

§ 1952.105

29 CFR Ch. XVII (7–1–10 Edition)

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; employment at Crater Lake National Park; employment at the U.S. Department of Energy's Albany Research Center (ARC); 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, as amended at 71 FR 2886, Jan. 18, 2006; 71 FR 36990, June 29, 2006]

§ 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 worksites located within Federal military reservations, except private contractors working on U.S. Army Corps of Engineers dam construction projects, including reconstruction of docks or other appurtenances;

(iv) Enforcement of occupational safety and health standards with regard to employment at Crater Lake National Park;

(v) Enforcement of occupational safety and health standards with regard to employment at the U.S. Department of Energy's Albany Research Center (ARC);

(vi) Enforcement of occupational safety and health standards with regard to all Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the state is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or

structure of the plan shall be deemed to be an issue not covered by the state plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and state authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the state designated agency.

(c) Federal authority under provisions of the Act not listed in Section 18(e) is unaffected by final approval of the Oregon State Plan. Thus, for example, the Assistant Secretary retains 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 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 Oregon 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 suspension or revocation of the final approval determination under Section 18(e), resumption of Federal

§ 1952.106

29 CFR Ch. XVII (7–1–10 Edition)

enforcement, and/or proceedings for withdrawal of plan approval.

[70 FR 24954, May 12, 2005, as amended at 71 FR 2886, Jan. 18, 2006; 71 FR 36990, June 29, 2006]

§ 1952.106 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, Room N3700, 200 Constitution Avenue, N.W., Washington, D.C. 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

Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Room 430, Labor and Industries Building, 350 Winter Street NE, Salem, Oregon 97310.

[59 FR 42495, Aug. 18, 1994]

§ 1952.107 Changes to approved plans.

In accordance with part 1953 of this chapter, the following Oregon plan changes were approved by the Assistant Secretary:

(a) The State submitted a revised field operations manual patterned after the Federal field operations manual, including modifications, in effect February 11, 1985, which superseded the State's previously approved manual. The Assistant Secretary approved the manual on July 29, 1986.

(b) The State submitted an industrial hygiene technical manual patterned after the Federal manual, including modifications, in effect March 30, 1984. The Assistant Secretary approved the manual on July 29, 1986.

(c) The State submitted an inspection scheduling system which schedules inspections based on lists of employers with a high incidence of workers compensation claims, whose operations are within industries with high injury rates, or which have a high potential for health problems. The Assistant Secretary approved the supplement on July 29, 1986.

(d) The State submitted several changes to its administrative regula-

tions concerning personal sampling, petition to modify abatement dates, penalties for repeat violations, and record-keeping exemptions. The Assistant Secretary approved these changes on July 29, 1986.

(e) *Legislation.* (1) On March 29, 1994, the Acting Assistant Secretary approved Oregon's revised statutory penalty levels as enacted subject to further action by the State in 1995 to correct the State's omission of revisions of the penalty for posting violations. Aside from posting penalties, Oregon's revised penalty levels are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(f) Oregon's State plan changes excluding coverage under the plan of all private sector employment (including tribal and Indian-owned enterprises) on Umatilla Indian reservation or trust lands, by letters of April 29 and July 14, 1997 (see §§ 1952.105); extending coverage under the plan to Superfund sites and private contractors working on U.S. Army Corps of Engineers dam construction projects, as noted in a 1992 Memorandum of Understanding; and specifying four (4) unusual circumstances where Federal enforcement authority may be exercised, as described in a 1991 addendum to the State's operational status agreement, were approved by the Acting Assistant Secretary on September 24, 1997.

(g) Oregon's State plan changes extending Federal enforcement jurisdiction to shore side shipyard and boatyard employment, as described in a 1998 Memorandum of Understanding and addendum to the State's operational status agreement; and to all private sector employment, including tribal and Indian-owned enterprises, on all Indian reservations, including establishments on trust lands outside of reservations, as described in a separate 1998 addendum, were approved by the Assistant Secretary on January 6, 1999.

[51 FR 27025, July 29, 1986. Redesignated at 52 FR 9162, Mar. 23, 1987, as amended at 59 FR 14555, Mar. 29, 1994. Further redesignated at 59 FR 42495, Aug. 18, 1994; 62 FR 49910, Sept. 24, 1997; 65 FR 36620, June 9, 2000]