section.

29 CFR 1902.4(c)(2) - The Assistant Secretary will determine whether the State Plan:

29 CFR 1902.4(c)(2)(i) - Provides for inspection of covered workplaces in the state, including inspections in response to complaints, where there are reasonable grounds to believe a hazard exists, in order to assure, so far as possible, safe and healthful working conditions for covered employees, by such means as providing for inspections under conditions such as those provided in Section 8 of the Act.

29 CFR 1902.4(c)(2)(ii) - Provides an opportunity for employees and their representatives, before, during, and after inspections, to bring possible violations to the attention of the state agency with enforcement responsibility in order to aid inspections, by such means as affording a representative of the employer and a representative authorized by employees an opportunity to accompany the state representative during the physical inspection of the workplace, or where

there is no authorized representative, by providing for consultation by the state representative with a reasonable number of employees.

29 CFR 1902.4(c)(2)(iii) - Provides for the notification of employees, or their representatives, when the state decides not to take compliance action as a result of violations alleged by such employees or their representatives and further provides for informal review of such decisions, by such means as written notification of decisions not to take compliance action and the reasons therefor, and procedures for informal review of such decisions and written statements of the disposition of such review.

29 CFR 1902.4(c)(2)(iv) - Provides that employees be informed of their protections and obligations under the Act, including the provisions of applicable standards, by such means as the posting of notices or other appropriate sources of information.

29 CFR 1902.4(c)(2)(v) - Provides necessary and appropriate protection to an employee against discharge or discrimination in terms and conditions of employment because he has filed a complaint, testified, or otherwise acted to exercise rights under the Act for himself or others, by such means as providing for appropriate sanctions against the employer for such actions and by providing for the withholding, upon request, of the names of complainants from the employer.

29 CFR 1902.4 (c)(2)(vi) - Provides that employees have access to information on their exposure to toxic materials or harmful physical agents and receive prompt information when they have been or are being exposed to such materials or agents in concentrations or at levels in excess of those prescribed by the applicable safety and health standards, by such means as the observation by employees of the monitoring or measuring of such materials or agents, employee access to the records of such monitoring or measuring, prompt notification by an employer to any employee who has been or is being exposed to such agents or materials in excess of the applicable standards, and information to such employee of corrective action being taken.

29 CFR 1902.4 (c)(2)(vii) - Provides procedures for the prompt restraint or elimination of any conditions or practices in covered places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for in the plan, by such means as immediately informing employees and employers of such hazards, taking steps to obtain immediate abatement of the hazard by the employer, and where appropriate, authority to initiate necessary legal proceedings to require such abatement.

29 CFR 1902.4(c)(2)(viii) - Provides adequate safeguards to protect trade secrets, by such means as limiting access to such trade secrets to authorized state officers or employees concerned with

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carrying out the plan and by providing for the issuance of appropriate orders to protect the confidentiality of trade secrets.

29 CFR 1902.4(c)(2)(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.

29 CFR 1902.4(c)(2)(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.

29 CFR 1902.4(c)(2)(xi) - Provides effective sanctions against employers who violate state standards and orders, such as those prescribed in the Act.

29 CFR 1902.4(c)(2)(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.

29 CFR 1902.4(c)(2)(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.

29 CFR 1902.4(d)(1) - State and local government employee programs. 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.

29 CFR 1902.4(d)(2) - This criterion for approved State Plans is interpreted to require the following elements with regard to coverage, standards, and enforcement:

29 CFR 1902.4(d)(2)(i) - *Coverage*. The program must cover all public employees over which the state has legislative authority under its constitution. The language in Section 18(c)(6) which

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only requires such coverage to the extent permitted by the state's law specifically recognizes the situation where local governments exclusively control their own employees, such as under certain home rule charters.

29 CFR 1902.4(d)(2)(ii) - 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.

29 CFR 1902.4(d)(2)(iii) - 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).

29 CFR 1902.4(d)(2)(iii)(a) - Regular inspections of workplaces, including inspections in response to valid employee complaints;

29 CFR 1902.4(d)(2)(iii)(b) - A means for employees to bring possible violations to the attention of inspectors;

29 CFR 1902.4(d)(2)(iii)(c) - 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;

29 CFR 1902.4(d)(2)(iii)(d) - A means of informing employees of their protections and obligations under the Act;

29 CFR 1902.4(d)(2)(iii)(e) - Protection for employees against discharge of discrimination because of the exercise of rights under the Act;

29 CFR 1902.4(d)(2)(iii)(f) - 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;

29 CFR 1902.4(d)(2)(iii)(g) - Procedures for the prompt restraint or elimination of imminent danger situations;

29 CFR 1902.4(d)(2)(iii)(h) - A means of promptly notifying employers and employees when an alleged violation has occurred, including the proposed abatement requirements;

29 CFR 1902.4(d)(2)(iii)(i) - A means of establishing timetables for the correction of violations;

29 CFR 1902.4(d)(2)(iii)(j) - A program for encouraging voluntary compliance; and

29 CFR 1902.4(d)(2)(iii)(k) - Such other additional enforcement provisions under state law as may have been included in the State Plan.

29 CFR 1902.4 (e) - 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.

Injury and Illness Recording and Reporting Requirements (§1902.7)

29 CFR 1902.7(a) - Injury and illness recording and reporting requirements promulgated by State Plan states must be substantially identical to those in 29 CFR Part 1904 on 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.⁴

29 CFR 1902.7(d) - A state may, but is not required, to participate in the Annual OSHA Injury and 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

⁴ OSHA accounts for employer burden hours and costs resulting from State Plan recordkeeping requirements under the Information Collection Request (ICR) for its Recordkeeping Rule (§1910.1904), OMB Control No. 1218-0176.

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.

Requirements for Approval of State Posters (§1902.9)

29 CFR 1902.9(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.

29 CFR 1902.9(a)(5) - In developing the poster, the state shall address but not be limited to the following items:

29 CFR 1902.9(a)(5)(i) - Responsibilities of the state, employers and employees;

29 CFR 1902.9(a)(5)(ii) - The right of employees or their representatives to request workplace inspections;

29 CFR 1902.9(a)(5)(iii) - The right of employees making such requests to remain anonymous;

29 CFR 1902.9(a)(5)(iv) - The right of employees to participate in inspections;

29 CFR 1902.9(a)(5)(v) - Provisions for prompt notice to employers and employees when alleged violations occur;

29 CFR 1902.9(a)(5)(vi) - Protection for employees against discharge or discrimination for the exercise of their rights under federal and state law;

29 CFR 1902.9(a)(5)(vii) - Sanctions;

29 CFR 1902.9(a)(5)(viii) - A means of obtaining further information on state law and standards and the address of the state agency;

29 CFR 1902.9(a)(5)(ix) - The right to file complaints with the Occupational Safety and Health Administration about state program administration;

29 CFR 1902.9(a)(5)(x) - A list of the issues as defined in §1902.2(c) of this chapter which will not be covered by State Plan;

29 CFR 1902.9(a)(5)(xi) - The address of the Regional Office of the Occupational Safety and Health Administration; and

29 CFR 1902.9(a)(5)(xii) - Such additional employee protection provisions and obligations under state law as may have been included in the approved State Plan.

3. 29 CFR 1902, Subpart C -- Procedures for Submission, Approval, and Rejection of State Plans Submission

§1902.10 - Submission

29 CFR 1902.10(a) - An authorized representative of the state agency or agencies responsible for administering the plan shall submit one copy of the plan 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 the Subpart B of this part, and (2) the state occupational safety and health standards to be included in the plan, including a copy 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.

29 CFR 1902.10(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.

4. 29 CFR 1902, Subpart D -- Procedures for Determinations Under Section 18(e) of the Act

Definitions (§1902.31)

Development step includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereof, for each plan. 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 three years developmental period. (See 29 CFR 1953.4(a)).

General Policies (§1902.32)

29 CFR 1902.32(e)- Once a State 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.

Completion of Developmental Steps – Certification (§1902.33)

29 CFR 1902.33 – Developmental Period. Upon the commencement of plan operations after the initial approval of a State 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*.

Evaluation of Plan Following Certification (§1902.38)

29 CFR 1902.38(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.

Completion of Evaluation (§1902.39)

29 CFR 1902.39(a) - After evaluating the actual operations of the State Plan, or any portion thereof, for at least one year following publication of the certification in the *Federal Register*

under §1902.34, the Assistant Secretary shall notify the state whenever he determines that the state will be eligible for an 18(e) determination. In addition, a state may request an 18(e) determination following the evaluation period noted above.

29 CFR 1902.39(b) - After it has been determined that a state will be eligible for an 18(e) determination, the Assistant Regional Director shall prepare a final report of his evaluation of the actual operations under a State Plan or portion thereof which may be subject to the 18(e) determination. The Assistant Regional Director's report shall be transmitted to the Assistant Secretary. The Assistant Secretary shall transmit such report to the state and the state shall have an opportunity to respond to the report.

Requirements Applicable to State Plans Granted Affirmative 18(e) Determinations (§1902.44)

29 CFR 1902.44(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.

§1902.46

29 CFR 1902.46(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:

29 CFR 1902.46(d)(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 one year, in which to meet the criteria for an affirmative 18(e) determination.

29 CFR 1956 - State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States without Approved Private Employee Plans, 29 CFR Part 1956, Subparts A-D

5. 29 CFR 1956, Subpart A – General

General Policies (§1956.2)

29 CFR 1956.2(b)(1) - Developmental plan. A State Plan for an occupational safety and health program for public employees may be approved although, upon submission, it does not fully meet the criteria set forth in §1956.10, if it includes satisfactory assurances by the state that it will take the necessary steps to bring the program into conformity with these criteria within the 3-year period immediately following the commencement of the plan's operation. In such a case, the plan shall include the specific actions the state proposes to take, and a time schedule for their accomplishment which is not to exceed three years, at the end of which the plan will meet the criteria in §1956.10. A developmental plan shall include the dates within which intermediate and final action will be accomplished. Although administrative actions, such as stages for application of standards and enforcement, related staffing, development of regulations may be developmental, to be considered for approval, a State Plan for public employees must contain at time of plan approval basic state legislative and/or executive authority under which these actions will be taken. If necessary program changes require further implementing executive action by the governor or supplementary legislative action by the state, a copy of the appropriate order, or the bill or a draft of legislation that will be or has been proposed for enactment shall be submitted, accompanied by:

29 CFR 1956.2(b)(1)(i) - A statement of the governor's support of the legislation or order and

29 CFR 1956.2(b)(1)(ii) - A statement of legal opinion that the proposed legislation or executive action will meet the requirements of the Act and this part in a manner consistent with the state's constitution and laws.

29 CFR 1956.2(b)(2) - On the basis of the state's submission, the Assistant Secretary will approve the plan if he finds that there is a reasonable expectation that the plan for public employees will meet the criteria in §1956.10 within the indicated three-year period. In such a case, the Assistant Secretary shall not make a determination that a state is fully applying the

criteria in §1956.10 until the state has completed all the developmental steps specified in the plan which are designed to make it at least as effective as the federal program for the private sector, and the Assistant Secretary has had at least one year to evaluate the plan on the basis of actual operations following the completion of all developmental steps. If at the end of three years from the date of commencement of the plan's operation, the state is found by the Assistant Secretary, after affording the state notice and an opportunity for a hearing, not to have substantially completed the developmental steps of the plan, he shall withdraw the approval of the plan.

29 CFR 1956.2(b)(3) - Where a State Plan approved under Part 1902 of this chapter is discontinued, except for its public employee component, or becomes approved after approval of a plan under this part, the developmental period applicable to the public employee component of the earlier plan will be controlling with regard to any such public employee coverage. For good cause, a state may demonstrate that an additional period of time is required to make adjustments on account of the transfer from one type of plan to another.

29 CFR 1956.2(c) - *Scope of a State Plan for public employees.* (1) A State Plan for public employees must provide for the coverage of both state and local government employees to the full extent permitted by the state laws and constitution. The qualification "to the extent permitted by its law" means only that where a state may not constitutionally regulate occupational safety and health conditions in certain political subdivisions, the plan may exclude such political subdivision employees from coverage.

29 CFR 1956.2(c)(2) - The state shall not exclude any occupational, industrial, or hazard grouping from coverage under its plan unless the Assistant Secretary finds that the state has shown there is no necessity for such coverage.

6. 29 CFR 1956, Subpart B -- Criteria

Specific Criteria (§1956.10)

29 CFR 1956.10(a) - *General.* A State Plan for public employees must meet the specific criteria set forth in this section.

29 CFR 1956.10(b)(1) - *Designation of state agency.* The plan shall designate a state agency or agencies which will be responsible for administering the plan throughout the state.

29 CFR 1956.10(b)(2) - The plan shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the

designated agency shall not detract significantly from the resources and priorities assigned to the administration of the plan.

29 CFR 1956.10(b)(3) - A state agency or agencies must be designated with overall responsibility for administering the plan throughout the state. Subject to this overall responsibility, enforcement of standards may be delegated to an appropriate agency having occupational safety and health responsibilities or expertise throughout the state. Included in this overall responsibility are the requirements that the designated agency have, or assure the provision of necessary qualified personnel, legal authority necessary for the enforcement of the standards and make reports as required by the Assistant Secretary.

29 CFR 1956.10(c) - Standards. The State Plan for public employees shall include, or provide for the development or adoption of, standards which are or will be at least as effective as those promulgated under Section 6 of the Act. The plan shall also contain assurances that the state will continue to develop or adopt such standards. Indices of the effectiveness of standards and procedures for the development or adoption of standards against which the Assistant Secretary will measure the plan in determining whether it is approvable are set forth in §1956.11(b).

29 CFR 1956.10(d)(1) - Enforcement. The State Plan for public employees shall provide a program for the enforcement of the state standards which is, or will be, at least as effective in assuring safe and healthful employment and places of employment as the standards promulgated by Section 6 of the Act; and provide assurances that the state's enforcement program for public employees will continue to be at least as effective in this regard as the federal program in the private sector. Indices of the effectiveness of a state's enforcement plan against which the Assistant Secretary will measure the plan in determining whether it is approvable are set forth in §1956.11(c).

29 CFR 1956.10(d)(2) - The plan shall require state and local government agencies to comply with all applicable state occupational safety and health standards included in the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

29 CFR 1956.10(e) - Right of entry and inspection. The plan shall contain adequate assurances that inspectors will have a right to enter covered workplaces which is at least as effective as that provided in Section 8 of the Act for the purpose of inspection or monitoring. Where such entry is refused, the state agency or agencies shall have the authority through appropriate legal process to compel such entry.

29 CFR 1956.10(f) - Prohibition against advance notice. The State Plan shall contain a prohibition against advance notice of inspections. Any exceptions must be expressly authorized by the head of the designated agency or agencies or his representative and such exceptions may be no broader than those authorized under the Act and the rules published in Part 1903 of this chapter relating to advance notice.

29 CFR 1956.10(g) - Personnel. The plan shall provide assurances that the designated agency or agencies and all government agencies to which authority has been delegated, have, or will have, a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. For this purpose, qualified personnel means persons employed on a merit basis, including all persons engaged in the development of standards and the administration of the plan. Subject to the results of evaluations, conformity with the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, issued by the Secretary of Labor, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission, pursuant to Section 208 of the Intergovernmental Personnel Act of 1970, modifying or superseding such standards, and guidelines on “at least as effective as” staffing derived from the federal private employee program will be deemed to meet this requirement.

29 CFR 1956.10(h) - Resources. The plan shall contain satisfactory assurances through the use of budget, organizational description, and any other appropriate means, that the state will devote adequate funds to the administration and enforcement of the public employee program. The Assistant Secretary will make the periodic evaluations of the adequacy of the resources the state has devoted to the plan.

29 CFR 1956.10(i) - Employer records and reports. The plan shall provide assurances that public employers covered by the plan will maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private employers under the Act.

29 CFR 1956.10(j) - State agency reports to the Assistant Secretary. The plan shall provide assurances that the designated agency or agencies shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require. The agency or agencies shall establish specific goals consistent with the goals of the Act, including measures of performance, output, and results which will determine the efficiency and effectiveness of the state program for public employees, and shall make periodic reports to the Assistant Secretary on the extent to which the state, in implementation of its plan, has attained these goals. Reports will also include data and information on the implementation of the specific inspection and voluntary compliance activities included within the plan. Further, these reports shall contain such statistical information pertaining to work-related deaths, injuries and

illnesses in employments and places of employment covered by the plan as the Assistant Secretary may from time to time require.

Indices of Effectiveness (§1956.11)

29 CFR 1956.11(a) - General. In order to satisfy the requirements of effectiveness under §1956.10 (c)(1) and (d)(1), the State Plan for public employees shall:

29 CFR 1956.11(a)(1) - Establish the same standards, procedures, criteria, and rules as have been established by the Assistant Secretary under the act; or

29 CFR 1956.11(a)(2) - Establish alternative standards, procedures, criteria, and rules which will be measured against each of the indices of effectiveness in Paragraphs (b) and (c) of this section to determine whether the alternatives are at least as effective as the federal program for private employees, where applicable, with respect to the subject of each index. For each index the state must demonstrate by the presentation of factual or other appropriate information that its plan for public employees will, to the extent practicable, be at least as effective as the federal program for private employees.

29 CFR 1956.11(d) - Additional indices. Upon his own motion, or after consideration of data, views, and arguments received in any proceedings held under Subpart C of this part, the Assistant Secretary may prescribe additional indices for any State Plan for public employees which shall be in furtherance of the purpose of this section.

7. 29 CFR 1956, Subpart C -- Approval, Change, Evaluation and Withdrawal of Approval Procedures

Procedures for Submission, Approval, and Rejection (§1956.20)

29 CFR 1956.20 - The procedures contained in Subpart C of Part 1902 of this chapter shall be applicable to submission, approval, and rejection of State Plans submitted under this part, except that the information required in §1902.20(b)(1)(iii) would not be included in decisions of approval.

Procedures for Certification of Completion of Development and Determination on Application of Criteria (§1956.23)

29 CFR 1956.23 - The procedures contained in §§1902.33 and 1902.34 of this chapter shall be applicable to certification of completion of developmental steps under plans approved in

accordance with this part. Such certification shall initiate intensive monitoring of actual operations of the developed plan, which shall continue for at least a year after certification, at which time a determination shall be made under the procedures and criteria of §§1902.38, 1902.39, 1902.40 and 1902.41, that on the basis of actual operations, the criteria set forth in §§1956.10 and 1956.11 of this part are being applied under the plan. The factors listed in §1902.37(b) of this chapter, except those specified in §1902.37(b)(11) and (12) which would be adapted to the state's compliance program provide the basis for making the determination of operational effectiveness.

Purpose (Establishment of a State Plan; 29 CFR Part 1902, Subparts A-D; 29 CFR Part 1956, Subparts A-D): The State Plan document as approved provides information to the public, to affected employers and employees, and to OSHA on the structural components of the OSHA-approved State Plan. The State Plan document contains copies of state enabling legislation, as well as all standards, regulations, policies, and procedures - either in final adopted form or as a proposal with a future commitment to implement within a three-year developmental period. As regularly updated through State Plan changes (see the following category), it has become a voluminous collection of documents, the most current components of which are now readily accessible through electronic means, primarily posting on state websites. It is used primarily for technical research and reference when questions of state authority or performance arise.

These regulations establish the conditions that must be met by any state seeking OSHA approval either of a complete State Plan, covering both the private sector and state and local government employer (Part 1902), or a State Plan limited in scope to state and local government employers only (Part 1956). The State Plan is a one-time submission which begins with the governor's letter designating a state agency responsible for the plan and indicating the state's intent to seek federal approval to assume state responsibility for occupational safety and health enforcement in that state. The regulations establish the criteria for State Plans, the procedures for initial State Plan approval or rejection, and the procedures for final State Plan approval, in the case of a complete State Plan, and in Part 1956 document the submission and approval process for State and Local Government Employee Only State Plans.

B. State Plan Changes (29 CFR Part 1953)

Purpose and Scope (§1953.1)

29 CFR 1953.1(a) - This part implements the provisions of Section 18 of the Occupational Safety and Health Act of 1970 ("OSH Act" or the "Act") which provides for State Plans for the

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development and enforcement of state occupational safety and health standards. These plans must meet the criteria in Section 18(c) of the Act, and Part 1902 of this chapter (for plans covering both private sector and state and local government employers) or Part 1956 of this chapter (for plans covering only state and local government employers), either at the time of submission or—where the plan is developmental—within the three year period immediately following commencement of the plan's operation. Approval of a State Plan is based on a finding that the state has, or will have, a program, pursuant to appropriate state law, for the adoption and enforcement of state standards that is “at least as effective” as the federal program.

29 CFR 1953.1(b) - When submitting plans, the states provide assurances that they will continue to meet the requirements in Section 18(c) of the Act and Part 1902 or Part 1956 of this chapter for a program that is “at least as effective” as the federal. Such assurances are a fundamental basis for approval of plans. (See §1902.3 and §1956.2 of this chapter.) From time to time after initial plan approval, states will need to make changes to their plans. This part establishes procedures for submission and review of State Plan supplements documenting those changes that are necessary to fulfill the state's assurances, the requirements of the Act, and Part 1902 or Part 1956 of this chapter.

29 CFR 1953.1(c) - Changes to a plan may be initiated in several ways. In the case of a developmental plan, changes are required to document establishment of those necessary structural program components that were not in place at the time of plan approval. These commitments are included in a developmental schedule approved as part of the initial plan. These “developmental changes” must be completed within the three year period immediately following the commencement of operations under the plan. Another circumstance requiring subsequent changes to a State Plan would be the need to keep pace with changes to the federal program, or “federal program changes.” A third situation would be when changes are required as a result of the continuing evaluation of the state program. Such changes are called “evaluation changes.” Finally, changes to a state program's safety and health requirements or procedures initiated by the state without a federal parallel could have an impact on the effectiveness of the state program. Such changes are called “state-initiated changes.” While requirements for submission of a plan supplement to OSHA differ depending on the type of change, all supplements are processed in accordance with the procedures in §1953.6.

Definitions (§1953.2)

29 CFR 1953.2(c) - *Plan change* means any modification made by a state to its approved occupational safety and health State Plan which has an impact on the plan's effectiveness.

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29 CFR 1953.2(d) - Plan supplement means all documents necessary to accomplish, implement, describe and evaluate the effectiveness of a change to a State Plan which differs from the parallel federal legislation, regulation, policy, or procedure. (This would include a copy of the complete legislation, regulation, policy, or procedure adopted; an identification of each of the differences; and an explanation of how each provision is at least as effective as the comparable federal provision.)

29 CFR 1953.2(e) - Identical plan change means one in which the state adopts the same program provisions and documentation as the federal program with the only differences being those modifications necessary to reflect a state's unique structure (e.g., organizational responsibility within a state and corresponding titles or internal state numbering system).

29 CFR 1953.2(f) - Different plan change means one in which the state adopts program provisions and documentation that are not identical as defined in this paragraph.

29 CFR 1953.2(g) - Developmental change is a change made to a State Plan which documents the completion of a program component which was not fully developed at the time of initial plan approval.

29 CFR 1953.2(h) - Federal program change is a change made to a State Plan when OSHA determines that an alteration in the federal program could render a state program less effective than OSHA's if it is not similarly modified.

29 CFR 1953.2(i) - Evaluation change is a change made to a State Plan when evaluations of a state program show that some substantive aspect of a State Plan has an adverse impact on the implementation of the state's program and needs revision.

29 CFR 1953.2(j) - State-initiated change is a change made to a State Plan which is undertaken at a state's option and is not necessitated by federal requirements.

General Policies and Procedures (§1953.3)

29 CFR 1953.3(a) - Effectiveness of State Plan changes under state law. Federal OSHA approval of a State Plan under Section 18(b) of the OSH Act in effect removes the barrier of federal preemption, and permits the state to adopt and enforce state standards and other requirements regarding occupational safety or health issues regulated by OSHA. A state with an approved plan may modify or supplement the requirements contained in its plan, and may implement such requirements under state law, without prior approval of the plan change by federal OSHA. Changes to approved State Plans are subject to subsequent OSHA review. If

OSHA finds reason to reject a State Plan change, and this determination is upheld after an adjudicatory proceeding, the plan change would then be excluded from the state's federally-approved plan.

(b) - Required State Plan notifications and supplements. Whenever a state makes a change to its legislation, regulations, standards, or major changes to policies or procedures, which affect the operation of the State Plan, the state shall provide written notification to OSHA. When the change differs from a corresponding federal program component, the state shall submit a formal, written plan supplement. When the state adopts a provision which is identical to a corresponding federal provision, written notification, but no formal plan supplement, is required. However, the state is expected to maintain the necessary underlying state document (e.g., legislation or standard) and to make it available for review upon request. All plan change supplements or required documentation must be submitted within 60 days of adoption of the change. Submission of all notifications and supplements may be in electronic format.

29 CFR 1953.3(c) - Plan supplement availability. The underlying documentation for identical plan shall be maintained by the state. Annually, states shall submit updated copies of the principal documents comprising the plan, or appropriate page changes, to the extent that these documents have been revised. To the extent possible, plan documents will be maintained and submitted by the state in electronic format and also made available in such manner.

29 CFR 1953.3(d) - Advisory opinions. Upon state request, OSHA may issue an advisory opinion on the approvability of a proposed change which differs from the federal program prior to promulgation or adoption by the state and submission as a formal supplement.

29 CFR 1953.3(e) - Alternative procedures. Upon reasonable notice to interested persons, the Assistant Secretary may prescribe additional or alternative procedures in order to expedite the review process or for any other good cause which may be consistent with the applicable laws.

Submission of Plan Supplements (§1953.4)

29 CFR 1953.4(a)(1) - Developmental changes. Sections 1902.2(b) and 1956.2(b) of this chapter require that each state with a developmental plan must set forth in its plan, as developmental steps, those changes which must be made to its initially-approved plan for its program to be at least as effective as the federal program and a timetable for making these changes. The state must notify OSHA of a developmental change when it completes a developmental step or fails to meet any developmental step.

29 CFR 1953.4(a)(2) - If the completion of a developmental step is the adoption of a program component which is identical to the federal program component, the state need only submit documentation, such as the cover page of an implementing directive or a notice of promulgation, that it has adopted the program component, within 60 days of adoption of the change, but must make the underlying documentation available for federal and public review upon request.

29 CFR 1953.4(a)(3) - If the completion of a developmental step involves the adoption of policies or procedures which differ from the federal program, the state must submit one copy of the required plan supplement within 60 days of adoption of the change.

29 CFR 1953.4(a)(4) - When a developmental step is missed, the state must submit a supplement which documents the impact on the program of the failure to complete the developmental step, an explanation of why the step was not completed on time and a revised timetable with a new completion date (generally not to exceed 90 days) and any other actions necessary to ensure completion. Where the state has an operational status agreement with OSHA under §1954.3 of this chapter, the state must provide an assurance that the missed step will not affect the effectiveness of state enforcement in any issues for which the state program has been deemed to be operational.

29 CFR 1953.4(a)(5) - If the state fails to submit the required documentation or supplement, as provided in §1953.4(a)(2), (3) or (4), when the developmental step is scheduled for completion, OSHA shall notify the state that documentation or a supplement is required and set a timetable for submission of any required documentation or supplement, generally not to exceed 60 days.

29 CFR 1953.4(b)(1) - *Federal program changes.* When a significant change in the federal program would have an adverse impact on the “at least as effective” status of the state program if a parallel state program modification were not made, state adoption of a change in response to the federal program change shall be required. A federal program change that would not result in any diminution of the effectiveness of a State Plan compared to federal OSHA generally would not require adoption by the state.

29 CFR 1953.4(b)(2) - Examples of significant changes to the federal program that would normally require a state response would include a change in the Act, promulgation or revision of OSHA standards or regulations, or changes in policy or procedure of national importance. A federal program change that only establishes procedures necessary to implement a new or established policy, standard or regulation does not require a state response, although the state would be expected to establish policies and procedures which are “at least as effective,” which must be available for review on request.

29 CFR 1953.4(b)(3) - When there is a change in the federal program which requires state action, OSHA shall advise the states. This notification shall also contain a date by which states must adopt a corresponding change or submit a statement why a program change is not necessary. This date will generally be six months from the date of notification, except where the Assistant Secretary determines that the nature or scope of the change requires a different time frame, for example, a change requiring legislative action where a state has a biennial legislature or a policy of major national implications requiring a shorter implementing time frame. State notification of intent may be required prior to adoption.

29 CFR 1953.4(b)(4) - If the state change is different from the federal program change, the state shall submit one copy of the required supplement within 60 days of state adoption. The supplement shall contain a copy of the relevant legislation, regulation, policy, or procedure and documentation on how the change maintains the “at least as effective as” status of the plan.

29 CFR 1953.4(b)(5) - If the state adopts a change identical to the federal program change, the state is not required to submit a supplement. However, the state shall provide documentation that it has adopted the change, such as the cover page of an implementing directive or a notice of promulgation, within 60 days of state adoption.

29 CFR 1953.4(b)(6) - The state may demonstrate why a program change is not necessary because the state program is already the same as or at least as effective as the federal program change. Such submissions will require review and approval as set forth in §1953.6.

29 CFR 1953.4(b)(7) - Where there is a change in the federal program which does not require state action but is of sufficient national interest to warrant indication of state intent, the state may be required to provide such notification within a specified time frame.

29 CFR 1953.4(c)(1) - Evaluation changes. Special and periodic evaluations of a state program by OSHA in cooperation with the state may show that some portion of a State Plan has an adverse impact on the effectiveness of the state program and accordingly requires modification to the state's underlying legislation, regulations, policy, or procedures as an evaluation change. For example, OSHA could find that additional legislative or regulatory authority may be necessary to effectively pursue the state's right of entry into workplaces or to assure various employer rights.

29 CFR 1953.4(c)(2) - OSHA shall advise the state of any evaluation findings that require a change to the State Plan and the reasons supporting this decision. This notification shall also contain a date by which the state must accomplish this change and submit either the change

supplement or a timetable for its accomplishment and interim steps to assure continued program effectiveness, documentation of adoption of a program component identical to the federal program component, or, as explained in Paragraph (c)(5) of this section, a statement demonstrating why a program change is not necessary.

29 CFR 1953.4(c)(3) - If the state adopts a program component which differs from a corresponding federal program component, the state shall submit one copy of a required supplement within 60 days of adoption of the change. The supplement shall contain a copy of the relevant legislation, regulation, policy, or procedure and documentation on how the change maintains the “at least as effective as” status of the plan.

29 CFR 1953.4(c)(4) - If the state adopts a program component identical to a federal program component, submission of a supplement is not required. However, the state shall provide documentation that it has adopted the change, such as the cover page of an implementing directive or a notice of promulgation, within 60 days of adoption of the change and shall retain all other documentation within the state available for review upon request.

29 CFR 1953.4(c)(5) - The state may demonstrate why a program change is not necessary because the state program is meeting the requirements for an “at least as effective” program. Such submission will require review and approval as set forth in §1953.6.

29 CFR 1953.4(d)(1) - *State-initiated changes.* A state-initiated change is any change to the State Plan which is undertaken at a state's option and is not necessitated by federal requirements. State-initiated changes may include legislative, regulatory, administrative, policy, or procedural changes which impact on the effectiveness of the state program.

29 CFR 1953.5(d)(2) - A state-initiated change supplement is required whenever the state takes an action not otherwise covered by this part that would impact on the effectiveness of the state program. The state shall notify OSHA as soon as it becomes aware of any change which could affect the state's ability to meet the approval criteria in Parts 1902 and 1956 of this chapter, e.g., changes to the state's legislation, and submit a supplement within 60 days. Other state-initiated supplements must be submitted within 60 days after the change occurred. The state supplement shall contain a copy of the relevant legislation, regulation, policy or procedure and documentation on how the change maintains the “at least as effective as” status of the plan. If the state fails to notify OSHA of the change or fails to submit the required supplement within the specified time period, OSHA shall notify the state that a supplement is required and set a time period for submission of the supplement, generally not to exceed 30 days.

Special Provisions for Standards Changes (§1953.5)

29 CFR 1953.5(a)(1) - Permanent standards. Where a federal program change is a new permanent standard, or a more stringent amendment to an existing permanent standard, the state shall promulgate a state standard adopting such new federal standard, or more stringent amendment to an existing federal standard, or an at least as effective equivalent thereof, within six months of the date of promulgation of the new federal standard or more stringent amendment. The state may demonstrate that a standard change is not necessary because the state standard is already the same as or at least as effective as the federal standard change. In order to avoid delays in worker protection, the effective date of the state standard and any of its delayed provisions must be the date of state promulgation or the federal effective date whichever is later. The Assistant Secretary may permit a longer time period if the state makes a timely demonstration that good cause exists for extending the time limitation. State permanent standards adopted in response to a new or revised federal standard shall be submitted as a State Plan supplement within 60 days of state promulgation in accordance with §1953.4(b), federal program changes.

29 CFR 1953.5(a)(2) - Because a state may include standards and standards provisions in addition to federal standards within an issue covered by an approved plan, it would generally be unnecessary for a state to revoke a standard when the comparable federal standard is revoked or made less stringent. If the state does not adopt the federal action, it need only provide notification of its intent to retain the existing state standard to OSHA within six months of the federal promulgation date. If the state adopts a change to its standard parallel to the federal action, it shall submit the appropriate documentation as provided in §§1953.4(b)(3) or (4)—federal program changes. However, in the case of standards applicable to products used or distributed in interstate commerce where Section 18(c)(2) of the Act imposes certain restrictions on State Plan authority, the modification, revision, or revocation of the federal standard may necessitate the modification, revision, or revocation of the comparable state standard unless the state standard is required by compelling local conditions and does not unduly burden interstate commerce.

29 CFR 1953.5(a)(3) - Where a state on its own initiative adopts a permanent state standard for which there is no federal parallel, the state shall submit it within 60 days of state promulgation in accordance with §1953.4(d)—state-initiated changes,

29 CFR 1953.5(b)(1) - Emergency temporary standards. Immediately upon publication of an emergency temporary standard in the *Federal Register*, OSHA shall advise the states of the standard and that a federal program change supplement shall be required. This notification must also provide that the state has 30 days after the date of promulgation of the federal standard to adopt a state emergency temporary standard if the State Plan covers that issue. The state may

demonstrate that promulgation of an emergency temporary standard is not necessary because the state standard is already the same as or at least as effective as the federal standard change. The state standard must remain in effect for the duration of the federal emergency temporary standard which may not exceed six (6) months.

29 CFR 1953.5(b)(2) - Within 15 days after receipt of the notice of a federal emergency temporary standard, the state shall advise OSHA of the action it will take. State standards shall be submitted in accordance with the applicable procedures in §1953.4(b)—federal program changes, except that the required documentation or plan supplement must be submitted within five days of state promulgation.

29 CFR 1953.5(b)(3) - If for any reason, a state on its own initiative adopts a state emergency temporary standard, it shall be submitted as a plan supplement in accordance with §1953.4(c), but within ten days of promulgation.

Review and Approval of Plan Supplements (§1953.6)

29 CFR 1953.6(a) - OSHA shall review a supplement to determine whether it is at least as effective as the federal program and meets the criteria in the Act and implementing regulations and the assurances in the State Plan. If the review reveals any defect in the supplement, or if more information is needed, OSHA shall offer assistance to the state and shall provide the state an opportunity to clarify or correct the change.

29 CFR 1953.6(e) - If a state fails to submit a required supplement or if examination discloses cause for rejecting a submitted supplement, OSHA shall provide the state a reasonable time, generally not to exceed 30 days, to submit a revised supplement or to show cause why a proceeding should not be commenced either for rejection of the supplement or for failure to adopt the change in accordance with the procedures in §1902.17 or Part 1955 of this chapter.

Procedures for Submitting Changes (§1956.21)

29 CFR 1956.21 - The procedures contained in Part 1953 of this chapter shall be applicable to submission and consideration of developmental, federal program, evaluation, and state-initiated change supplements to plans approved under this part.

Purpose (State Plan Changes, 29 CFR Part 1953, Procedures for Submitting Changes, 29 CFR 1956.21): OSHA collects specified information from the State Plan regarding formal changes to the State Plan's standards or policy documents in order to ensure continued program effectiveness. State Plans must also have operating procedures equivalent to those

in the federal program and must respond to all changes in the federal program by submitting parallel state policies and procedures through web-links or electronic copies if state procedures differ from the federal. The information is used for comparison to the federal program; to determine equivalent effectiveness and continued plan approvability; and to respond to questions from the public, employers, and employees, the Congress, and other oversight agencies with regard to one or multiple states' authority, procedures, and practices. Summary information is posted on OSHA's website. States are also periodically asked to respond to requests, both formally and informally, for information on the structural components or operational practices of their programs. The information is used to verify that the State Plan is providing worker protections that are "at least as effective as" those provided by OSHA.

State Plans are initially approved if they contain sufficient documentation, in the form of statutes, regulations, standards, policies, and procedures, to demonstrate that the State Plan meets certain structural criteria and has the institutional capacity to run a program that is "at least as effective as" the federal program. The State Plan may be incomplete at the time of initial approval, but must adopt and submit all necessary structural components within three years of plan approval (developmental plan changes). Any subsequent changes that are made to the state's program or practice by legislation, regulation, administrative or budgetary action, or on its own initiative, must also be documented (state initiated change). When changes are made to the federal program which would render the state program no longer "at least as effective as" OSHA, the State Plan must adopt and submit appropriate documentation of a parallel state change for review and approval (federal program change). Where federal monitoring and evaluation of a State Plan results in a determination that state legislation, regulation, policy, procedure, practice, or administrative or budgetary action renders the program not "at least as effective" as the federal program in structure or performance, documentation of appropriate corrective action must be submitted for approval (evaluation plan change). State occupational safety and health standards constitute a subset of state initiated changes and federal program changes and must be submitted for approval with appropriate documentation.

State Plan change documents are submitted for review and approval where significant and serve to modify the approved State Plan. Formal federal approval of the most significant changes may be communicated to the state. Since OSHA-approved State Plans operate under authority of state law, all program modifications take effect upon state adoption and remain in effect unless rejected by OSHA through a formal adjudicatory process. On September 15, 2002, OSHA promulgated amendments to these regulations that sought to reduce the number of submissions requiring formal approval, as long as the state maintains appropriate policy documentation which is available to OSHA and the regulated public for

review. State Plans are now required to document all changes to their program, including any response to a program change that adopts policy or procedures parallel to the federal, through electronic means, by either posting the change on their state website or submitting an electronic copy to OSHA. In addition, a web-based data system of automated state responses and tracking of plan changes, together with web posting/electronic submission of plan changes, contribute to a reduction from the original burden hours. As part of an effort to make information on State Plan standards and policies/directives more readily accessible, OSHA and the Occupational Safety and Health State Plan Association (OSHSPA) have developed a system for displaying a summary of the State Plans' responses to new federal standards and directives as obtained through the data system on OSHA's website.

As part of its effort to be responsive to issues and events, OSHA periodically seeks up-to-date summary information from the states by e-mail, phone, or memorandum on specific provisions of their programs and/or activities. States usually respond by e-mail with the requested information, providing either web links to, or electronic copies of, relevant documents. This information is consolidated for all State Plans into a reference document. The information sought relates either to specific aspects of the states' operations that is already reflected in State Plan documentation or to specific ongoing activities, e.g., an inspection. States are not asked to create new information in this process or to query outside entities. For example, OSHA may need to display which of the approved State Plans have a state standard that differs from the federal and what those differences are. In the interest of accuracy and timeliness, the states are asked to provide summary information.

C. Monitoring and Evaluation (29 CFR 1954 and 1956)

1. 29 CFR 1954, Subpart A -- General

Monitoring System (§1954.2)

29 CFR 1954.2(a) - To carry out the responsibilities for continuing evaluation of State Plans under Section 18(f) of the Act, the Assistant Secretary has established a State Program Performance Monitoring System. Evaluation under this monitoring system encompasses both the period before and after a determination has been made under Section 18(e) of the Act. The monitoring system is a three phased system designed to assure not only that developmental steps are completed and that the operational plan is, in fact, at least as effective as the federal program with respect to standards and enforcement, but also to provide a method for continuing review of the implementation of the plan and any modifications thereto to assure compliance with the provisions of the plan during the time the state participates in the cooperative federal-state program.

29 CFR 1954.2(b) - Phase I of the system begins with the initial approval of a State Plan and continues until the determination required by Section 18(e) of the Act is made. During Phase I, the Assistant Secretary will secure monitoring data to make the following key decisions:

29 CFR 1954.2(b)(1) - What should be the level of federal enforcement;

29 CFR 1954.2(b)(2) - Should plan approval be continued; and

29 CFR 1954.2(b)(3) - What level of technical assistance is needed by the state to enable it to have an effective program.

29 CFR 1954.2(c) - Phase II of the system relates to the determination required by Section 18(e) of the Act. The Assistant Secretary must decide, after no less than three years following approval of the plan, whether or not to relinquish federal authority to the state for issues covered by the occupational safety and health program in the State Plan. Phase II will be a comprehensive evaluation of the total state program, drawing upon all information collected during Phase I.

29 CFR 1954.2(d) - Phase III of the system begins after an affirmative determination has been made under Section 18(e) of the Act. The continuing evaluation responsibility will be exercised under Phase III, and will provide data concerning the total operations of a state program to enable the Assistant Secretary to determine whether or not the plan approval should be continued or withdrawn.

29 CFR 1954.2(e) - The State Program Performance Monitoring System provides for, but is not limited to, the following major data inputs:

29 CFR 1954.2(e)(1) - Quarterly and annual reports of state program activity;

29 CFR 1954.2(e)(2) - Visits to state agencies;

29 CFR 1954.2(e)(3) - On-the-job evaluation of state compliance officers; and

29 CFR 1954.2(e)(4) - Investigation of Complaints About State Program Administration.

Exercise of Federal Discretionary Authority (§1954.3)

29 CFR 1954.3(f)(1) - Procedural agreements. A determination as to the operational status of a State Plan shall be accompanied by an agreement with the state setting forth the federal-state responsibilities as follows:

29 CFR 1954.3(f)(1)(i) - Scope of the state's operational status including the issues excluded from the plan, the issues where state enforcement will not be operational at the time of the agreement and the dates for commencement of operations;

29 CFR 1954.3(f)(1)(ii) - Procedures for referral, investigation and enforcement of employee requests for inspections;

29 CFR 1954.3(f)(1)(iii) - Procedures for reporting fatalities and catastrophes by the agency which has received the report to the responsible enforcing authority both where the state has and has not adopted the requirement that employers report as provided in 29 CFR 1904.8;

29 CFR 1954.3(f)(1)(iv) - Specifications as to when and by what means the operational guidelines of this section were met; and

29 CFR 1954.3(f)(1)(v) - Provision for resumption of federal enforcement activity for failure to substantially comply with this agreement, or as a result of evaluation or other relevant factors.

2. 29 CFR 1954.10, Subpart B -- State Monitoring Reports and Visits to State Agencies

Reports from the States (§1954.10)

29 CFR 1954.10(a) - In addition to any other reports required by the Assistant Secretary under Sections 18(c)(8) and 18(f) of the Act and §1902.3(1) of this chapter, the state shall submit quarterly and annual reports as part of the evaluation and monitoring of state programs.¹

¹Such quarterly and annual reports forms may be obtained from the Office of the Assistant Regional Director in whose region the state is located.

29 CFR 1954.10(b) - Each state with an approved State Plan shall submit to the appropriate Regional Office an annual occupational safety and health report in the form and detail provided for in the report and the instructions contained therein.

29 CFR 1954.10(c) - Each state with an approved State Plan shall submit to the appropriate Regional Office a quarterly occupational safety and health compliance and standards activity report in the form and detail provided for in the report and the instructions contained therein.

Visits to State Agencies (§1954.11)

29 CFR 1954.11 - As a part of the continuing monitoring and evaluation process, the Assistant Secretary or his representative shall conduct visits to the designated agency or agencies of state with approved plans at least every six months. An opportunity may also be provided for discussion and comments on the effectiveness of the State Plan from other interested persons. These visits will be scheduled as needed. Periodic audits will be conducted to assess the progress of the overall state program in meeting the goal of becoming at least as effective as the federal program. These audits will include case file review and follow-up inspections of workplaces.

3. 29 CFR 1954, Subpart C -- Complaints About State Program Administration (CASPA)

Complaints About State Program Administration (§1954.20)

29 CFR 1954.20(a) - Any interested person or representative of such person or groups of persons may submit a complaint concerning the operation or administration of any aspect of a State Plan. The complaint may be submitted orally or in writing to the Assistant Regional Director for Occupational Safety and Health (hereinafter referred to as the Assistant Regional Director) or his representative in the region where the state is located.

29 CFR 1954.20(b) - Any such complaint should describe the grounds for the complaint and specify the aspect or aspects of the administration or operation of the plan which is believed to be inadequate. A pattern of delays in processing cases, of inadequate workplace inspections, or the granting of variances without regard to the specifications in the State Plans, are examples.

29 CFR 1954.20(c)(1) - If upon receipt of the complaint, the Assistant Regional Director determines that there are reasonable grounds to believe that an investigation should be made, he shall cause such investigation, including any workplace inspection, to be made as soon as practicable.

29 CFR 1954.20(c)(2) - In determining whether an investigation shall be conducted and in determining the timing of such investigation, the Assistant Regional Director shall consider such factors as:

29 CFR 1954.20(c)(2)(i) - The extent to which the complaint affects any substantial number of persons;

29 CFR 1954.20(c)(2)(ii) - The number of complaints received on the same or similar issues and whether the complaints relate to safety and health conditions at a particular establishment;

29 CFR 1954.20(c)(2)(iii) - Whether the complainant has exhausted applicable state remedies;
and

29 CFR 1954.20(c)(2)(iv) - The extent to which the subject matter of the complaint is pertinent to the effectuation of federal policy.

Processing and Investigating a Complaint (§1954.21)

29 CFR 1954.21(a) - Upon receipt of a complaint about state program administration, the Assistant Regional Director will acknowledge its receipt and may forward a copy of the complaint to the designee under the State Plan and to such other person as may be necessary to complete the investigation. The complainant's name and the names of other complainants mentioned therein will be deleted from the complaint and the names shall not appear in any record published, released or made available.

29 CFR 1954.21(b) - In conducting the investigation, the Assistant Regional Director may obtain such supporting information as is appropriate to the complaint. Sources for this additional information may include "spot-check" follow-up inspections of workplaces, review of the relevant state files, and discussion with members of the public, employers, employees and the state.

29 CFR 1954.21(c) - On the basis of the information obtained through the investigation, the Assistant Regional Director shall advise the complainant of the investigation findings and in general terms, any corrective action that may result. A copy of such notification shall be sent to the state and it shall be considered part of the evaluation of the State Plan.

29 CFR 1954.21(d) - If the Assistant Regional Director determines that there are no reasonable grounds for an investigation to be made with respect to a complaint under this subpart, he shall notify the complaining party in writing of such determination. Upon request of the complainant, or the state, the Assistant Regional Director, at his discretion, may hold an informal conference. After considering all written and oral views presented the Assistant Regional Director shall affirm, modify, or reverse his original determination and furnish the complainant with written notification of his decision and the reasons therefore. Where appropriate, the state may also receive such notification.

Notice Provided by State (§1954.22)

29 CFR 1954.22(a)(1) - In order to assure that employees, employers, and members of the public are informed of the procedures for Complaints About State Program Administration, each state with an approved State Plan shall adopt not later than July 1, 1974, a procedure not inconsistent with these regulations or the Act, for notifying employees, employers and the public of their right to complain to the Occupational Safety and Health Administration about state program administration.

29 CFR 1954.22(a)(2) - Such notification may be by posting of notices in the workplace as part of the requirement in §1902.4(c)(2)(iv) of this chapter and other appropriate sources of information calculated to reach the public.

Procedures for Evaluation and Monitoring of State Plans for State and Local Government Employees Only (§1956.22)

29 CFR 1956.22 - The procedures contained in Part 1954 of this chapter shall be applicable to evaluation and monitoring of State Plans approved under this part, except that the decision to relinquish federal enforcement authority under Section 18(e) of the Act is not relevant to Phase II and III monitoring under §1954.2 and the guidelines of exercise of federal discretionary enforcement authority provided in §1954.3 are not applicable to plans approved under this part. The factors listed in §1902.37(b) of this chapter, except those specified in §1902.37(b)(11) and (12), which would be adapted to the state compliance program, provide the basis for monitoring.

Purpose (Monitoring and Evaluation, 29 CFR Part 1954, Procedures for Evaluation and Monitoring, 29 CFR 1956.22): Most information and data collected for monitoring and evaluation is developed federally or as a part of the states' routine program operation, including data entry into the consolidated federal-state data system. Where information is not captured electronically, the State Plans are required to submit copies of relevant actions for monitoring oversight, including strategic and annual performance plans, which also serve grant funding application purposes. State Plans must provide formal responses to program performance complaint investigations, evaluation reports, and special monitoring studies, including development of corrective action plans, as appropriate. This information is used by OSHA to establish whether there are program deficiencies and, if so, to ensure their correction. This information is also of interest to the public, the Congress, and employers and employees as a means of external assessment of satisfactory program operation. OSHA conducted special expanded monitoring efforts covering FY 2009 and follow-up reports on FY 2010 State Plan performance which entailed increased federal oversight, including review of a subset of state enforcement case files. The State Plans were required to respond in more specific detail to these reports and to develop detailed corrective action plans with

appropriate follow-up documentation. This has resulted in an increase in paperwork burden hours for the State Plans.

OSHA's monitoring obligation and implementation procedures for evaluating State Plan effectiveness remain essentially the same throughout the life of a state's program (initial approval and developmental period, final approval, continued approval) and are primarily a federal responsibility. The monitoring procedures are conducted on a fiscal year basis with regular quarterly review of state-supplied and computer generated information, and result in the issuance of annual federal evaluation reports on each state's effectiveness. The focus of OSHA's monitoring is on state progress in achieving approved performance goals, on meeting mandated requirements of the OSH Act and regulations, and assessing whether State Plan performance regarding standards and enforcement is "at least as effective" as federal performance. States establish and document their goals in periodically updated five-year strategic plans and annual performance plans which are included in the narrative portion of the State Plan's annual grant submission. Data on state and federal performance are available through the consolidated federal-state data system which is maintained and operated by federal OSHA.

On a quarterly basis, OSHA regional staff have discussions with state officials on their progress in meeting goals and their performance on mandated program activities. States have primary responsibility for providing information on performance goal progress through state tracking systems. States participate in OSHA's consolidated federal-state data system (the Integrated Management Information System (IMIS) and its successor, the OSHA Information System (OIS)), providing data on program activities in the same manner as a federal office, including the inspection data required by Executive Order 13673, Fair Pay and Safe Workplaces. Thus, complete data on the usual and customary activities of the states' enforcement, compliance assistance, and non-discrimination programs are available to OSHA. Data needed to evaluate state performance are produced through federally developed and generated reports using agreed upon measures. Federal officials conduct performance analysis and prepare annual evaluation reports. States participate to varying degrees in assessing information and prepare formal annual self-evaluation reports on their performance. In addition, states respond to federal reports, including commitments for any needed corrective action.

Beginning in 2010, in response to concerns about specific State Plan performance issues, e.g., construction fatalities in Nevada, federal monitoring has become more rigorous resulting in additional expectations for more detailed state responses to report findings and documentation of specific follow-up actions through corrective action plans, etc. Special federal evaluation reports were generated on each of the approved State Plans covering FY

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2009 and FY 2010 performance. The expanded effort is expected to continue to the extent that federal resources permit. Federal review of case files and staff and stakeholder interviews are included in this expanded effort. States are provided full opportunity to participate in these efforts and respond to findings, both formally and informally. Similarly, Complaints About State Program Administration (CASPA) are investigated federally with state opportunity for input and response. CASPA investigations are a way to ensure that individual concerns about the operation of a State Plan which reflect systemic deficiencies in the program are corrected.

For information and/or data not part of a currently established electronic data system, the states on occasion may be asked to provide copies of specific action items, such as variances granted or significant review board decisions for review and monitoring.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce the burden.

Data on State Plan day-to-day activity is collected electronically through a unified federal-state data system. (This data is part of the “usual and customary” information that any state regulatory agency would collect as part of its routine operation, management, and accountability functions and deals with matters that are investigatory in nature.) OSHA has developed the data system and provided it to the states without cost. The necessary computer and network equipment is purchased by the State Plans using available grant funding, and the State Plans are charged monthly for their proportionate share of telecommunication and data processing costs. State Plans actively participate in the design and modification of new and improved systems, and OSHA regularly negotiates with the State Plans to ensure that computer services meet state needs.

Plan changes are submitted electronically through e-mail with the most basic authorizing and implementing documents posted on state and federal websites. OSHA deployed an automated system for tracking the submission and review of plan changes in FY 2003. Summary reports of state responses are posted for public information on OSHA's website. Activities associated with monitoring are arranged and negotiated through electronic means.

Annual State Plan grant applications submitted under Section 23(g) of the Act are now submitted electronically through <http://www.grants.gov/>. Although electronic submission of the grant forms is mandatory, only two forms (SF 424 or 424A) are actually completed online. All other documents are submitted as scanned documents resulting in minimal to no change in preparation time and burden hours for grant submissions. However, most State Plans have been in operation for over 30 years and have established internal electronic templates for their grant submissions, requiring only

annual updates.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use of the purposes described in Item 2 above.

The submission of multiple copies of documents has been eliminated through electronic submission. State Plans are no longer required to submit multiple copies of documents to multiple offices, but may provide the information once through email to the various offices that require the information or by posting the documents on the State Plan's website and providing the URL to OSHA. All information developed is specific to the OSHA program and there is no similar information available.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

These information collections relate solely to participating state agencies. There is no impact on small businesses or other small entities.

6. Describe the consequences to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The information must be collected to fulfill OSHA's statutory responsibility to ensure that state programs are "at least as effective" as the federal program in structure and performance and continue to be so as the federal program changes. Procedural changes have been made to allow state certification of various actions with documentation retained and available within the state if identical to the federal; if actions differ from the federal actions, web posting or electronic submission has replaced formal hard copy submissions. It is essential to the process that states be afforded the opportunity to provide input, explanations, and comment on monitoring findings or other critiques of their structure and/or performance as they impact on continued authority and funding to operate a State Plan.

7. Explain any special circumstances that would cause a collection of information to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;**

- **In connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances for information collection.

8. If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the collection of information prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)), OSHA published a notice in the *Federal Register* (81 FR 4672; January 27, 2016) requesting public comment on its proposed extension of the collections of information associated with federal regulations governing OSHA-approved State Plans (29 CFR Parts 1902, 1953, 1954, and 1956). This notice was part of a preclearance consultation program that provides interested parties with an opportunity to comment. The Agency received no comments in response to this notice.

The Agency generally conducts formal meetings with OSHSPA (the state plan association) three times a year, and with the OSHSPA Board three more times each year where the various policies related to the collections of information are discussed.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

OSHA will not provide payments or gifts to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The respondents to these collections of information are state government agencies which do not require an assurance of confidentiality.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No information of a sensitive nature or other matters that are commonly considered private is associated with these information collections. (As a condition of funding, states are required to provide assurances of nondiscrimination in their operation and with regard to their employees.)

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized costs to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

Summary Table 1, located at the end of this analysis, provides an overview of the estimated respondents, responses, burden hours, and burden hour costs.

A. State Plan Development

There are currently 28 OSHA-approved State Plans. All except five were approved during the 1970's. The New York State and Local Government Employers Only State Plan was approved in June 1984; the New Jersey State and Local Government Employers Only State Plan was approved in January 2001; the Virgin Islands State and Local Government Employers Only State Plan was approved in July 2003; the Illinois State and Local

Government Employers Only State Plan was approved in September 2009; and the Maine State and Local Government Only State Plan was approved in August 2015.

While at various times Montana, Ohio, Massachusetts, West Virginia, Washington, D.C., and Pennsylvania have also expressed interest in the development of a State Plan, none of these states have completed submission of material required for approval of a State Plan. Questions regarding the requirements for submission of a State Plan periodically arise during state legislative sessions. While the submission of a new State Plan is not considered imminent, the estimated number of hours includes a placeholder for the estimated 2,000 required to submit a new State Plan in the event a state decides to submit one.

B. State Plan Changes

Plan change estimates are based on the type of submission and the burden that is associated solely with the preparation of the documentation necessary for submission to OSHA. The effort required to accomplish the action - promulgate a standard, adopt a regulation policy - are all a necessary part of the routine operation of the program. The only burden is the submission.

Developmental changes: The Illinois State and Local Government State Plan, the Virgin Island State and Local Government State Plan, and the Maine State and Local Government State Plan are all expected to submit the developmental plan changes necessary to document the structural completeness of their programs, as pledged at the time of plan approval. Each State Plan is expected to submit up to 15 developmental plan changes during each year of its developmental period. It is estimated that each change requires five hours of staff effort to prepare for submission or **225 hours**.

State-initiated changes: Using the 2014 calendar year as a guideline, it is estimated that four of the approved State Plans submit an average of 12 plan modifications on their own initiative each year. It is estimated that each change requires five hours of staff effort to prepare for submission, or **240 hours**.

Federal program changes: All 28 states are required to respond to an average of eight changes in the federal program each year. Documentation of the changes is submitted by web link or electronic copy, if the policy adopted differs from the federal program. It is estimated that each change requires one hour of staff effort to prepare for submission, or **224 hours**.

Evaluation changes: It is estimated that as many as 15 State Plans may have to make as

many as three changes to their plans per year based on issues discovered during monitoring and evaluation. Each change requires up to six hours of staff effort to prepare for submission, or **270 hours**.

Different State Standards: A State Plan may adopt a state standard different from the federal standard either on its own initiative or in response to a federal standard. Such standards require submission of a detailed comparison to the federal and justification of the differences. (Again, the time spent developing and promulgating the standard is not part of the federal burden.) It is estimated that on average, four states per year develops four different state standards which require ten hours per submission, or **160 hours**.

Requests for Summary Information: Periodically OSHA needs to assemble information on how specific issues are dealt with in each of the 28 states. This information is gathered almost exclusively through informal electronic (e-mail) means, although phone calls and memoranda (transmitted electronically) are sometimes necessary. States are not asked to create new information in this process, or to query outside entities. It is estimated that there are twenty such requests each year which require up to one-half (.5) hour per response, or **280 hours**. Information on State Plan change submissions is collected in an electronic data system with the implementation of an automated log tracking system, and summary information is posted on OSHA's website for public use.

C. Monitoring and Evaluation Activities

On a five- year cycle, all 28 states establish long-range strategic goals (120 hours) for a total of 3,360 hours/5 years, or **672 hours** per year. On an annual basis, the 28 State Plans must prepare performance plans with annualized goals (80 hours each or **2,240 hours**) and submit year-end State Plan self-evaluation reports on goal progress (65 hours each or **1,820**). The performance plans also serve a dual purpose as the narratives for the annual state funding/grant applications and are now scanned and submitted electronically through www.Grants.gov.

On a quarterly basis, 28 states provide interim reports on their goal progress during discussions/meetings with regional staff (8 hours per meeting or **896 total hours**). On a quarterly basis, the 28 states provide other information and/or data which are not part of a currently established electronic data system, including copies of specific action items, such as variances granted or significant review board decisions (2 hours each or **224 total hours**). All 28 states provide responses and corrective action plans, where necessary, in response to the annual federal evaluation report (65 hours each or **1,820 total hours**). In addition, State Plans must respond to other federal reports and special assessments including responses to

Complaints about State Program Administration (CASPA's). It is estimated that on average each state must respond to two CASPA's a year (8 hours effort or **448 total hours**) since some states may have more and some may have none in any given year.

OSHA estimates a total of **11,519** burden hours for the State Plans to comply with the collection of information and reporting requirements of 29 CFR 1902, 1953, 1954, and 1956.

Total Burden Hour Cost to the States: \$363,194

(See Table 1, footnote 1 for wage rates used to estimate costs.)

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life on capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There are no additional costs to the respondents other than their time.

14. Provide estimates of annualized cost to the federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The cost to the federal government is for the review and analysis of the various plan documents and monitoring information (e.g., as provided by 29 CFR 1902.4(b) and (c), 29 CFR 1953.6, and

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1954.1(c) submitted by the State Plans. A professional staff of up to seven Program Analysts in the Directorate of Cooperative and State Programs, Office of State Programs, in Washington, D.C. (average grade GS-13, Step 4 with a salary of \$101,361⁵) spends 30% of its time tracking and reviewing the subject collection of information at a cost of \$212,858 per year. Each of the ten regions has an average of two full-time equivalents (average grade GS-13, Step 1, with a salary of \$73,846⁶) who devote 25% of their time to these functions (\$369,230). Therefore, the total federal review cost is: \$582,088.

15. Explain the reasons for any program changes or adjustments.

The Agency is requesting an adjustment increase to adjust the number of burden hours associated with the developmental steps necessary for certain states in the developmental process, including Maine, Illinois and Virgin Islands. Maine received initial approval on August 5, 2015 and has been moved to the developmental category. As a result, the total burden hours have increased slightly from 11,369 to 11,519 (an increase of 150 burden hours), and the total estimated costs have increased slightly from \$350,434 to \$363,194.

16. For collection of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

OSHA will not generally publish this information. However, summary information on State Plan responses to changes in the federal program is posted on OSHA's website, as are major federal monitoring reports and the States' responses. Most states make detailed information on their statutes, rules, regulations, standards, and policies as submitted to OSHA available on their public websites, and OSHA provides summary information, including links to the state information, on a webpage devoted to each State Plan. All other information is publicly available upon request.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

There are no forms on which to display the expiration date.

18. Explain each exception to the certification statement.

⁵ Source: U.S. Office of Personnel Management, *General Schedule and Locality Tables, Salary Table 2016-DCB* (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/16Tables/html/DCB.aspx>). Base pay; does not include locality pay.

⁶ Source: U.S. Office of Personnel Management, *General Schedule and Locality Tables, Salary Table 2016-GS* (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/16Tables/html/GS.aspx>). Base pay; does not include locality pay.

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OSHA is not seeking an exception to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.

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Table 1 - Summary of Proposed Burden Hours

Collection of Information Requirement	Respondents	Response Frequency	Total Responses	Hours per Response	Current Annual Burden Hours	Proposed Annual Burden Hours	Annual Burden Hour Change	Cost Under Item 12ⁱ
A. State Plan Developmentⁱⁱ	1	1	1	2,000	2,000	2,000	0	\$63,060
B. State Plan Changes								
Developmental	3	15	45	5	75	225	150	
State Initiated	4	12	48	5	240	240	0	
Federal Program	28	8	224	1	224	224	0	
Evaluation	15	3	45	6	270	270	0	
Different Standards	4	4	16	10	160	160	0	
Requests for Summary Info	28	20	560	0.5	280	280	0	
Subtotal					1,249	1,399	150	\$44,110
C. Monitoring & Evaluation Activities								
Quarterly Mtgs.	28	4	112	8	896	896	0	
Strategic Plan	28	0.2	6	120	672	672	0	
Performance Plan/Grant	28	1	28	80	2,240	2,240	0	

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Collection of Information Requirement	Respondents	Response Frequency	Total Responses	Hours per Response	Current Annual Burden Hours	Proposed Annual Burden Hours	Annual Burden Hour Change	Cost Under Item 12
State Annual Report	28	1	28	65	1,820	1,820	0	
State activities reviews/updates	28	4	112	2	224	224	0	
Response to FAME	28	1	28	65	1,820	1,820	0	
Response to CASPAs	28	2	56	8	448	448	0	
Subtotal					8,120	8,120	0	\$256,024
Total	28		1,309		11,369	11,519	150	\$363,194

ⁱ The cost estimate is based on the average salary of a State Plan administrative professional at a \$35.87 hourly rate, and the average salary of state clerical employee at an \$18.52 hourly rate. It is assumed that 75% of the information collection is performed by professional staff and 25% by clerical (a combined rate of \$31.53). Source: Bureau of Labor Statistics News Release, December 9, 2015, Employer Costs for Employee Compensation –September 2015; Table 4: state and local government employer costs per hour worked. (http://www.bls.gov/news.release/archives/ecec_03102016.htm).

ⁱⁱ As of the date of this ICR, there are 28 States operating OSHA-approved State Plans. The State of Maine recently began a new Public Employee Only State Plan. The possibility of pursuing plan approval arises as a question during legislative sessions in several states each year. The burden hours associated with active plan development are estimated to be 2,000 a year.