

(2) Worksites located on the navigable waters, including artificial islands;

(3) Native health care facilities that are Federally owned and contractor operated, including those owned by the U.S. Department of the Interior—Indian Health Service, the U.S. Department of Defense, or the U.S. Department of Commerce—National Oceanic and Atmospheric Administration, and operated by Tribal organizations under contract with the Indian Health Service;

(4) Operations of private sector employers within the Metlakatla Indian Community on the Annette Islands;

(5) Operations of private sector employers within Denali (Mount McKinley) National Park;

(6) Operations of private contractors at Cape Lisburne Long Range Missile Base, Point Lay Short Range Missile Base, Eareckson Air Station on Shemya Island, Fort Greeley Missile Defense in Delta Junction, the U.S. Coast Guard Integrated Support Commands in Kodiak and Ketchikan, the U.S. Coast Guard Air Station in Sitka, and the U.S. Coast Guard 17th District Command in Juneau;

(7) Federal government employers and employees;

(8) The U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; or

(9) 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. 23, 1984, as amended at 54 FR 115, Jan. 4, 1989; 62 FR 2563, Jan. 17, 1997; 65 FR 36625, June 9, 2000; 69 FR 20827, Apr. 19, 2004]

§ 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 institute 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

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covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan.

(1) Federal OSHA retains 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 and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments.

(2) Federal jurisdiction will 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.

(3) 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).

(4) Federal jurisdiction is also retained for Native health care facilities that are Federally owned and contractor operated, including those owned by the U.S. Department of the Interior, Indian Health Service; the U.S. Department of Defense; or the U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and operated by Tribal organizations under contract with the Indian Health Service. However, the State retains jurisdiction over construction and contract maintenance activities at these facilities with the exception of the Metlakatla Indian Community, Annette Island Service Unit, which is entirely under Federal jurisdiction. (The State also retains jurisdiction over Native health care facilities that are leased or owned by

Tribal organizations, except for the Metlakatla Indian Community.)

(5) Federal jurisdiction is also retained with regard to the operations of private contractors at Cape Lisburne Long Range Missile Base, Point Lay Short Range Missile Base, Eareckson Air Station on Shemya Island, Fort Greeley Missile Defense in Delta Junction, the U.S. Coast Guard Integrated Support Commands in Kodiak and Ketchikan, the U.S. Coast Guard Air Station in Sitka, and the U.S. Coast Guard 17th District Command in Juneau.

(6) 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, for Federal government employers, and for the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(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 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; 65 FR 36625, June 9, 2000; 69 FR 20827, Apr. 19, 2004]

§ 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 N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Suite 715, 1111 Third Avenue, Seattle, Washington, 98101-3212; and

Office of the Commissioner, Alaska Department of Labor, 1111 W. 8th Street, Room 306, P.O. Box 24119, Juneau, Alaska 99802-1149.

[65 FR 36625, June 9, 2000]

§ 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.

(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 ef-

fect 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 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 [Reserved]