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the Assistant Secretary may approve a plan relating to other industrial, occupational or hazard groupings if he determines that the plan is administratively practicable and that such groupings would not conflict with the purposes of the Act.

(2) Each State plan shall describe the occupational safety and health issue or issues and the State standard or standards applicable to each such issue or issues over which it desires to assume enforcement responsibility in terms of the corresponding Federal industrial, occupational or hazard groupings and set forth the reasons, supported with appropriate data, for any variations the State proposes from the coverage of Federal standards.

(3) The State plan shall apply to all employers and employees within the affected industry, occupational or hazard grouping unless the Assistant Secretary finds that the State has shown good cause why any group or groups of employers or employees should be excluded. Any employers or employees so excluded shall be covered by applicable Federal standards and enforcement provisions in the Act.

Subpart B—Criteria for State Plans

§ 1902.3 Specific criteria.

(a) *General*. A State plan must meet the specific criteria set forth in this section.

(b) *Designation of State agency*. (1) The State plan shall designate a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State.

(2) The plan shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to administration of the plan.

(3) A State agency or agencies must be designated with overall responsibility for administering the plan throughout the State. However, political subdivisions of the State may have the responsibility and authority for the development and enforcement of standards, provided that the State agency or agencies are given adequate authority by statute, regulation, or agreement, to insure that the commitments of the State under the plan will be fulfilled.

(c) *Standards*. (1) The State plan shall include or provide for the development or adoption of, and contain assurances that the State will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under section 6 of the Act. Indices of the effectiveness of standards and procedures for the development or adoption of standards against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in § 1902.4(b).

(2) The State plan shall not include standards for products distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision, reflecting section 18(c)(2) of the Act, is interpreted as not being applicable to customized products or parts not normally available on the open market, or to the optional parts or additions to products which are ordinarily available with such optional parts or additions.

(d) *Enforcement*. (1) The State plan shall provide a program for the enforcement of the State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program. Indices of the effectiveness of a State's enforcement plan against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in § 1902.4(c).

(2) The State plan shall require employers to comply with all applicable State occupational safety and health standards covered by the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

(e) *Right of entry and inspection*. The State plan shall contain adequate assurance that inspectors will have a right to enter and inspect covered workplaces which is, or will be, at least

as effective as that provided in section 8 of the Act. Where such entry or inspection is refused, the State agency or agencies shall have the authority, through appropriate legal process, to compel such entry and inspection.

(f) *Prohibition against advance notice.* The State plan shall contain a prohibition against advance notice of inspections. Any exceptions must be expressly authorized by the head of the designated agency or agencies or his representative and such exceptions may be no broader than those authorized under the Act and the rules published in part 1903 of this chapter relating to advance notice.

(g) *Legal authority.* The State plan shall contain satisfactory assurances that the designated agency or agencies have, or will have, the legal authority necessary for the enforcement of its standards.

(h) *Personnel.* The State plan shall provide assurance that the designated agency or agencies have, or will have, a sufficient number of adequately trained and qualified personnel necessary for the enforcement of the standards. For this purpose qualified personnel means persons employed on a merit basis, including all persons engaged in the development of standards and the administration of the State plan. Conformity with the Standards for a Merit System of Personnel Administration, 45 CFR part 70, issued by the Secretary of Labor, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Pub. L. 91–648; 84 Stat. 1915) modifying or superseding such standards, will be deemed to meet this requirement.

(i) *Resources.* The State plan shall contain satisfactory assurances through the use of budget, organizational description, and any other appropriate means that the State will devote adequate funds to the administration and enforcement of the program. The Assistant Secretary will make periodic evaluations of the adequacy of the State resources devoted to the plan.

(j) *State and local government employees.* The State plan shall include, to the extent permitted by State law, an effective and comprehensive occupational safety and health program covering all employees of public agencies of the State and its political subdivisions. Such program shall be as effective as the programs contained in the plan which are applicable to employees covered by the plan.

(k) *Employer records and reports.* The State plan shall provide assurances that employers covered by the plan will maintain records and make reports to the Assistant Secretary in the same manner and to the same extent as if the plan were not in effect.

(l) *State agency reports to the Assistant Secretary.* The State plan shall provide assurances that the designated agency or agencies shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require. The agency or agencies shall establish specific goals, consistent with the goals of the Act, including measures of performance, output and results which will determine the efficiency and effectiveness of the State program, and shall make periodic reports to the Assistant Secretary on the extent to which the State, in implementation of its plan, has attained these goals. Reports will also include data and information on the implementation of the specific inspection and voluntary compliance activities included within the State plan. Further, these reports shall contain such statistical information pertaining to work-related deaths, injuries, and illnesses in employments and places of employment covered by the plan as the Assistant Secretary may from time to time require.

(Approved by the Office of Management and Budget under control number 1218–0004)

[36 FR 20751, Oct. 29, 1971, as amended at 54 FR 24333, June 7, 1989]

§ 1902.4 Indices of effectiveness.

(a) *General.* In order to satisfy the requirements of effectiveness under § 1902.3 (c)(1) and (d)(1), the State plan shall:

(1) Establish the same standards, procedures, criteria and rules as have been established by the Assistant Secretary under the Act, or;