

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****Oregon State Plan; Approval of Plan Supplements; Revised State Plan**

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval; supplements to Oregon occupational safety and health state plan.

SUMMARY: This document gives notice of OSHA's approval of supplements to Oregon's occupational safety and health state plan. These supplements were submitted in September 2003 as a revised state plan and later updated through August 2004. OSHA is approving the revised state plan, which updates and documents all structural components of the Oregon program. This includes a revised narrative description of the current program, legislation, administrative rules, interagency jurisdictional agreements, a compliance manual, policy directives, a consultation manual, and a technical manual relating to the Oregon state plan. (Oregon's safety and health standards are approved in separate notices.)

DATES: *Effective Date:* December 16, 2004.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact George Shaw, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3700, Washington, DC 20210; telephone (202) 693-2244. You may access many of Oregon's documents referenced in this **Federal Register** notice by visiting the state's Web site at www.cbs.state.or.us/external/osha. Electronic copies of this **Federal Register** notice, as well as all OSHA **Federal Register** notices and related press releases mentioned in this document, are available on OSHA's Web site at www.osha.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

The Oregon Occupational Safety and Health State Plan was initially approved under section 18(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(b)) (hereinafter referred to as the OSH Act) and 29 CFR Part 1902 on

December 22, 1972 (37 FR 28628). The exercise of concurrent federal enforcement jurisdiction was suspended on January 23, 1975 (40 FR 18427). The program was subsequently certified as having completed all its developmental steps and being structurally complete on September 15, 1982 (47 FR 42105). 29 CFR Part 1953 provides procedures for the review and approval of state plan change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

II. Description of Revised State Plan

Oregon submitted a revised state plan document on September 17, 2003, and later updated it through August, 2004. The revised state plan includes a program narrative and current copies of all key documents relating to Oregon's occupational safety and health program. All these documents are described below and are being approved in this notice, with the exception of Oregon's safety and health standards, which are addressed in separate **Federal Register** approval notices—the most recent being March 1, 2004 (69 FR 9643).

A. Plan Narrative

The Oregon state plan is administered by the Oregon Division of Occupational Safety and Health (OR-OSHA) of the Department of Consumer and Business Services. OR-OSHA was established in 1973 by the Oregon Safe Employment Act (Oregon Act). OR-OSHA adopts and enforces occupational safety and health standards under authority of the Oregon Act that are at least as effective as Federal OSHA's, and covers both private sector and state and local government employees. The plan narrative provides a general overview of OR-OSHA's legal authority (including interagency and jurisdictional agreements), standards and variances, enforcement policies and procedures, management systems, voluntary compliance activities (including compliance assistance programs, expanded consultative services, and training and education), an occupational safety and health laboratory, personnel policies and procedures, recordkeeping and reporting requirements, budget, staffing and funding, and programs and services for which there is no direct federal parallel.

B. Legislation

The Oregon Safe Employment Act, Oregon Revised Statutes (ORS) section 654, 2001 Edition, was most recently amended at ORS 654.035 in 2003 by House Bill 3010 concerning fall protection in steel erection. The Oregon

Act contains authority for inspections, right of entry, citations and proposed penalties for first instance violations, employee rights, non-discrimination, compliance assistance, etc., all of which have been determined to provide authority equivalent to that of the OSH Act and to meet the criteria and indices for plan approval contained in 29 CFR part 1902.

The Oregon Safe Employment Act contains a number of differences or additional requirements from the OSH Act. The more significant of these are listed below. Items 1, 3, 5 and 9 contain differences from federal statute or policy; the remaining items (2, 4, 6–8 and 10–13) reflect additional state requirements.

1. Private Right of Action for Discrimination. An employee who files a discrimination complaint for protected safety and health activities may also file a suit in any circuit court in Oregon under certain circumstances, per ORS 654.062(5)(b). (See discussion of discrimination program differences in section II.C, Regulations.)

2. Red Warning Notice. A red warning notice provision at ORS 654.082 allows OR-OSHA to prohibit use of a machine, equipment or place of employment in imminent danger or other situations if use would violate a statute, rule or standard, with a civil penalty up to \$5,000 against any person who violates this provision (ORS 654.086(g)). Federal OSHA does not have red warning notice authority, but can obtain a temporary restraining order from U.S. district court in an imminent danger situation.

3. Failure to Post Penalty. The civil penalties section provides for a discretionary posting requirements penalty of up to \$1,000 (ORS 654.086(f)), compared to federal statutory authority for a mandatory posting penalty of up to \$7,000. In practice, federal OSHA cites for not posting a citation or annual summary of injuries and illnesses, but usually does not issue a citation for failure to post the OSHA poster. OSHA's average initial penalties for posting violations range from \$51 to \$1200. Oregon has established minimum penalties for such violations which in some cases exceed the federal. (See penalties discussion in section II.C, Regulations.) Although Oregon lacks the parallel statutory authority, in practice it does not appear that this negatively impacts the Oregon program.

4. Loss Control Programs. All insurers for workers' compensation must provide free safety and health loss control consultative services. Self-insured employers must implement safety and

health loss control programs (ORS 654.097).

5. Self-Audits. The Oregon Act was amended in 1999 to include, for the first time, a provision permitting employers to withhold from OR-OSHA certain voluntary safety and health consultation reports (ORS 654.101). The federal statute does not have a corresponding provision, although federal OSHA has adopted a policy (65 FR 46498) under which it, like Oregon OSHA, does not routinely request self-audit reports and does not use such reports to identify hazards for purposes of an inspection. Federal OSHA does, however, retain the authority to gain access to voluntary self-audits when necessary to fulfill its enforcement responsibilities.

The Oregon statute generally permits an employer to refuse to disclose, and to prevent other persons from disclosing, safety and health consultation reports. However, the employer may disclose such a report voluntarily. The law also contains some expansive exceptions to the employer's right to refuse. First, reports that an employer is required to prepare under an OR-OSHA rule or standard or as a matter of law, *e.g.*, PSM process hazard analyses, construction accident prevention program evaluations, medical monitoring records, and many others, are not protected and are available to OR-OSHA. Second, OR-OSHA has access, under the statute, to any reports that stem from the investigation of occupational accidents, illnesses, or diseases. OR-OSHA interprets this exception to apply even if the scope of the investigation or report is broader than the particular circumstances of the accident, illness or disease that generated the audit in the first place. Third, the privilege afforded by the statute is limited to reports prepared by private outside consultants; any reports or discussions generated by an employer's own employees are subject to disclosure to OR-OSHA. And fourth, Oregon's self-audit provision does not apply in the context of criminal investigations or prosecutions for alleged violations of the Oregon Act. Notably, in an August 26, 2004 letter from Peter De Luca, Administrator, to Richard Terrill, Regional Administrator—X, which has been incorporated into the revised state plan being approved today, OR-OSHA adopted broad interpretations of each of these four exemptions. The state plan explained that because of the broad exemptions in the self-audit provision, the privilege afforded by the law has only very limited practical application.

Moreover, Oregon requires most employers to establish and maintain

safety committees, and those committees are required by law and by regulation to keep minutes of their meetings and to include, in those minutes, information about workplace hazard assessments. *See* ORS 654.176 and 182, and OAR 437-001-0765. So even if a particular consultant's report is protected by the self-audit privilege, OR-OSHA can generally obtain all of the information it needs about that report through the agency's rights to interview employees and to access records of the company's safety committee meetings, inspections, evaluations and recommendations.

The state plan has represented to federal OSHA that because of the law's broad exemptions, and because of Oregon's unique safety committee rules, the self-audit provision has not in any way impeded OR-OSHA's ability to effectively enforce the Oregon Act. Indeed, in the five years since the self-audit provision was added to the Oregon statute, not a single employer has invoked its protections—and no willful violations have been jeopardized. OR-OSHA estimates that most self-audits are available to the agency. Therefore, while federal OSHA continues to believe that a self-audit privilege is inappropriate and unnecessary, Oregon's very limited privilege does not present a sufficient basis for finding that the right of entry and inspection under the state plan is any less effective than what is provided for in section 8 of the federal OSH Act. OR-OSHA has pledged to seek legislative reconsideration of the law if it is found, in the future, to have a negative impact on the state plan or its required performance.

6. Toilets. Flushable toilets plus washing facilities must be provided at large construction projects costing \$1 million or more (ORS 654.150 and 160).

7. High Voltage Lines. No employer shall require an employee to work bare-handed or rubber-gloved on high voltage lines (ORS 654.165).

8. Safety Committees. Every public or private employer of more than 10 employees must establish and administer a safety committee. Employers with 10 or fewer employees with a high lost workday case rate or high workers' compensation premium rate must also establish safety committees (ORS 654.176 and 182). Although Oregon does not have a standard mandating safety and health programs, the committees are expected to evaluate accident and illness prevention programs.

9. Grants. OR-OSHA administers an occupational safety and health grant program that awards grants, funded

from civil penalties, to employer or employee organizations to develop employee training programs and promote the development of employer-sponsored safety and health programs (ORS 654.189 and 191).

10. Hazard Communication. Piping systems must be labeled about hazardous chemicals contained in the system or about asbestos used as a pipe insulation material, and every employer must post a sign informing employees about their right to information on hazardous substances in their workplace (ORS 654.196).

11. Scholarships. OR-OSHA provides Workers' Memorial Scholarships for the education of spouses and children of fatally or seriously injured workers. These scholarships are funded from the interest earned on a special account established by statute using \$250,000 from civil penalties (ORS 654.200).

12. Agricultural Workers. Agricultural employers must give their employees basic safety and health information developed by OR-OSHA in a variety of languages (ORS 654.770 and 780.)

13. Criminal Willful Penalties. Oregon's criminal willful penalties provisions contain two provisions in addition to those found in the OSH Act. A willful violation in Oregon that "materially contributed to the death of any employee" may also be subject to criminal prosecution, as well as a willful violation that results in death. Oregon also includes a definition of a "willful" violation at ORS 654.991(1) as one committed "* * * knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a regulation, rule, standard or order."

C. Regulations

1. General Administration. OR-OSHA's General Administrative Rules, Oregon Administrative Rules (OAR) section 437 Division 1, were most recently amended by OR-OSHA Administrative Order 6-2003, adopted and effective November 26, 2003. They parallel federal OSHA regulations at 29 CFR part 1903 on inspections, citations and proposed penalties; 29 CFR part 1904 on injury/illness recordkeeping and reporting; and 29 CFR part 1905 on variances. These Oregon rules have been determined to be at least as effective as OSHA's and continue to meet the indices and criteria of plan approval contained in 29 CFR part 1902. The main differences concern penalties and recordkeeping. In addition, Oregon's administrative rules contain requirements for workplace safety committees and for loss prevention

activities by workers' compensation insurers and self-insured employers that federal OSHA does not have, as well as a training grant program funded by civil penalty money.

- **Penalties.** Unlike OSHA's rules or policies, Oregon's penalties rules at OAR 437-001-0135 to 0203 establish a mandatory minimum proposed penalty for repeat violations (\$200) as well as optional minimum penalties of \$200 for failure to post a citation or annual summary and \$100 for failure to post the OSHA poster. (Both agencies have a \$100 minimum penalty for serious violations.) Unlike OSHA, OR-OSHA's rules also require penalties of \$100-\$5,000 for red tag violations, \$250-\$2,500 for field sanitation violations, and a civil penalty of \$100-\$2,500 for making false statements (in addition to criminal penalties identical to OSHA's). Penalty calculation methods are addressed in detail in Oregon's compliance policy manual. (See discussion in section II.E.)

- **Recordkeeping.** As required by 29 CFR 1904.37, Oregon's recordkeeping requirements at OAR 437-001-0700 through 0742 are the same as federal OSHA's concerning which injuries and illnesses are recordable and how they are recorded. Oregon's rules contain slight differences in wording, do not employ the federal question/answer format, and include two non-mandatory appendices concerning hearing loss recording criteria. 1904.37 also provides that other state recordkeeping provisions may be more stringent or include supplemental requirements. In addition to the federal requirements for reporting a fatality or the hospitalization of three or more employees within 8 hours, Oregon requires the reporting of any overnight hospitalization within 24 hours. In conjunction with its bloodborne pathogens standard (OAR 437-002-1035), Oregon requires all employers to maintain a needlestick sharps injury log. (Federal OSHA does not require a sharps log for employers who are otherwise partially exempt from the 1904 recordkeeping requirements due to small size or type of industry.)

2. Settlement and Abatement.

Oregon's rules for Contested Cases, at OAR 438-085, have been amended through WCB 3-1997, adopted December 12, 1997, effective March 1, 1998. These rules are administered by the Workers' Compensation Board, which handles appeals of Oregon OSHA citations and penalties. This regulation parallels 29 CFR parts 2200-2499, "Occupational Safety and Health Review Commission", and has been determined to provide at least as

effective procedures for review and adjudication of contested cases. There are two differences. Under OAR 438-085-0305, the Workers' Compensation Board defers action on a Request for Hearing for 90 days while OR-OSHA continues to seek informal settlement—unless there is an express waiver of participation in OR-OSHA's informal settlement conference process. Like Oregon, federal OSHA continues to seek an informal settlement after an appeal is filed before the Review Commission, but there is no specified deferral period to encourage settlement before the case is reviewed by an administrative law judge. In addition, for serious or willful violations, the filing of an appeal in Oregon (unlike OSHA) has no effect upon the start of the abatement period. The employer must begin abating the alleged violation during this 90 day period.

3. **Non-discrimination.** Discrimination Rules at OAR 839 Division 3 ("Civil Rights Complaint Procedures"), Division 4 ("Retaliation for Opposition to Health and Safety Hazards"), and Division 50 ("Contested Case Hearing Rules"), adopted by the Oregon Bureau of Labor and Industries (BOLI), were last revised by BLI Administrative Order 10-2002, adopted and effective May 17, 2002 (Divisions 3 & 4) and by BLI Administrative Order 2-2000, adopted and effective January 27, 2000 (Division 50). These rules to protect workers from discrimination for engaging in protected safety and health activities under the Oregon Act are administered by the Civil Rights Division of the Bureau of Labor and Industries through an agreement with Oregon OSHA. (BOLI investigates complaints under all of Oregon's civil rights laws.) If BOLI is unable to reach a settlement in a merit ("substantial evidence") case, it issues formal charges and presents the case before a BOLI hearing examiner (administrative law judge) who prepares a final order issued by the Commissioner of Labor. BOLI can enforce a settlement agreement or Commissioner's order through the courts if the employer does not voluntarily comply. These discrimination rules parallel OSHA's rules at 29 CFR 1977 and have been determined to provide at least as effective procedures for review and adjudication of safety and health discrimination complaints. There are, however, several differences. All BOLI settlements are required to be no-fault (OAR 839-003-0055(2)(a)). In addition, BOLI lacks the authority to settle cases unilaterally (*e.g.*, with just the employer). BOLI dismisses the

complaint if the employer is willing to settle but the complainant is not (OAR 839-003-0050(3) and -0055(2)). However, the complainant can then invoke a private right of action and file a civil suit in state court (OAR 839-003-0020(2)). A civil suit may be filed subsequent to a complaint being filed with BOLI. However, under Oregon law, a person filing a civil suit initially waives the right to later file an administrative complaint with BOLI. Under OSHA, there is no private right of action in federal court for alleged discrimination.

D. Interagency Agreements

Oregon OSHA currently has 11 jurisdictional agreements with other state and federal agencies. The latest is an April 9, 2004 interagency agreement with federal OSHA Region X on emergency response in the event of a natural disaster or terrorist event. Other agreements with OSHA are Oregon's Operational Status Agreement, which delineates the areas of federal enforcement in the state; and an agreement concerning the Umatilla Chemical Agent Disposal Facility. Oregon OSHA also has chosen to implement national agreements signed by federal OSHA with various other federal agencies. In addition, Oregon OSHA has signed agreements for coordination of enforcement with the U.S. Environmental Protection Agency (worker protection standard, Clean Air Act) and with these state agencies: Bureau of Labor and Industries (discrimination and farm worker camps), Department of Environmental Quality (asbestos), Fire Marshall (fire and hazardous materials), Department of Agriculture (pesticides), and the Oregon Health Division (ionizing radiation).

Note: Two interagency agreements with the Oregon Department of Agriculture and with the U.S. Environmental Protection Agency concern pesticides enforcement and are considered by OSHA to be outside of the Oregon state plan. OSHA's section 23(g) grant restrictions prohibit the expenditure of federal or matching state funds for programs coming within the jurisdiction of and/or funded by another federal agency, including pesticides enforcement in agriculture.

E. Manuals and Directives

1. **Compliance Manual.** OR-OSHA's Field Inspection Reference Manual (FIRM) was issued July 1, 1995, re-issued January 1, 2003, and revised through Change 1, September 1, 2003. Oregon's compliance manual parallels federal OSHA's current FIRM, issued September 26, 1994, and other federal implementing compliance policy directives. It has been determined to

provide at least as effective policy and procedures for the conduct of OR-OSHA's enforcement program and continues to meet the criteria and indices for plan approval contained in 29 CFR 1902. The Oregon FIRM provides guidance to the OR-OSHA compliance staff concerning pre-inspection procedures (inspection scheduling and priorities, complaints and other unprogrammed inspections, inspection preparation), inspection procedures (conduct of the inspection, opening conference, physical examination of the workplace, follow-up inspections, fatality/catastrophe investigations, imminent danger investigations, construction inspections), inspection documentation (types of violations, violation of general duty clause, writing citations, grouping and combining of violations), post-inspection procedures (abatement, citations, penalties, post-citation process), and disclosure (policy and procedures, specific guidelines). In addition, program directives establish detailed compliance procedures on a number of issues. (See section II.E.2.)

- **Penalty calculation.** OR-OSHA's procedures for penalty calculation contain a number of differences from OSHA's, including lower base penalty amounts used in calculation of a probability/severity-based (gravity-based) penalty (from \$300 to \$1,250 for a serious violation, vs. federal \$1,500 to \$5,000), and differences in calculations for combined or grouped violations and in penalty adjustment factors. For example, while federal OSHA allows a penalty reduction of up to 60% for employer size, Oregon allows a penalty reduction of only 10% for small employers. Oregon also allows penalty reductions for a low lost workday injury rate which federal OSHA does not. In addition, Oregon's procedures generally allow a lower minimum penalty for failure-to-abate violations (\$50 per day for other-than-serious and \$250 per day for serious, with higher minimum in unusual circumstances, vs. federal policy of \$1,000 per day minimum for either serious or other-than-serious unabated violations). Oregon does not allow penalty adjustments for repeat or willful violations, while OSHA allows an adjustment for employer size. Although these and other differences in penalty calculation result in lower average penalties in Oregon, no deficiencies in program operations attributable to these differences have been noted. Oregon believes that its practice of conducting much more frequent inspections and the fact that its final assessed penalties are reduced less

after appeal than are federal OSHA's result in equivalent worker protection as demonstrated by declining injury/illness rates.

- **Orders to Correct.** In addition to issuing citations, Oregon issues "Orders to Correct" to require correction of safety and health hazards in certain circumstances. For example, orders may be used when a citation has not been issued within 180 days of the opening conference, when legal estoppel issues interfere with issuing a citation, or when a small employer, who is required by rule to have a safety committee but does not, agrees to implement an "innovative" committee following the OR-OSHA guidelines for small employers. Citations for failure-to-abate and repeat violations can be issued on an Order to Correct. Almost all Orders to Correct have dealt with small employer implementation of safety committee requirements. Oregon's use of Orders to Correct in most circumstances is comparable to OSHA's De Minimis Violations, where the employer complies with the clear intent of a standard but deviates from its particular requirements in a manner that has no direct or immediate relationship to employee safety or health.

- **Multi-employer guidelines.** Oregon's different Multi-Employer Workplace Citation Guidelines, effective January 1, 2003 and re-issued March 8, 2004, are referenced in OR-OSHA's FIRM but are contained in a stand-alone enforcement guidance document posted on the OR-OSHA website that has been determined to be at least as effective as OSHA's policy (OSHA Instruction CPL 2-0.124, December 10, 1999). Under OR-OSHA's guidelines, only employers that have direct knowledge of the hazardous conditions and exercise, or have the right to exercise, direct control over the work practices of employees who could reasonably have been exposed to such conditions may be cited. The federal policy is broader and also allows citations for employers responsible for correcting a hazard. However, Oregon's guidelines encourage the use of Orders to Correct for employers who are not cited.

2. **Program Directives.** OR-OSHA Program Directives, as updated through May, 2004, provide guidance to Oregon compliance officers to enforce and interpret standards and administrative rules, and have been found to be at least as effective as OSHA's program guidance documents and continue to meet the indices and criteria of 29 CFR part 1902. While most Oregon program directives concern the enforcement of individual standards, 26 directives provide broader compliance guidance

for the operation of the Oregon state plan, covering issues such as citing corporate officers; egregious violations; paperwork and written program violations; process for splitting violations; complaint policies and procedures; inspection criteria (for construction and logging safety inspections, for random construction inspections and for temporary employment and leasing agencies); inspection exemptions for small agricultural employers; scheduling lists for safety and health inspections; state-wide settlement agreements; video and audio tapes case file documentation guidelines; independent contractors, LLCs, partnerships and corporate officers; jurisdictional issues and agreements; local emphasis programs (agriculture and reforestation worker housing, falls in construction, field sanitation, and struck-by hazards in logging); special emphasis programs (silicosis, lead in construction); safety and health program review; and tuberculosis.

3. **Consultation Manual.** OR-OSHA's Consultative Services Reference Guide, dated February 5, 2002, parallels OSHA's Consultation Policies and Procedures Manual issued August 6, 2001 and contains provisions as established by 29 CFR part 1908. Oregon's consultation manual has been found to be at least as effective as OSHA's and meets the indices and criteria of 29 CFR part 1902. Oregon operates an on-site consultation program for small private sector employers pursuant to section 21(d) of the federal OSH Act which is staffed by 4 consultants and is separate from its OSHA-approved state plan. In addition, as also documented in OR-OSHA's consultation manual, Oregon operates a separate consultation program funded with 100% state funds and staffed by 32 consultants which provides similar services to both private and public sector employers but does not conform to all of the requirements of the federal program, including required abatement of serious hazards. Because of these differences, the private sector aspect of this program is not considered a part of the approved state plan but is evaluated to the extent appropriate to assure it has no negative impact on the effectiveness of the approved state plan.

4. **Technical Manual.** The Oregon Technical Manual, updated through April, 2001, is a reference document that is also part of Oregon's revised state plan. It is identical to the OSHA Technical Manual (OSHA Instruction TED 1-0.15A, January 20, 1999) except for section 1, sampling, which was updated by the state in 2001 to reflect

its current laboratory practices. The Technical Manual provides technical information to OR-OSHA compliance officers on occupational safety and health topics to assist them in hazard recognition and to provide guidance in accident prevention. Topics addressed include sampling and measurement methods, health hazards (polymers, indoor air, ventilation, heat stress, noise, lasers), safety hazards (oil well derricks, petroleum refining, pressure vessel guidelines, industrial robots), construction operations (demolition, excavations, lead exposure), health care facilities, ergonomics, and chemical protective clothing.

F. Budget and Personnel

The revised Oregon state plan contains the current FY 2005 grant application for the Oregon program which includes an organization chart and detailed information on staffing and funding. The Oregon plan is currently funded at \$5,105,000 in initial federal section 23(g) funds, \$5,105,000 in matching state funds, and \$8,394,237 in 100% state funds, for a total initial federal and state award of \$18,604,237. OR-OSHA has a staff of 184 with 52 safety and 28 health compliance officers, 2 safety and 2 health consultants funded under 21(d), and 19 safety and 13 health consultants in a 100% state-funded program. The approved compliance staffing benchmarks for the Oregon program pursuant to a 1978 court order in *AFL-CIO v. Marshall* (C.A. No. 74-406) are 47 safety and 28 health. OR-OSHA personnel are employed under a merit system in compliance with Oregon law, personnel rules, and the state's collective bargaining contract with the Oregon Public Employees Union.

III. Decision

After careful review and consideration, the Oregon revised state plan and its components described above are found to be in substantial conformance with comparable federal provisions and in some cases to go

beyond federal requirements and are hereby approved under 29 CFR Part 1953 as providing a revised state plan for the development and enforcement of standards which continues to be "at least as effective as" the federal program, as required by section 18(b) of the OSH Act. The right to reconsider this approval is reserved should substantial objections or other information become available to the Assistant Secretary regarding any of the plan change's components. OSHA's decision today incorporates the requirements and implementing regulations applicable to state plans generally.

IV. Location of Basic State Plan Documentation

Copies of the revised Oregon state plan are maintained at the following locations; specific documents are available upon request. Contact the Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101-3212, (206) 553-5930, fax (206) 553-6499; Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, Salem, Oregon 97310, (503) 378-3272, fax (503) 947-7461; and the Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW, Room N3700, Washington, D.C. 20210, (202) 693-2244, fax (202) 693-1671.

Most of the Oregon revised state plan documents referenced above are posted on the state's Web site at www.cbs.state.or.us/external/osha. Oregon's contested cases rules at OAR 438-085 are posted on the state of Oregon's rules Web site at http://arcweb.sos.state.or.us/rules/alpha_index.html, under Department of Consumer and Business Services, Workers' Compensation Board. The Bureau of Labor and Industries'

discrimination rules at OAR 839-003, 839-004 and 839-050 may be accessed through the same Web site.

An electronic copy of this **Federal Register** notice and related press release are available on OSHA's Web site, www.osha.gov.

V. Public Participation

Under 29 CFR 1953.6(c), OSHA generally "will seek public comment if a State program component differs significantly from the comparable Federal program component and OSHA needs additional information on its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program * * *". Based on the information presently available, the Assistant Secretary finds that the Oregon revised state plan described above is consistent with federal requirements and with commitments contained in the plan and previously made available for public comment. Public participation for the purpose of providing additional information about the effectiveness of the Oregon state plan is therefore unnecessary. Moreover, all legislative and regulatory components of the revised plan as well as many of the policy documents were adopted under procedural requirements of state law, which included appropriate opportunity for public participation. Good cause is therefore found for approval of these supplements (which constitute the revised state plan), and further public participation would be repetitious and unnecessary.

Authority: Sec. 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of Labor's Order No. 5-2002 (67 FR 65008, October 22, 2002).

Signed in Washington, DC, this 10th day of December, 2004.

John L. Henshaw,
Assistant Secretary.

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