

§ 1952.102 Completion of developmental steps and certification.

(a)(1) In accordance with § 1952.108(a), the Oregon Safe Employment Act, Senate Bill 44, amending Oregon Revised Statutes 654 and 446 and other miscellaneous provisions, was signed by the Governor on July 22, 1973, and carried an effective date of July 1, 1973.

(2) The following differences between the program described in § 1952.105(b)(1) and the program authorized by the State law are approved:

(i) By promulgation of the appropriate regulatory provision, Rule 46-331, and by including a mandatory consultation requirement in its Field Compliance Manual, Oregon provides for employee participation, when there is no employee representative, by requiring the inspector to consult with employees.

(ii) In accordance with ORS, 654.062(3), an additional written request from an employee is required in order to obtain a statement of the reasons why no citation was issued as a result of an employee complaint of unsafe work conditions, which will be subject to evaluation in its administration.

(iii) Section 18 of Oregon's legislation authorizes a stay of the abatement date by operation of law pending a final order of the Board for nonserious violations and for serious violations when the abatement date of the serious violation is specifically contested. An expedited hearing will be requested for serious violations when the abatement date is contested.

(3) The Oregon Safe Employment Act as last amended in the 1981 legislative session included changes renaming the designated enforcement agency, establishment of a director for that agency, authority for requiring certain employers to establish safety and health committees, and limiting penalties for other-than-serious violations in temporary labor camps. The Assistant Secretary approved the amended legislation on September 15, 1982.

(b) In accordance with the requirements of 29 CFR 1952.10 the Oregon State Poster with assurance submitted on September 2, 1975, was approved by the Assistant Secretary on November 5, 1975. The State's revised poster which implemented the assurance was

approved by the Assistant Secretary on September 15, 1982.

(c) In accordance with § 1952.108(d) Oregon has completed the training as described.

(d) Oregon has developed and implemented a computerized Management Information System.

(e) In accordance with § 1952.108(f) Oregon has developed and implemented an Affirmative Action Plan.

(f) In accordance with § 1952.108(e) a Statement of Goals and Objectives has been developed by the State and was approved by the Assistant Secretary on June 24, 1977.

(g) The Oregon State Compliance Manual which is modeled after the Federal Field Operations Manual has been developed by the State, and was approved by the Assistant Secretary on June 24, 1977.

(h) In accordance with the requirements of § 1952.4, Oregon State record-keeping and reporting regulations adopted on June 4, 1974, and subsequently revised, were approved by the Assistant Secretary on August 28, 1980.

(i) In accordance with § 1952.108 (c) and (g), the Oregon Workers' Compensation Department adopted administrative regulations providing procedures for conduct and scheduling of inspections, extension of abatement dates, variances, employee complaints, posting of citations and notices, and voluntary compliance consultation in the public sector, effective July 1, 1974, with revisions incorporated in rules effective August 1, 1982 and August 13, 1982. These regulations with supplemental assurances were approved by the Assistant Secretary on September 15, 1982.

(j) In accordance with § 1952.108(c) the Oregon Workers' Compensation Board adopted rules effective December 20, 1973, governing practice and procedures for contested cases with revisions incorporated in rules effective August 2, 1982. These rules were approved by the Assistant Secretary on September 15, 1982.

(k) The Oregon Workers' Compensation Department submitted rules of the Oregon Bureau of Labor and Industries, the agency assigned responsibility for

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investigation of complaints of discrimination under the Oregon Safe Employment Act. These regulations and rule effective June 21, 1982, and March 12, 1982 with supplemental assurance were approved by the Assistant Secretary on September 15, 1982.

(l) In accordance with §1902.34 of this chapter, the Oregon occupational safety and health plan was certified effective September 15, 1982, as having completed all developmental steps specified in the plan as approved on December 28, 1972, on or before December 28, 1975. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[40 FR 24523, June 9, 1975, as amended at 41 FR 8955, Mar. 2, 1976; 41 FR 23671, June 11, 1976; 42 FR 34281, July 29, 1977; 45 FR 60430, Sept. 12, 1980; 47 FR 42104, 42106, Sept. 24, 1982. Redesignated at 52 FR 9162, Mar. 23, 1987, and further redesignated at 59 FR 42495, Aug. 18, 1994]

§ 1952.103 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall*, compliance staffing levels ("benchmarks") necessary for a "fully effective" enforcement program were required for each State operating an approved State plan. In October 1992, Oregon completed, in conjunction with OSHA, a re-assessment of the health staffing level initially established in 1980 and proposed a revised health benchmark of 28 health compliance officers. Oregon elected to retain the safety benchmark level established in the 1980 Report to the Court of the U.S. District Court for the District of Columbia in 1980 of 47 safety compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

[59 FR 42495, Aug. 18, 1994]

§ 1952.104 [Reserved]

§ 1952.105 Level of Federal enforcement.

(a) Pursuant to §§1902.20(b)(1)(iii) and 1954.3 of this chapter under which an operational status agreement has been entered into with Oregon, effective January 23, 1975, and as amended, effec-

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tive December 12, 1983 and November 27, 1991; and based on a determination that Oregon is operational in the issues covered by the Oregon occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act, 29 U.S.C. 667(c), will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR parts 1910, 1926 and 1928 except as provided in this section. The U.S. Department of Labor will continue to exercise authority among other things with regard to:

(1) Complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c));

(2) Standards in the maritime issues covered by 29 CFR Parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, which have been specifically excluded from coverage under the plan. This includes: employment on the navigable waters of the U.S.; shipyard and boatyard employment on or immediately adjacent to the navigable waters—including floating vessels, dry docks, graving docks and marine railways—from the front gate of the work site to the U.S. statutory limits; longshoring, marine terminal and marine grain terminal operations, except production or manufacturing areas and their storage facilities; construction activities emanating from or on floating vessels on the navigable waters of the U.S.; commercial diving originating from an object afloat a navigable waterway; and all other private sector places of employment on or adjacent to navigable waters whenever the activity occurs on or from the water;

(3) Enforcement of new Federal standards until the State adopts a comparable standard;

(4) Enforcement in situations where the State is refused entry and is unable to obtain a warrant or enforce its right of entry;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;