

§ 1953.5

29 CFR Ch. XVII (7-1-04 Edition)

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

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.

§ 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.