

§ 1952.103

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 reassessment 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 Final approval determination.

(a) In accordance with Section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the state met the “fully effective” compliance staffing benchmarks as revised in 1994 in response to a court order of the United States District

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Court for the District of Columbia in *AFL-CIO v. Marshall*, (C.A. No. 74–406), and was satisfactorily providing reports to OSHA through participation in the Federal-state Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Oregon State Plan for a period of at least one year following certification of completion of developmental steps. Based on an 18(e) Evaluation Report covering the period October 1, 2002 through September 30, 2003, and after opportunity for public comment, the Assistant Secretary determined that, in operation, Oregon’s occupational safety and health program (with the exception of temporary labor camps in agriculture, general industry, construction and logging) is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final state plan approval in Section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, under Section 18(e) of the Act, the Oregon State Plan was granted final approval and concurrent Federal enforcement authority was relinquished for all worksites covered by the plan (with the exception of temporary labor camps in agriculture, general industry, construction and logging), effective May 12, 2005.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Oregon. The plan does not cover private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

(c) Oregon is required to maintain a state program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health

enforcement staff to meet the benchmarks for state staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[70 FR 24954, May 12, 2005]

§ 1952.105 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Oregon State Plan under Section 18(e) of the Act, effective May 12, 2005, occupational safety and health standards which have been promulgated under Section 6 of the Act (with the exception of those applicable to temporary labor camps in agriculture, general industry, construction and logging) do not apply with respect to issues covered under the Oregon plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under Sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under Section 8 (except those necessary to evaluate the plan under Section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by Section 18(e)); to conduct enforcement proceedings in contested cases under Section 10; to institute proceedings to correct imminent dangers under Section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Act under Section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under Section 9 or 10 before the effective date of the 18(e) determination. The Operational Status Agreement, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991, is superseded by this action, except that it will continue to apply to temporary labor camps in agriculture, general industry, construction and logging.

(b)(1) In accordance with Section 18(e), final approval relinquishes Federal OSHA authority with regard to occupational safety and health issues covered by the Oregon plan (with the

exception of temporary labor camps in agriculture, general industry, construction and logging). OSHA retains full authority over issues which are not subject to state enforcement under the plan. Thus, Federal OSHA retains its authority relative to:

(i) 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;

(ii) Enforcement of occupational safety and health standards at all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundaries of all Indian reservations, including the Warm Springs and Umatilla reservations, and on lands outside these reservations that are held in trust by the Federal government for these tribes. (Businesses owned by Indians or Indian tribes that conduct work activities outside the tribal reservation or trust lands are subject to the same jurisdiction as non-Indian owned businesses.);

(iii) Enforcement of occupational safety and health standards at work-sites located within Federal military reservations, except private contractors working on U.S. Army Corps of Engineers dam construction projects,