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Title 29: Labor

PART 1953—CHANGES TO STATE PLANS

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SOURCE: 67 FR 60125, Sept. 25, 2002, unless otherwise noted.

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§1953.1 Purpose and scope.

(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 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.

(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.

(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.

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§1953.2 Definitions.

(a) *OSHA* means the Assistant Secretary of Labor for Occupational Safety and Health, or any representative authorized to perform any of the functions discussed in this part, as set out in implementing Instructions.

(b) *State* means an authorized representative of the agency designated to administer a State plan under §1902.3(b) of this chapter.

(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.

(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.)

(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). *Different plan change* means one in which the State adopts program provisions and documentation that are not identical as defined in this paragraph.

(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.

(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.

(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.

(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.

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§1953.3 General policies and procedures.

(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.

(c) *Plan supplement availability.* The underlying documentation for identical plan changes 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.

(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.

(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.

[67 FR 60125, Sept. 25, 2002, as amended at 80 FR 49908, Aug. 18, 2015]

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§1953.4 Submission of plan supplements.

(a) *Developmental changes.* (1) 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.

(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.

(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.

(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.

(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.

(b) *Federal Program changes.* (1) 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.

(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.

(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.

(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.

(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.

(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.

(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.

(c) *Evaluation changes.* (1) 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.

(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.

(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.

(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.

(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.

(d) *State-initiated changes.* (1) 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.

(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.

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§1953.5 Special provisions for standards changes.

(a) *Permanent standards.* (1) 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.

(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 6 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.

(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,

(b) *Emergency temporary standards.* (1) 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.

(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 5 days of State promulgation.

(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 10 days of promulgation.

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§1953.6 Review and approval of plan supplements.

(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.

(b) If upon review, OSHA determines that the differences from a corresponding Federal component are purely editorial and do not change the substance of the policy or requirements on employers, it shall deem the change identical. This includes “plain language” rewrites of new Federal standards or previously approved State standards which do not change the meaning or requirements of the standard. OSHA will inform the State of this determination. No further review or FEDERAL REGISTER publication is required.

(c) Federal OSHA may seek public comment during its review of plan supplements. Generally, OSHA will seek public comment if a State program component differs significantly from the comparable Federal program component and OSHA needs additional information on its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program and in the case of a standard applicable to products used or distributed in interstate commerce, whether it is required by compelling local conditions or unduly burdens interstate commerce under section 18(c)(2) of the Act.

(d) If the plan change meets the approval criteria, OSHA shall approve it and shall thereafter publish a FEDERAL REGISTER notice announcing the approval. OSHA reserves the right to reconsider its decision should subsequent information be brought to its attention.

(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.