

§ 1953.2

could have an impact on the effectiveness of the State program. Such changes are called “State-initiated changes.” While requirements for submission of a plan supplement to OSHA differ depending on the type of change, all supplements are processed in accordance with the procedures in § 1953.6.

§ 1953.2 Definitions.

(a) *OSHA* means the Assistant Secretary of Labor for Occupational Safety and Health, or any representative authorized to perform any of the functions discussed in this part, as set out in implementing Instructions.

(b) *State* means an authorized representative of the agency designated to administer a State plan under § 1902.3(b) of this chapter.

(c) *Plan change* means any modification made by a State to its approved occupational safety and health State plan which has an impact on the plan’s effectiveness.

(d) *Plan supplement* means all documents necessary to accomplish, implement, describe and evaluate the effectiveness of a change to a State plan which differs from the parallel Federal legislation, regulation, policy or procedure. (This would include a copy of the complete legislation, regulation, policy or procedure adopted; an identification of each of the differences; and an explanation of how each provision is at least as effective as the comparable Federal provision.)

(e) *Identical plan change* means one in which the State adopts the same program provisions and documentation as the Federal program with the only differences being those modifications necessary to reflect a State’s unique structure (e.g., organizational responsibility within a State and corresponding titles or internal State numbering system). *Different plan change* means one in which the State adopts program provisions and documentation that are not identical as defined in this paragraph.

(g) *Developmental change* is a change made to a State plan which documents the completion of a program component which was not fully developed at the time of initial plan approval.

(h) *Federal program change* is a change made to a State plan when OSHA de-

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termines that an alteration in the Federal program could render a State program less effective than OSHA’s if it is not similarly modified.

(i) *Evaluation change* is a change made to a State plan when evaluations of a State program show that some substantive aspect of a State plan has an adverse impact on the implementation of the State’s program and needs revision.

(j) *State-initiated change* is a change made to a State plan which is undertaken at a State’s option and is not necessitated by Federal requirements.

§ 1953.3 General policies and procedures.

(a) *Effectiveness of State plan changes under State law.* Federal OSHA approval of a State plan under section 18(b) of the OSH Act in effect removes the barrier of Federal preemption, and permits the State to adopt and enforce State standards and other requirements regarding occupational safety or health issues regulated by OSHA. A State with an approved plan may modify or supplement the requirements contained in its plan, and may implement such requirements under State law, without prior approval of the plan change by Federal OSHA. Changes to approved State plans are subject to subsequent OSHA review. If OSHA finds reason to reject a State plan change, and this determination is upheld after an adjudicatory proceeding, the plan change would then be excluded from the State’s Federally-approved plan.

(b) *Required State plan notifications and supplements.* Whenever a State makes a change to its legislation, regulations, standards, or major changes to policies or procedures, which affect the operation of the State plan, the State shall provide written notification to OSHA. When the change differs from a corresponding Federal program component, the State shall submit a formal, written plan supplement. When the State adopts a provision which is identical to a corresponding Federal provision, written notification, but no formal plan supplement, is required. However, the State is expected to maintain the necessary underlying State document (e.g., legislation or standard) and

to make it available for review upon request. All plan change supplements or required documentation must be submitted within 60 days of adoption of the change. Submission of all notifications and supplements may be in electronic format.

(c) *Plan supplement availability.* Copies of all principal documents comprising the State plan, whether approved or pending approval, shall be available for inspection and copying at the Federal and State locations specified in the subpart of Part 1952 of this chapter relating to each State plan. The underlying documentation for identical plan changes shall be maintained by the State and shall similarly be available for inspection and copying at the State locations. Annually, States shall submit updated copies of the principal documents comprising the plan, or appropriate page changes, to the extent that these documents have been revised. To the extent possible, plan documents will be maintained and submitted by the State in electronic format and also made available in such manner.

(d) *Advisory opinions.* Upon State request, OSHA may issue an advisory opinion on the approvability of a proposed change which differs from the Federal program prior to promulgation or adoption by the State and submission as a formal supplement.

(e) *Alternative procedures.* Upon reasonable notice to interested persons, the Assistant Secretary may 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.

§ 1953.4 Submission of plan supplements.

(a) *Developmental changes.* (1) Sections 1902.2(b) and 1956.2(b) of this chapter require that each State with a developmental plan must set forth in its plan, as developmental steps, those changes which must be made to its initially-approved plan for its program to be at least as effective as the Federal program and a timetable for making these changes. The State must notify OSHA of a developmental change when it completes a developmental step or fails to meet any developmental step.

(2) If the completion of a developmental step is the adoption of a program component which is identical to the Federal program component, the State need only submit documentation, such as the cover page of an implementing directive or a notice of promulgation, that it has adopted the program component, within 60 days of adoption of the change, but must make the underlying documentation available for Federal and public review upon request.

(3) If the completion of a developmental step involves the adoption of policies or procedures which differ from the Federal program, the State must submit one copy of the required plan supplement within 60 days of adoption of the change.

(4) When a developmental step is missed, the State must submit a supplement which documents the impact on the program of the failure to complete the developmental step, an explanation of why the step was not completed on time and a revised timetable with a new completion date (generally not to exceed 90 days) and any other actions necessary to ensure completion. Where the State has an operational status agreement with OSHA under § 1954.3 of this Chapter, the State must provide an assurance that the missed step will not affect the effectiveness of State enforcement in any issues for which the State program has been deemed to be operational.

(5) If the State fails to submit the required documentation or supplement, as provided in § 1953.4(a)(2), (3) or (4), when the developmental step is scheduled for completion, OSHA shall notify the State that documentation or a supplement is required and set a timetable for submission of any required documentation or supplement, generally not to exceed 60 days.

(b) *Federal Program changes.* (1) When a significant change in the Federal program would have an adverse impact on the "at least as effective" status of the State program if a parallel State program modification were not made, State adoption of a change in response to the Federal program change shall be required. A Federal program change that would not result in any diminution of the effectiveness of a State plan