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AUTHORITY: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

SOURCE: 38 FR 24361, Sept. 7, 1973, unless otherwise noted.

## Subpart A—General

### § 1953.1 Purpose and scope.

(a) This part applies to the provisions of section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) relating to State plans for the development and enforcement of State safety and health standards. The provisions of this part set forth the procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12–71, 36 FR 8754, May 12, 1971) will review changes in a State plan approved in accordance with section 18(c) of the Act and part 1902 of this chapter, and also provide advisory opinions on proposed changes to be made by a State in implementing its plan.

(b)(1) States may submit plans covering any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. These plans must meet the criteria in section 18(c) of the Act and part 1902 either at the time of submission or in any event not later than the three year period immediately following commencement of the plan's operation, where the plan is developmental.

(2) The Act provides for discretionary concurrent Federal and State authority during this three year developmental period and until the Assistant Secretary determines on the basis of actual operations that the State is applying the criteria of section 18 of the Act and part 1902. During the period of concurrent Federal and State authority, as well as after a determination has been under section 18(e) that the plan is meeting the criteria of the Act and part 1902, the State plan will be continually evaluated under section 18(f) of the Act as to the manner in which the provisions (including any assurances) are implemented.

(c)(1) In accordance with section 18(c) of the Act the Assistant Secretary is authorized to approve State plans and any modifications to these plans. In submitting plans the States have provided assurances that they will continue to meet the requirements in section 18(c) of the Act and 29 CFR part 1902 during the time the States participate in the Federal program. Such assurances are a fundamental basis for approval of plans. (See 29 CFR 1902.3(c)(1), (d)(1)). This part establishes procedures for review of those modifications (hereinafter referred to as changes) that are necessary to fulfill the State's assurances, the requirements of the Act, and 29 CFR part 1902. Responsibility for review of changes is a separate function, but related to the exercise of concurrent authority under section 18(e) of the Act and continuing evaluation under section 18(f) of the Act.

(2) Changes to a plan can be separated into several categories. As the State plan is implemented, supplements will be required to meet developmental schedules approved as part of the plan. These developmental step supplements must be completed within three years after commencement of operations under the plan. The development of the Federal program and the continuing evaluation of the State programs will also require that changes be made in the plans. In addition there could be State initiated changes that would have an impact on the effectiveness of the State program.

(d) Because of the States' need to continue an on-going program, this

part also provides for advisory opinions to requesting States. These opinions, while not final decisions under the review procedures established in this part will provide the States with a basis for operation pending formal review of a change supplement.

#### **§1953.2 General policies.**

(a) Approval of a plan submitted under section 18(b) of the Act is based on a finding that the State has or will have, an "at least as effective" program for the enforcement and setting of standards and will meet the criteria in §1902.3 of the chapter within a three year developmental period when all of the planned activities are performed. The State must also continue to apply the criteria in section 18(c) of the Act and 29 CFR part 1902, as well as comply with the provisions of the plan and any assurances contained therein as long as the plan continues in operation. Supplements to the plan will be reviewed in the context of the entire plan as it moves through its developmental and operational stages.

(b) The regulations in this part will apply both before and after determinations have been made under section 18(e) of the Act and will be amended as necessary. Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210, a written petition for revision, amendment or revocation of any of the provisions of this part. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

(c) Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding 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.

(d) Advisory opinions are designed to facilitate implementation of changes in a State plan. In general these opinions will be given for proposed changes such as the adoption of regulations or standards prior to promulgation by the States and submission as a formal change.

(e) Copies of all supplements to a plan, all public comments thereon, and all advisory opinions shall be available for inspection and copying at the expense of the person requesting the copy at the locations specified in the subpart of part 1952 of this chapter relating to the State plan. The locations include the Office of Federal and State Operations, the Office of the Regional Administrator for the Occupational Safety and Health Administration (hereinafter referred to as the Regional Administrator) in whose Region the State is located, and an office or offices of the State which have been designated by the State for this purpose. The most current copy of a State plan will be located in the State and Regional office pending submission of the change supplements to the Assistant Secretary.

#### **§1953.3 Publication.**

Whenever a State is required under its law to publish notice of the subject matter of any change required by this part prior to its adoption by the State, a republication by the State as in §1902.11(a) of this chapter will not be required. Where the subject matter of the change is not subject to public notice under State law, republication by the State as provided in §1902.11(a) of this chapter may be required unless the Assistant Secretary determines the change is minor. Such a minor change could include notice that the State had completed intermediate steps in the implementation of its Management Information System or its staff training program.

#### **§1953.4 Delegation of authority.**

(a)(1) Under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health, the Regional Administrators shall be responsible for review and approval of changes to occupational safety and health standards in approved State plans in accordance with the procedures specified in the applicable subparts of this part.

(2) In conjunction with this delegation of authority, the Assistant Secretary of Labor for Occupational Safety and Health, after consultation with

the Office of the Solicitor, will be responsible for advising the Regional Administrators as to interpretations of Federal and State standards so as to avoid inconsistent interpretations particularly in States adopting other than Federal standards. Any person may request such an interpretation from the Assistant Secretary.

(b) Regional Administrators means the employee or officer regularly or temporarily in charge of a Regional Office of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are specifically designated to act for such employee or officer in his absence. The term also includes any employee or officer in the Occupational Safety and Health Administration exercising supervisory responsibility over the Regional Administrator. Such supervisory employee or officer is considered to exercise concurrent authority with the Regional Administrator.

[39 FR 5629, Feb. 14, 1974]

### Subpart B—Developmental Change Supplements

#### § 1953.10 Definitions.

(a) Each State with a developmental plan must set forth in its plan those changes which are designed to make its program at least as effective as the Federal program and a timetable for making such changes in accordance with 29 CFR 1902.2(b). A developmental change includes the completion of these developmental steps as well as amendments required in response to failure to meet any steps in the developmental schedule.

(b) Developmental steps must be completed within the three year period immediately following commencement of operations. (See §1902.2(b) of this chapter). The date of “commencement of operations” is ordinarily the plan approval date if the State initiates inspections and enforcement activity with respect to standards covered by the approved plan in accordance with the legal authority existing in the State at the time of approval. But in any case, commencement of operations can be no later than the effective date of the grant approved under section

23(g) of the Act. A State may also commence operations by initiating inspections and enforcement activity at some point after approval and prior to the effective date of the grant. Following approval, each State will submit a letter to the Regional Administrator setting the date for commencement operations. These letters will be included in the approved plans.

#### § 1953.11 Submission and consideration.

(a) A supplement is required whenever a State completes a developmental step or fails to meet any developmental step. If a State fails to submit the required supplement when the developmental step was scheduled for completion, the Regional Administrator 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.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator for the Occupational Safety and Health Administration.

(2) When a developmental step is missed, the supplement should contain the change with related documentation on the impact of the change on the State plan as well as the following information:

(i) An explanation of why the step was not completed;

(ii) A new date for completion of the step;

(iii) A revised developmental schedule showing specific actions the State proposes to take whenever the missed step would require a new timetable; and

(iv) A demonstration that the current operating program is substantial enough to contribute to the protection of employees in the State through the enforcement of standards.

Where appropriate, changes requiring legislative action will be supported as required in §1902.2(b) of this chapter.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in