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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.* Copies of all principal documents comprising the State plan, whether approved or pending approval, shall be available for inspection and copying at the Federal and State locations specified in the subpart of Part 1952 of this chapter relating to each State plan. The underlying documentation for identical plan

changes shall be maintained by the State and shall similarly be available for inspection and copying at the State locations. 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.

§ 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

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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.

§ 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