PART 1954—PROCEDURES FOR THE EVALUATION AND MONITORING OF APPROVED STATE PLANS

Subpart A—General

§ 1954.1 Purpose and scope.

(a) Section 18(f) of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) provides that “the Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved * * * is carrying out such plan.”

(b) This part 1954 applies to the provisions of section 18(f) of the Act relating to the evaluation of approved plans for the development and enforcement of State occupational safety and health standards. The provisions of this part 1954 set forth the policies and 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 continually monitor and evaluate the operation and administration of approved State plans.

(c) Following approval of a State plan under section 18(c) of the Act, workplaces in the State are subject to a period of concurrent Federal and State authority. The period of concurrent enforcement authority must last for at least three years. Before ending Federal enforcement authority, the Assistant Secretary is required to make a determination as to whether the State plan, in actual operation, is meeting the criteria in section 18(c) of the Act including the requirements in part 1902 of this chapter and the assurances in the approval plan itself. After an affirmative determination has been made, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out section 18(f) of the Act), 9, 10, 13, and 17 of the Act shall not apply with respect to any occupational safety or health issues covered under the plan. The Assistant Secretary may, however, retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 of the Act before the date of the determination under section 18(e) of the Act.

(d) During this period of concurrent Federal and State authority, the operation and administration of the plan will be continually evaluated under section 18(f) of the Act. This evaluation will continue even after an affirmative determination has been made under section 18(e) of the Act.

§ 1954.2 Monitoring system.

(a) To carry out the responsibilities for continuing evaluation of State plans under section 18(f) of the Act, the Assistant Secretary has established a State Program Performance Monitoring System. Evaluation under this monitoring system encompasses both the period before and after a determination has been made under section 18(e) of the Act. The monitoring system is a three phased system designed to assure not only that developmental steps are completed and that the operational plan is, in fact, at least as effective as the Federal program with respect to standards and enforcement, but also to provide a method for continuing review of the implementation of the plan and any modifications thereto to assure compliance with the provisions of the plan during the time
§ 1954.3 Exercise of Federal discretionary authority.

(a)(1) When a State plan is approved under section 18(c) of the Act, Federal authority for enforcement of standards continues in accordance with section 18(e) of the Act. That section prescribes a period of concurrent Federal-State enforcement authority which must last for at least three years, after which time the Assistant Secretary shall make a determination whether, based on actual operations, the State plan meets all the criteria set forth in section 18(c) of the Act and the implementing regulations in 29 CFR part 1902 and subpart A of 29 CFR part 1952. During this period of concurrent authority, the Assistant Secretary may, but shall not be required to, exercise his authority under sections 5(a)(2), 8, 9, 10, 13 and 17 of the Act with respect to standards promulgated under section 6 of the Act where the State has comparable standards. Accordingly, section 18(e) authorizes, but does not require, the Assistant Secretary to exercise his discretionary enforcement authority over all the issues covered by a State plan for the entire 18(e) period.

(2) Existing regulations at 29 CFR part 1902 set forth factors to be considered in determining how Federal enforcement authority should be exercised. These factors include:

(i) Whether the plan is developmental or complete;

(ii) Results of evaluations conducted by the Assistant Secretary;

(iii) The State's schedule for meeting Federal standards; and

(iv) Any other relevant matters.

(29 CFR 1902.1(c)(2) and 1902.20(b)(1)(iii).

(3) Other relevant matters requiring consideration in the decision as to the level of Federal enforcement include:

(i) Coordinated utilization of Federal and State resources to provide effective worker protection throughout the Nation;

(ii) Necessity for clarifying the rights and responsibilities of employers and employees with respect to Federal and State authority;

(iii) Increasing responsibility for administration and enforcement by States under an approved plan for evaluation of their effectiveness; and

(iv) The need to react promptly to any failure of the States in providing effective enforcement of standards.

(b) Guidelines for determining the appropriate level of Federal enforcement. In light of the requirements of 29 CFR