

## § 1952.237

### § 1952.237 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Kentucky's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) *The Voluntary Protection Program.*

On October 24, 1996, the Assistant Secretary approved Kentucky's plan supplement, which is generally identical to the Federal Voluntary Protection Program, with the exception that the State's VPP is limited to the "Star" level participation for general industry firms.

(c) *Temporary labor camps/field sanitation.* Effective February 3, 1997, the Assistant Secretary approved Kentucky's plan amendment, dated July 29, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Kentucky pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

[59 FR 14556, Mar. 29, 1994, as amended at 61 FR 55099, Oct. 24, 1996; 62 FR 2563, Jan. 17, 1997]

## Subpart R—Alaska

### § 1952.240 Description of the plan as initially approved.

(a) The Department of Labor is the State agency designated by the Governor to administer the plan throughout the State. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2(c)(1) of this chapter under four major codes for general safety, industrial housing, electrical hazards, and occupational health and environmental controls. The plan also includes vertical special industry codes for construction, wood products, petro-

## 29 CFR Ch. XVII (7-1-98 Edition)

leum, and fishing. Appendix G of the plan contains a time-table for adoption of the standards beginning with the effective date of the grant approved under section 23(g) of the Act. The timetable requires from 6 to 36 months for completion of the standard-setting process with most of the standards to be adopted within 6 months of the effective date of the grant.

(b)(1) The plan included draft legislation which has been passed by the State legislature and signed by the Governor amending chapter 18 of the Alaska Statutes. Under the legislation, effective July 24, 1973, the Department of Labor has full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State, including coverage of public employees, with the exceptions of maritime workers in the area of exclusive Federal jurisdiction; employees of the United States; employees protected by State agencies under the Atomic Energy Act of 1954, (42 U.S.C. 2021); and employees whose working conditions are regulated by Federal agencies other than the U.S. Department of Labor under the provisions of section 4(b)(1) of the Occupational Safety and Health Act of 1970. (84 Stat. 1592, 29 U.S.C. 653(b)(1)).

(2) The legislation brings the plan into conformity with the requirements of part 1902 of this chapter in areas such as procedures for granting or denying permanent and temporary variances to standards by the Commissioner; protection of employees from hazards; promulgation of standards by the Commissioner prescribing requirements "at least as effective" as the requirements for Federal Standards including medical examinations and monitoring and measuring of hazards; imminent danger abatement by administrative order and court injunction; protection of employees against discharge or discrimination in terms or conditions of employment by filing complaints with the Commissioner who will seek court action through the State Attorney General; and adequate safeguards to protect trade secrets.

(3) The legislation provides for inspections, including inspections in response to complaints; gives employers

and employee representatives an opportunity to accompany inspectors in order to aid inspections and provides for payment to employees for time spent in aiding an inspection; notification of employees or their representatives when no compliance action is taken as a result of an alleged violation, including informal review; notification of employees of their protections and obligations through legislative requirements on posting; provision for prompt notice to employers and employees of alleged violations of standards, and abatement requirements, through the issuance and posting of citations; a system of sanctions against employers for violations of standards; employer right of review to the Occupational Safety and Health Review Board; and employee participation in the review procedure with compensation for time spent by the employee.

(c) Included in the plan is a statement of legal opinion that the law, which was supported by the Governor in accordance with the requirements of part 1902 of this chapter, is consistent with the Constitution and laws of Alaska. The plan sets out goals and provides a timetable for bringing it into full conformity with part 1902 of this chapter at the end of three years after commencement of operations under the plan. Personnel will be employed under the existing State merit system and the voluntary compliance program for on-site consultation meets the conditions set forth in the Washington decision (38 FR 2421). The plan also includes the State Administrative Procedure Act which authorizes the Commissioner to promulgate emergency temporary standards and issue rules and regulations necessary for the implementation of the safety and health law.

(d) The plan includes the following documents as of the date of approval:

- (1) The plan document and appendices A through V.
- (2) Alaska legislation as enacted amending chapter 18 of the Alaska Statutes.

(3) Letters from the Commissioner of Labor dated May 25, 1973, June 15, 1973, and July 10, 1973.

[38 FR 21630, Aug. 10, 1973, as amended at 49 FR 38261, Sept. 28, 1984]

#### **§ 1952.241 Developmental schedule.**

The Alaska plan is developmental. The Schedule of developmental steps (described in the plan as revised in letters dated September 17, 1975, February 10, 1976, and April 15, 1976, from Edmond N. Orbeck, Commissioner, Alaska Department of Labor, to James Lake, Regional Administrator for Occupational Safety and Health) follows:

(a) Promulgation of occupational safety and health standards, as effective as corresponding Federal standards promulgated under chapter XVII of title 29, Code of Federal Regulations by September 1976.

(b) A Compliance Operations Manual for the guidance of compliance personnel will be developed and printed by February 1, 1974.

(c) A Management Information System (MIS) will be developed by October 1, 1974.

(d) An interim training schedule (appendix M) will be initiated by April 1, 1974. An extended training plan of substantially permanent form will be developed and adopted by October 1, 1976.

(e) Complete hiring of industrial health staff by October 1, 1976.

(f) Provide for an Industrial Health laboratory capacity by October 1, 1976.

(g) Adoption of the following regulations by January 30, 1975:

- (1) Recordkeeping and Reporting;
- (2) Variances;

(3) Exceptions to the prohibitions against advance notice (such exceptions to be no broader than those contained in 29 CFR part 1903);

(4) Clarification of the appropriate parties for employers to notify in order to file a notice of contest;

(5) A definition of imminent danger that mirrors the Federal definition;

(6) A regulation to allow affected employees to participate as parties in hearings.

[41 FR 56315, Dec. 28, 1976. Redesignated at 49 FR 38261, Sept. 28, 1984]

#### **§ 1952.242 Completed developmental steps.**

(a) In accordance with § 1952.243(d) Alaska completed its interim training program by April 1, 1974, and has developed and adopted an extended training program by October 1, 1976 (41 FR 36206).

## § 1952.243

- (b) In accordance with § 1952.243(c) Alaska has developed and implemented a manual Management Information System by October 1, 1974 (41 FR 36206).
- (c) In accordance with the requirements of § 1952.10 the Alaska Safety and Health Poster for private and public employees was approved by the Assistant Secretary on September 28, 1976 (41 FR 43405).
- (d) In accordance with § 1952.243(e) Alaska has completed hiring of its industrial health staff by October 1, 1976 (41 FR 52556).
- (e) In accordance with § 1952.243(f) Alaska has provided for an Industrial Health Laboratory capacity by October 1, 1976 (41 FR 36206).
- (f) In accordance with § 1952.243(g) Alaska has adopted regulations covering inspections, citations, and proposed penalties, Alaska Occupational Safety and Health Review Board procedures; recording and reporting occupational injuries and illnesses; variances; and consulting and training which were approved by the Assistant Secretary on August 2, 1977.
- (g) In accordance with § 1952.243(b) Alaska has developed a Compliance Manual which is modeled after the Federal Field Operations Manual and was approved by the Assistant Secretary on August 2, 1977.
- (h) In accordance with § 1902.34 of this chapter, the Alaska occupational safety and health plan was certified, effective September 9, 1977, as having completed on or before October 1, 1976, all developmental steps specified in the plan as approved on July 31, 1973.
- [41 FR 56315, Dec. 28, 1976, as amended at 42 FR 40196, Aug. 9, 1977; 42 FR 45907, Sept. 13, 1977. Redesignated at 49 FR 38261, Sept. 28, 1984]
- § 1952.243 Final approval determination.**
- (a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after a determination that the State met the "fully effective" compliance staffing benchmarks as established in 1980 in response to a Court Order in *AFL-CIO v. Marshall*, (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Alaska State plan for a period of at least one year following certification of completion of developmental steps (Sept. 9, 1977, 42 FR 54905). Based on the Evaluation Report for FY 1983 and available FY 1984 data, and after opportunity for public comment and an informal public hearing held on June 7, 1984 in Anchorage, Alaska, the Assistant Secretary determined that in actual operations, the State of Alaska occupational safety and health program 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 States plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Alaska plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective September 26, 1984.
- (b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Alaska. The plan does not cover private sector maritime employment; operations of private sector employers within the Metlakatla Indian Community on the Annette Islands; operations of private sector employers within Denali (Mount McKinley) National Park; worksites located on the navigable waters, including artificial islands; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Alaska retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Alaska 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.

[49 FR 38261, Sept. 28, 1984, as amended at 54 FR 115, Jan. 4, 1989; 62 FR 2563, Jan. 17, 1997]

**§ 1952.244 Level of Federal enforcement.**

(a) As a result of the Assistant Secretary's determination granting final approval to the Alaska plan under section 18(e) of the Act, effective September 26, 1984, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Alaska plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violation 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 conduct evaluation of the plan under section 18(b) 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 Federal Act under section 17. The Assistant Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA re-

tains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR part 1915, shipyard employment; part 1917, marine terminals; part 1918, longshoring; part 1919, gear certification) as well as provisions of general industry standards (29 CFR part 1910) appropriate to hazards found in these employments). Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor (Secretary's Order 5-96, December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.243(b). Federal jurisdiction will also be retained over marine-related private sector employment at worksites on the navigable waters, such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act. Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National Park, and for Federal government employers and employees.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such

## § 1952.245

standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Alaska State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[49 FR 38261, Sept. 28, 1984, as amended at 54 FR 115, Jan. 4, 1989; 62 FR 2563, Jan. 17, 1997]

### § 1952.245 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., room N3476, Washington, DC 20210;

Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Federal Office Building, room 6003, 909 First Avenue, Seattle, Washington 98174; and

Office of the Commissioner, Alaska Department of Labor, 1111 W. 8th Street, room 306, Juneau, Alaska 99802.

[49 FR 38262, Sept. 28, 1984]

### § 1952.246 Changes to approved plans.

(a) In accordance with part 1953 of this chapter, the following Alaska plan changes were approved by the Assistant Secretary:

(1) The State submitted a revised field operations manual patterned after and responsive to modifications to the Federal field operations manual in effect February 11, 1985 which superseded its earlier approved manual. The Assistant Secretary approved the manual on October 24, 1985.

## 29 CFR Ch. XVII (7-1-98 Edition)

(2) The State submitted an industrial hygiene technical manual patterned after and responsive to modifications to the Federal manual in effect October 29, 1984. The Assistant Secretary approved the manual on October 24, 1985.

(3) The State submitted an inspection scheduling system patterned after and responsive to the Federal system in effect October 29, 1984. The Assistant Secretary approved the supplement on October 24, 1985.

(4) The State submitted an amendment to its legislation and field procedures which provided for issuance of an onsite notice of violations which serves to require correction of other than serious violations in lieu of a citation. The Assistant Secretary approved these changes on October 24, 1985.

(5) The State submitted several changes on its administrative and review rules concerning personal sampling, ex parte warrants, petition to modify abatement dates, withdrawal of contest, recordkeeping penalties and exemptions, exemption from scheduled inspections after consultation, renaming the division of the State agency directly enforcing standards, and the address for filing contests. The Assistant Secretary approved these changes on October 24, 1985.

(b) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Alaska's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(c) *Temporary labor camps/field sanitation.* Effective February 3, 1997, the Assistant Secretary approved Alaska's plan amendment, dated October 1, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA

**Occupational Safety and Health Admin., Labor****§ 1952.251**

standards in agriculture in Alaska pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

[50 FR 43133, Oct. 24, 1985, as amended at 59 FR 14556, Mar. 29, 1994; 59 FR 50793, Oct. 5, 1994; 62 FR 2563, Jan. 17, 1997]

**Subpart S—The Virgin Islands****§ 1952.250 Description of the plan as initially approved.**

(a) The Virgin Islands Occupational Safety and Health program will be administered and enforced by the Virgin Islands Department of Labor (hereafter called the agency). It will cover all activities of employees and places of private and public employment except those subject to subpart G of part 1910 and subpart D of part 1926 of this chapter relating to occupational health and environmental control and §§ 1910.13–1910.16 and parts 1915–1918 of this chapter relating to maritime employment.

(b)(1) The Plan requires employers of one or more employees to furnish them employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated or issued by the agency. The standards adopted by the United States Department of Labor covering issues within the scope of the plan will be adopted by the agency. The Plan also directs employees to comply with all occupational safety and health standards and regulations that are applicable to their own actions and conduct.

(2) The Plan also requires each owner, lessor, agent or manager of any premises used in whole or in part as a place of employment to comply with safety and health standards and regulations established under the program.

(c) The Plan includes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employees from hazards. It provides employer and employee representatives an opportunity to accompany inspectors and call attention to

possible violations, before, during, and after inspections, protection of employees against discharge or discrimination in terms and conditions of employment, notice to employees or their representatives when no compliance action is taken upon complaints, including informal review, notice to employees of their protections and obligations, adequate safeguards to protect trade secrets, prompt notice to employers and employees of alleged violations of standards and abatement requirements, effective remedies against employers and owners, and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings; procedures for prompt restraint or elimination of imminent danger conditions, and procedures for inspection in response to complaints.

(d)(1) The Plan includes a legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the laws of the Virgin Islands.

(2) A merit system of personnel administration will be used.

(3) A program of education, training, and consultation for employers and employees will be developed.

(4) The Plan is supplemented by the inclusion of implementing legislation (Virgin Islands Act No. 3421) and bill number 6003 to correct section 14(e) thereof and a revised implementation time table.

[38 FR 24896, Sept. 11, 1973, as amended at 49 FR 16775, Apr. 20, 1984]

**§ 1952.251 Developmental schedule.**

The following is a summary of the major developmental steps provided by the plan:

(a) Commencement of recruitment and staff training—September 10, 1973.

(b) Effective date of implementing legislation—October 1, 1973.

(c) Procedural and interpretative, regulations and standards to become effective—January 1, 1974.

(d) Enforcement program to be operational—January 1, 1974.

(e) Public employee program to be operational—July 15, 1974.