

the Regional Administrator. Such supervisory employee or officer is considered to exercise concurrent authority with the Regional Administrator.

[39 FR 5629, Feb. 14, 1974]

### Subpart B—Developmental Change Supplements

#### § 1953.10 Definitions.

(a) Each State with a developmental plan must set forth in its plan those changes which are designed to make its program at least as effective as the Federal program and a timetable for making such changes in accordance with 29 CFR 1902.2(b). A developmental change includes the completion of these developmental steps as well as amendments required in response to failure to meet any steps in the developmental schedule.

(b) Developmental steps must be completed within the three year period immediately following commencement of operations. (See § 1902.2(b) of this chapter). The date of "commencement of operations" is ordinarily the plan approval date if the State initiates inspections and enforcement activity with respect to standards covered by the approved plan in accordance with the legal authority existing in the State at the time of approval. But in any case, commencement of operations can be no later than the effective date of the grant approved under section 23(g) of the Act. A State may also commence operations by initiating inspections and enforcement activity at some point after approval and prior to the effective date of the grant. Following approval, each State will submit a letter to the Regional Administrator setting the date for commencement operations. These letters will be included in the approved plans.

#### § 1953.11 Submission and consideration.

(a) A supplement is required whenever a State completes a developmental step or fails to meet any developmental step. If a State fails to submit the required supplement when the developmental step was scheduled for completion, the Regional Administrator 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.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator for the Occupational Safety and Health Administration.

(2) When a developmental step is missed, the supplement should contain the change with related documentation on the impact of the change on the State plan as well as the following information:

(i) An explanation of why the step was not completed;

(ii) A new date for completion of the step;

(iii) A revised developmental schedule showing specific actions the State proposes to take whenever the missed step would require a new timetable; and

(iv) A demonstration that the current operating program is substantial enough to contribute to the protection of employees in the State through the enforcement of standards.

Where appropriate, changes requiring legislative action will be supported as required in § 1902.2(b) of this chapter.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Regional Administrator, except as provided in § 1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedures provided in §§ 1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

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(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to meet the developmental schedule, in accordance with the procedures in §1902.17 of this chapter on rejection of State plans.

(e) The Assistant Secretary shall review a supplement in the context of the entire plan to see whether it meets the assurances provided in the plan for an "at least as effective" program and whether there is a reasonable expectation that the plan will meet the requirements of the Act and the criteria in part 1902 within the three year developmental period. The decision shall reflect the Assistant Secretary's determination as to whether the supplement meets these requirements.

(f) If a timely request is submitted by the State, a final decision on a developmental change supplement will, to the extent practicable, be made no later than 60 days after the close of the period for written public comment or a hearing, whichever is relevant, unless the Assistant Secretary determines that the change is minor. The Assistant Secretary may defer publication of minor changes until the end of each full year of operations under the plan. The deferral of publication would not be appropriate where the change under consideration included a failure to meet a developmental step.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5629, Feb. 14, 1974]

### Subpart C—Federal Program Change Supplements

SOURCE: 39 FR 32905, Sept. 12, 1974, unless otherwise noted.

#### § 1953.20 Definitions.

When 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, a program

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change supplement to a State plan shall be required. Examples of Federal program changes that would require a supplement include promulgation or modification of standards, including emergency temporary standards; revisions in enforcement policies or procedures; and legislative or regulatory changes in the Federal program, including recordkeeping and reporting requirements. A Federal program change that would either not affect or that would result in no diminution of the effectiveness of a State plan, generally would not require action by the States.

#### § 1953.21 Standards supplements.

(a)(1) In accordance with section 18(c) of the Act, §1902.3(c)(1) and (2) and §1902.4(b)(2)(i) through (vii) of this chapter, and the assurances contained in an approved plan, each State has agreed that its standards, including emergency temporary standards, will continue to be identical to or at least as effective as Federal standards promulgated under section 6 of the Act relating to issues covered by the approved plan. The requirement to be at least as effective includes promulgation of new standards as well as modifications, revisions, or revocations of existing standards. Since a State may include standards in addition to Federal standards within an issue covered by an approved plan. It would generally not be necessary for a State to revoke a standard when the comparable Federal standard is revoked and no substitute Federal standard is promulgated.

(2) However, in the case of product standards where section 18(c)(2) of the Act requires that State plans meet certain tests before more stringent standards can be adopted or retained by the States, the modification, revision, or revocation of the Federal product standards would necessitate the modification, revision, or revocation of the comparable State standard unless the State product standard is required "by compelling local conditions and [does] not unduly burden interstate commerce." (See 29 CFR 1952.7).