FOR FURTHER INFORMATION CONTACT: Courtney Smith, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1371, email: *CTPRegulations@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 18, 2020, the Food and Drug Administration (FDA or Agency) issued a final rule establishing new cigarette health warnings for cigarette packages and advertisements. The final rule implements a provision of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) that requires FDA to issue regulations requiring color graphics depicting the negative health consequences of smoking to accompany new textual warning label statements. The Tobacco Control Act amends the Federal Cigarette Labeling and Advertising Act of 1965 (Pub. L. 89–92) to require each cigarette package and advertisement to bear one of the new required warnings. The final rule specifies the 11 new textual warning label statements and accompanying color graphics. Pursuant to section 201(b) of the Tobacco Control Act, the rule was published with an effective date of June 18, 2021, 15 months after the date of publication of the final rule.

On April 3, 2020, the final rule was challenged in the U.S. District Court for the Eastern District of Texas.[1] On May 8, 2020, the court granted a joint motion to govern proceedings in that case and postpone the effective date of the final rule by 120 days.[2] On December 2, 2020, the court granted a new motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[3] On March 2, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[4] On May 21, 2021, the court granted another motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[5] On August 18, 2021, the court issued an order to postpone the effective date of the final rule by an additional 90 days.[6] On November 12, 2021, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[7] On February 10, 2022, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[8] On May 10, 2022, the court issued another order to postpone the effective date of the final rule by an additional 90 days.[9] On August 10, 2022, the court granted a motion by the plaintiffs to postpone the effective date of the final rule by an additional 90 days.[10] The court ordered that the new effective date of the final rule is October 6, 2023. Pursuant to the court order, any obligation to comply with a deadline tied to the effective date is similarly postponed, and those obligations and deadlines are now tied to the postponed effective date.

To the extent that 5 U.S.C. 553 applies to this action, the Agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exception in 5 U.S.C. 553(b)(B). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The 90-day postponement of the effective date, until October 6, 2023, is required by court order in accordance with the court's authority to postpone a rule's effective date pending judicial review (5 U.S.C. 705). Seeking prior public comment on this postponement would have been impracticable, as well as contrary to the public interest in the orderly issuance and implementation of regulations.

Dated: August 12, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–17761 Filed 8–17–22; 8:45 am]

BILLING CODE 4164–01–P

[1] *R.J. Reynolds Tobacco Co. et al.* v. *United States Food and Drug Administration et al.,* No. 6:20–cv–00176 (E.D. Tex. filed April 3, 2020).

[2] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 8, 2020) (order granting joint motion and establishing schedule), Doc. No. 33.

[3] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. December 2, 2020) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 80.

[4] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. March 2, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 89.

[5] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 21, 2021) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 91.

[6] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. August 18, 2021) (order postponing effective date), Doc. No. 92.

[7] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. November 12, 2021) (order postponing effective date), Doc. No. 93.

[8] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. February 10, 2022) (order postponing effective date), Doc. No. 94.

[9] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. May 10, 2022) (order postponing effective date), Doc. No. 96.

[10] *R.J. Reynolds Tobacco Co.,* No. 6:20–cv–00176 (E.D. Tex. August 10, 2022) (order granting Plaintiffs' motion and postponing effective date), Doc. No. 100.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. OSHA–0022–0008]

RIN 1218–AD41

Massachusetts State Plan for State and Local Government Employers; Initial Approval Determination

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

ACTION: Final rule.

SUMMARY: The Massachusetts State and Local Government Only State Plan, a State occupational safety and health, applicable only to Massachusetts State and local Government employees (workers of the State and its political subdivisions), is approved as a developmental plan under the Occupational Safety and Health Act of 1970 and OSHA regulations. OSHA's decision to grant the Massachusetts State Plan initial approval is based on its determination that the Massachusetts State Plan meets, or will meet within three years, OSHA's State Plan approval criteria, and that Massachusetts has provided adequate assurances that it will be at least as effective as Federal OSHA in protecting the safety and health of Massachusetts State and local Government workers. The Massachusetts State Plan is eligible to receive funding from the Department of Labor's Fiscal Year 2022 budget.

DATES: This final rule is effective August 18, 2022.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Contact Francis Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone (202) 693–2200; email: *kalinowski.doug@dol.gov.*

Copies of this ***Federal Register*** *document and news releases:* Copies of this **Federal Register** document and other documents referenced herein are available at *www.regulations.gov,* the Federal eRulemaking Portal, in Docket No. OSHA–2022–0008. Electronic copies of this document, as well as news releases and other relevant information, are also available at OSHA's web page at: *www.osha.gov.*

Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. For example, the full Document ID number for the Massachusetts State Plan narrative, which describes the Massachusetts State Plan, is Document ID OSHA–2022–0008–0048.[1] OSHA will identify this comment, and other comments in the rulemaking, by the term ''Document ID'' followed by the comment's unique four-digit code (*e.g.,* as to the Massachusetts State Plan narrative, Document ID 0048).

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the OSH Act, 29 U.S.C. 667, provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to a Federal standard which has been promulgated may submit a State Plan to the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) documenting the proposed program in detail. State and local Government employers are excluded from Federal OSHA coverage under the Act (29 U.S.C. 652(5)). However, a State may submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employers and employees of the State and its political subdivisions (*i.e.,* State and local Government employers and employees) (29 CFR 1956.1). The Assistant Secretary will approve a State Plan applicable only to State and local Government employers and employees (State and local Government State Plan) if the Plan provides for the development and enforcement of standards relating to hazards in employment covered by the Plan which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under Section 6 of the OSH Act, giving due consideration to differences between State and local Government and private sector employment (29 U.S.C. 667(c); 29 CFR 1956.2(a)). In making this determination, the Assistant Secretary will measure the State Plan against the criteria and indices of effectiveness set forth in 29 CFR part 1956.10 and 1956.11 (29 CFR 1956.2(a)). A State and local Government State Plan may receive initial approval although it does not yet fully meet this criteria, if it includes satisfactory assurances by the State that it will take the necessary steps to bring the program into conformity with these criteria within the 3-year period immediately following the commencement of the State Plan's operation (29 CFR 1956.2(b)(1)). In such case, the developmental State Plan must include the specific actions (referred to as developmental steps) that the State Plan must take and a schedule for their accomplishment, not to exceed 3 years. Once a State and local Government State Plan has completed the developmental steps, Federal OSHA will publish a notification in the **Federal Register** certifying the State Plan's completion of all developmental steps (29 CFR 1956.23; 1902.33 and 1902.34).

Section 23(g) of the OSH Act provides for funding of up to 50% of the State Plan costs (29 U.S.C. 672(g)). Congress designates specific funds for this purpose (see, *e.g.,* FY 2022 Consolidated Appropriations Act, H.R. 2471, p. 383 (March 17, 2022)).

II. Massachusetts State Plan History and Events Leading to Initial Approval

The Massachusetts Department of Labor Standards (DLS) has a history that traces back to 1912. Although the agency's name has changed slightly over time, the mission of the DLS has always included promoting and protecting workers' health, safety, and working conditions. In 2014, by statute, Massachusetts authorized the DLS to provide State workers with at least the level of protection from workplace safety and health hazards as protections provided under the OSH Act by Federal OSHA (M.G.L. c. 149, § 6½). The DLS's authority to provide such protection was expanded to cover all State and local Government workers, including any political subdivision of the Commonwealth, which includes municipal and county workers, by amendment to the authorizing statute in 2018. Since 2019, the DLS, through its Workplace Safety and Health Program (WSHP), has performed inspections of State and local Government employers to ensure compliance with these requirements. The DLS began working with OSHA to obtain approval for a State Plan for occupational safety and Health, applicable only to State and local Government employment, and submitted a draft Plan to OSHA in December 2020, with final revisions to the Plan in June 2022.

In Fiscal Year 2022, Congress increased the funds available for State Plans. The Fiscal Year 2022 Omnibus Appropriations Act includes $1,250,000 in State Plan grant funds for the Massachusetts State Plan.

On June 30, 2022, OSHA published a notice in the **Federal Register** proposing to grant the Massachusetts State Plan initial approval as a State and local Government State Plan under section 18 of the OSH Act (29 U.S.C. 667) (87 FR 39033). In the proposal, OSHA indicated that it had preliminarily found the Massachusetts State Plan to be conceptually approvable as a developmental State Plan. The proposal also included a request for interested persons to submit public comment and to request an informal hearing concerning the proposed initial State Plan approval. OSHA received seven comments in response, and, as discussed below, all seven comments strongly supported OSHA's proposal. OSHA did not receive any requests for an informal hearing.

III. Summary of Comments Received

OSHA received seven comments from interested persons in response to its June 30, 2022, proposal and request for public comment. As previously noted, all seven comments may be viewed in the rulemaking docket at *www.regulations.gov,* under Docket No. OSHA–2022–0008.

All seven comments strongly support OSHA's initial approval of the Massachusetts State Plan. The Occupational Safety and Health State Plan Association (OSHSPA), which ''is an organization of twenty-eight (28) State Plans and U.S. Territories that have OSHA-approved State Plans,'' submitted a comment expressing strong support for OSHA's proposal to grant initial approval to the Massachusetts State Plan in order to ''ensure approximately 434,000 public sector workers in Massachusetts are afforded occupational safety and health protections that OSHA cannot provide'' (Document ID 0052). Another commenter, on behalf of United Support and Memorial for Workplace Fatalities, also expressed strong support (Document ID 0055).

The other five comments received were nearly identical to one another. These comments were received from the Massachusetts Coalition for Occupational Safety and Health (MassCOSH) (Document ID 0049), Dr. Leslie I. Boden, professor of Public Health at Boston University (Document ID 0050), SEIU Local 888 (Document ID 0051); Massachusetts AFL–CIO (Document ID 0054), and Teamsters

[1] The Appendices referenced in the Massachusetts State Plan narrative are also included in the Docket as supporting and related materials.

Local Union No. 25 (Document ID 0056). All five of these comments ''emphatically support'' OSHA's proposal to grant initial approval. They also raised identical specific concerns about terms of the proposed Massachusetts State Plan, regarding Massachusetts' regulations applicable to the Massachusetts State Plan that address advance notice of inspections, anti-retaliation, and Massachusetts' adoption of new OSHA standards and Emergency Temporary Standards. These five commenters' specific concerns are addressed below, in conjunction with OSHA's findings regarding the Massachusetts State Plan's compliance with the criteria and indices of effectiveness for State and local Government State Plans set forth in OSHA's regulations.

IV. Findings

As previously discussed, in order to grant initial approval to a State Plan for State and local Government, OSHA must determine whether the State Plan provides for the development and enforcement of standards relating to hazards in employment covered by the Plan which are or will be at least as effective in providing safe and healthful employment and places of employment as standards promulgated and enforced under Section 6 of the OSH Act, giving due consideration to differences between State and local Government and private sector employment (29 U.S.C. 667(c); 29 CFR 1956.2(a)). To make this determination, the Assistant Secretary measures the State Plan against the criteria in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR 1956.11 (29 CFR 1956.2(a)).

OSHA has evaluated the Massachusetts State Plan against the criteria and indices of effectiveness in OSHA's regulations and finds that the Massachusetts State Plan meets these criteria, or will meet these criteria within the three-year period immediately following the commencement of the State Plan's operation, as permitted by 29 CFR 1956.2(b)(1). OSHA's specific findings and conclusions with regard to these criteria and indices of effectiveness are discussed below.

OSHA's findings are based primarily on information about the Massachusetts State Plan that is included in the Massachusetts State Plan narrative (Document ID 0048), and on the Appendices referenced in the Massachusetts State Plan narrative that OSHA has also included in the rulemaking docket. And OSHA reviewed and carefully considered the seven public comments received in reaching its determinations regarding the Massachusetts State Plan.

A. Designated Agency

Section 18(c)(1) of the OSH Act provides that a State occupational safety and health program must designate a State agency or agencies responsible for administering the Plan throughout the State (29 U.S.C. 667(c)(1); see also 29 CFR 1956.10(b)(1)). The State Plan must describe the authority and responsibilities of the designated agency and provide assurance that other responsibilities of the agency will not detract from its responsibilities under the Plan (29 CFR 1956.10(b)(2)).

The DLS is designated as the State agency responsible for the development and enforcement of occupational safety and health standards applicable to State and local Government employment throughout the State. Workplace Safety and Health Program (WSHP) is the sub-agency responsible for administering the Massachusetts State Plan. The Massachusetts State Plan narrative describes the authority of the Massachusetts DLS and its other responsibilities (Document ID 0048, pp. 9–10).

B. Scope

Section 18(c)(6) of the OSH Act provides that a State Plan, to the extent permitted by its law, must establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of the State and its political subdivisions (29 U.S.C. 667(c)(6)). A State Plan may only exclude certain political subdivision employees from coverage if the State is constitutionally precluded from regulating occupational safety and health conditions for such political subdivision (29 CFR 1956.2(c)(1)). Further, the State may not exclude any occupational, industrial or hazard grouping from coverage under its Plan unless OSHA finds that the State has shown there is no necessity for such coverage (29 CFR 1956.2(c)(2)).

The Massachusetts State Plan covers State and local Government employees throughout the State. M.G.L. c. 149, § 6½ defines ''public employees'' as ''individuals employed by a public employer.'' ''Public employers,'' as defined by M.G.L. c. 149, § 6½, include ''any agency, executive office, department, board, commission, bureau, division, or authority of the commonwealth or of any political subdivision of the commonwealth [that is, city, town, county], any quasi-public independent entity and any authority or body politic and corporate established by the general court [Legislature] to serve a public purpose.'' Volunteers under the direction of a public employer or other public corporation or political subdivision are also covered. The definition of public employee does not include students (except when employed or vocational/technical students when performing field work), or those incarcerated or involuntarily/voluntarily committed in public institutions (Document ID 0048, pp. 6–9).

Consequently, OSHA finds that the Massachusetts State Plan contains satisfactory assurances that no employees of the State and its political subdivisions are excluded from coverage, and the Plan excludes no occupational, industrial, or hazard grouping.

C. Standards and Federal Program Changes

Section 18(c)(2) of the OSH Act requires State Plans to provide for the development and enforcement of occupational safety and health standards which are at least as effective as Federal OSHA standards that relate to the same issues (29 U.S.C. 667(c)(2)). A State Plan for State and local Government must provide for the development or adoption of such standards and must contain assurances that the State will continue to develop or adopt such standards (29 CFR 1956.10(c); 1956.11(b)(2)(ii)). A State may establish the same standards, procedures, criteria, and rules as Federal OSHA (29 CFR 1956.11(a)(1)), or alternative standards, procedures, criteria, and rules that are at least as effective as those of Federal OSHA (29 CFR 1956.11(a)(2)). Among other requirements, State standards that deal with toxic materials or harmful physical agents, must adequately assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity, even if such employee has regular exposure to the regulated hazard throughout the employee's working life (29 CFR 1956.11(b)(2)(i)). Where a State's standards are not identical to Federal OSHA's, they must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1956.11(b)(2)(iii)). The State Plan must provide for prompt and effective standards setting actions for protection of employees against new and unforeseen hazards, by such means as the authority to promulgate emergency temporary standards (29 CFR 1956.11(b)(2)(v)). State standards must provide for furnishing employees

appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1956.11(b)(2)(vi)). They must require suitable protective equipment and technological procedures with respect to regulated hazards, including monitoring or measuring exposure, where appropriate (29 CFR 1956.11(b)(2)(vii)). M.G.L. c. 149, §§ 6 and 6½ authorize the DLS to investigate and issue fines to places of public employment. M.G.L. c. 149, § 6½ includes the requirement that ''Public employers shall provide public employees at least the level of protection provided under the federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.,* including standards and provisions of the general duty clause contained in 29 U.S.C. 654.'' Massachusetts promulgated regulations pursuant to M.G.L. c. 149, § 6½. Those regulations include 454 CMR 25.00 and 29.00, which were promulgated and/or amended according to M.G.L. c. 30A, § 1 *et seq.,* the Massachusetts State Administrative Procedure Act (State APA). 454 CMR 25.00 incorporates the standards set forth under the OSH Act, 29 U.S.C. 651 *et seq.,* including the General Duty Clause, and regulations, 29 CFR parts 1903, 1904, 1910, 1915, 1917, 1918, 1926, 1928, and 1977, and applies them to Massachusetts places of State and local Government employment. 454 CMR 29.00 provides the procedures for issuing civil penalties and hearing appeals (Document ID 0048, p. 10).

M.G.L. c. 149, § 6½ created the Occupational Health and Safety Hazard Advisory Board (Advisory Board), whose members are appointed by the Governor. The Advisory Board evaluates injury and illness data, recommends training and implementation of safety and health measures, and monitors the effectiveness of safety and health programs to determine where additional resources are needed to protect the safety and health of State and local Government employees. The DLS consults with the Advisory Board prior to promulgating occupational safety and health regulations and adopting regulations promulgated by OSHA, pursuant to M.G.L. c. 149, § 6½(d) (Document ID 0048, pp. 10–11).

In all rulemaking, the DLS follows its State APA and 950 CMR 20.00 (PREPARING AND FILING REGULATIONS). Prior to the adoption, amendment, or repeal of any regulation where the violation of the regulation is punishable by fine or imprisonment, except for emergency temporary standards, the DLS must provide notice and hold a public hearing where any interested persons, data, views, arguments, or comments either orally, in writing, or both, shall be accepted for consideration. The DLS has provided assurances that it will complete this process to adopt all Federal occupational safety and health standards not promulgated as emergency temporary standards, within six months, as required by OSHA regulation (Document ID 0048, p. 11).

When the DLS promulgated 454 CMR 25.02, it incorporated the following phrase, ''All current and updated regulations and references at 29 CFR parts 1903, 1904, 1910, 1915, 1917, 1918, 1926, 1928 and 1977 are incorporated by reference, and applicable to all places of employment covered by 454 CMR 25.00'' with the intent of automatically adopting any future changes of revisions of the Federal OSHA standards. However, this method of adopting standards is prohibited by the State APA. Therefore, the DLS, as a developmental step, will amend 454 CMR 25.00 to remove this phrase and clarify its rulemaking process with respect to the adoption of Federal OSHA standards (Document ID 0048, p. 11).

In addition, consistent with 29 CFR 1953.4(b), Massachusetts has provided assurances that it will timely adopt and/or implement all other Federal Program Changes, or an at least as effective alternative, whenever OSHA designates such Federal Program Changes to be ''adoption required'' or ''equivalency required.'' This includes the adoption of all Federal Directives designated as ''adoption required'' or ''equivalency required'' by OSHA, or an at least as effective alternative (Document ID 0048, p.11).

The DLS has the authority under M.G.L. c. 149, § 6½ to adopt alternative or different occupational health and safety standards where no Federal standards are applicable to the conditions or circumstances or where standards that are more stringent than the Federal are deemed advisable. New or modified standards may be requested through research and experience during inspections, a recommendation from the Advisory Board, and an interested person. Prior to the development and promulgation of new standards or the modification or revocation of existing standards, the DLS would consider input from the Advisory Board, per M.G.L. c. 149, § 6½(d), experts with technical knowledge, and submissions from interested persons, and provide the opportunity for interested persons to participate in any hearing. To be considered by the Advisory Board, new or modified standards are required to be more protective of employees than existing OSHA standards, or to address issues for which there is no existing OSHA standard (Document ID 0048, p. 12).

The DLS has the authority to adopt emergency temporary standards where State and local Government employees may be exposed to unique hazards for which existing standards do not provide adequate protection for the preservation of their health or safety. Emergency rulemaking procedures are in the State APA at M.G.L. c. 30A, § 2, 3, & 6 and 950 CMR 20.05. An emergency is defined in the State APA as the existence of a situation where it is necessary to adopt, amend, or repeal a regulation for the preservation of the public health, safety, or general welfare immediately, and where the observance of the requirements of notice and a public hearing would be contrary to the public interest. The DLS's finding of an emergency and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the State Secretary.

With regard to Federal occupational safety and health standards promulgated as emergency temporary standards, if OSHA promulgates an emergency temporary standard, Massachusetts has provided assurances that the DLS will, and has the authority to, adopt and rely on OSHA's findings of grave danger and reasonable necessity, and that such reliance on Federal OSHA's findings will be sufficient to satisfy the requirements of the State APA. The DLS would file emergency regulations within 30 days of the Federal promulgation date unless an existing State standard is deemed to be at least as effective, following the emergency rulemaking procedures as outlined in the State APA at M.G.L. c. 30A, §§ 2, 3, & 6, and 950 CMR 20.05(2). An emergency regulation becomes effective immediately when filed or such later time as specified therein, per M.G.L. c. 30A, § 6 (Document ID 0048, pp. 12–14).

Per the State APA, and as described at 950 CMR 20.05(2), such emergency temporary regulations may only remain in effect no longer than three months from the date filed with the State Secretary or until superseded by a permanent regulation. During the three months covered by the emergency regulation, the DLS has provided assurances that it would proceed with the rulemaking process as described in 950 CMR 20.05(2)(a) through (c) to adopt the ETS for a period equal to or exceeding Federal OSHA's ETS, and that it would make an emergency temporary standard permanent within

three months of its effective date pursuant to 950 CMR 20.05(2)(a) through (c), provided that the Federal emergency temporary standard remains in effect (Document ID 0048, pp. 12–13).

As previously discussed, five commenters provided nearly identical public comments in support of OSHA's proposal to grant the Massachusetts State Plan initial approval. These five commenters also expressed concerns regarding the Massachusetts rulemaking process, and particularly regarding Massachusetts' recent decision not to adopt OSHA's COVID–19 Healthcare Emergency Temporary Standard (COVID–19 Healthcare ETS) (Document ID 0049; 0050; 0051; 0054; 0056). Additionally, they expressed concerns that the State APA only permits a Massachusetts emergency temporary standard to remain in effect for three months, whereas the commenters state that the OSH Act contemplates an emergency temporary standard to remain effective until superseded by a permanent standard, ''a process contemplated by the OSH Act to occur within 6 months of the [Emergency Temporary Standard's] promulgation.''

OSHA appreciates these commenters' perspective. It is true that Massachusetts did not adopt OSHA's COVID Healthcare ETS. However, the agency does not find that Massachusetts' failure to adopt that ETS suggests a deficiency in the State Plan because Massachusetts also did not have an OSHA-approved State Plan when the COVID Healthcare ETS was published in 2021, and thus was not required by the OSH Act to have and enforce standards that were at least as effective as Federal OSHA at that time. Moreover, OSHA specifically consulted with the DLS regarding Massachusetts' decision not to adopt OSHA's COVID–19 Healthcare ETS, and Massachusetts made assurances, discussed above, that it will timely adopt all Federal standards promulgated in the future, including any future emergency temporary standards, and that it will adopt a permanent standard that is at least as effective as a Federal emergency temporary standard, within the three-month timeframe that the State APA permits emergency regulations in Massachusetts to remain in effect. OSHA notes that State Plans' statutory and regulatory requirements for adopting Federal OSHA standards vary considerably by State. OSHA will continue to monitor Massachusetts' ability to timely adopt Federal standards, including emergency temporary standards, if promulgated, including during the three-year developmental period following OSHA's grant of initial approval to the Massachusetts State Plan and prior to certifying the State Plan's completion of all developmental steps in accordance with 29 CFR 1956.23, 1902.33, and 1902.34.

Based on the preceding Plan provisions, assurances, and commitments, OSHA finds the Massachusetts State Plan to have met the statutory and regulatory requirements for initial plan approval with respect to adoption of occupational safety and health standards and Federal Program Changes.

D. Variances

A State Plan must have authority to grant variances from State standards upon application of a public employer or employers which corresponds with Federal OSHA's authority under sections 6(b)(6) and 6(d) of the OSH Act (29 U.S.C. 655(b)(6) and (d); 29 CFR 1956.11(b)(2)(iv). Such authority must include provisions for the consideration of views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to variance applications (29 CFR 1956.11(b)(2)(iv)).

Per 454 CMR 25.05(6), variances may be granted when, ''The Director, on the record, after notice, an inspection when warranted, and an opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of 454 CMR 25.00 as found necessary and proper. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.'' The DLS has provided assurances that variances may not be granted unless it is established that adequate protection is afforded to employees under the terms of the variance. However, current DLS provisions for granting variances, found at 454 CMR 25.05(6), are inconsistent with OSHA's permanent variance procedure. Therefore, during its developmental period, Massachusetts has provided assurances that it intends to complete the developmental step of amending 454 CMR 25.05 to modify its variance requirements to become consistent with those in the OSH Act and to adopt OSHA's regulation governing variances, 29 CFR 1905 (Document ID 0048, pp. 14–15).

Accordingly, OSHA finds that the Massachusetts State Plan has adequately provided assurances that it will meet the statutory and regulatory requirements for initial plan approval with respect to variances within the developmental period.

E. Enforcement

Section 18(c)(2) of the OSH Act requires a State Plan to include provisions for enforcement of State standards which are or will be at least as effective in providing safe and healthful employment and places of employment as the Federal program, and to assure that the State's enforcement program for public employees will continue to be at least as effective as the Federal program in the private sector (29 U.S.C. 667(c)(2); see also 29 CFR 1956.10(d)(1)).

1. Legal Authority

The State Plan must require State and local Government employers to comply with all applicable standards, rules and orders and must have the legal authority necessary for standards enforcement (29 U.S.C. 667(c)(4); 29 CFR 1956.10(d)(2), 1956.11(c)(2)(viii)).

M.G.L. c. 149 § 6½ requires public employers to, ''provide public employees at least the level of protection provided under the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et. seq., including standards and provisions of the general duty clause contained in 29 U.S.C. 654.'' The DLS, as the designated enforcement agency for M.G.L. c. 149 § 6½, has the authority to inspect public sector workplaces pursuant to M.G.L. c. 149, §§ 6, 6½, 10, 17, and 454 CMR 25.03. According to 454 CMR 25.03(1)(a), the DLS has the authority to ''enter without delay'' public sector workplaces to conduct inspections. M.G.L. c. 149, §§ 6, 6½(e), 10, and 17, 454 CMR 25.03 and 25.05(4), as well as the Massachusetts Field Operation Manual (MA FOM) [2] at Chapter 3(IV)(C), provide procedures for when an employer refuses entry to the DLS inspector. Pursuant to 454 CMR 25.03(c), the DLS may question privately any employer, operator, manager, agent or employee. The DLS has the authority to review employer records as part of an inspection under M.G.L. c. 149 § 17, which states that the DLS, ''. . . shall have access to all

[2] Massachusetts has already written and adopted a Massachusetts Field Operations Manual (MA FOM) based on Federal OSHA's Field Operations Manual (FOM) with some differences to reflect differences between the State Plan and Federal OSHA. Federal OSHA is currently reviewing the Massachusetts FOM. The DLS has provided assurances that, once Federal OSHA's review is complete, it will make any updates, as necessary, to ensure that the enforcement policies in the MA FOM are at least as effective as Federal OSHA's FOM. This commitment is also a developmental step (Document ID 0048, p. 29).

records pertaining to wages, hours, and other conditions of employment which are found essential to such investigations.'' This authority is also included in 454 CMR 25.03(c) (Document ID 0048, pp. 16–17). Additional legal authority of the Massachusetts State Plan related to enforcement is discussed below.

2. Inspections

A State Plan must provide for the inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1956.11(c)(2)(i)). When no compliance action results from an inspection of a violation alleged by an employee complaint, the State must notify the complainant of its decision not to take compliance action by such means as written notification and opportunity for informal review (29 CFR 1956.11(c)(2)(iii)).

As previously noted, the DLS has the authority to inspect any workplace where work is being performed by an employee of a State or local Government employer to enforce its occupational safety and health standards pursuant to M.G.L. c. 149, §§ 6, 6½, 10 and 17, and 454 CMR 25.03 (Document ID 0048, p. 17). The DLS will accept a complaint from any source: employees, representatives of employees, or members of the public. Complaints may be made in person, by telephone, or by email. A complaint form is available on the DLS website. A complainant may request that their name not be revealed to the employer. While allegations made in the complaint are provided to the employer, copies of the complaint form are not regularly provided to the employer. However, under court order, the DLS may be required to provide the complaint form and the name of the complainant to the State or local Government employer. If the DLS determines upon the receipt of a complaint that there are reasonable grounds to believe that unsafe or unhealthful working conditions exists, an inspector shall be assigned to the case to determine if such violation or danger exists per 29 CFR 1903.11, incorporated at 454 CMR 25.02, and the MA FOM Chapter 9. When contact information has been provided, the DLS will inform the individual who has made a complaint that an inspection will be scheduled and that the individual will be advised of the results. If the DLS determines that there are no reasonable grounds to believe that a violation or danger exists, the employee or representative of the employee who alleged violations will be notified of such determination per procedures of the MA FOM Chapter 9, as required in 29 CFR 1903, as adopted under 454 CMR 25.00 (Document ID 0048, p. 20).

3. Employee Notice and Participation in Inspection

In conducting inspections, the State Plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1956.11(c)(2)(iii)). In addition, the State Plan must provide that employees be informed of their protections and obligations under the OSH Act by such means as the posting of notices (29 CFR 1956.11(c)(2)(iv)), and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1956.11(c)(2)(vi)).

During the walkaround inspection, representatives of the employer and employees are allowed to accompany the DLS throughout the inspection process so long as they do not interfere in the conduct of the inspection or present a safety or health hazard as determined in the sole discretion of the DLS, pursuant to 454 CMR 25.03(6) (Document ID 0048, p. 19).

Any State or local Government employer who violates any of the posting requirements, pursuant to 29 CFR 1903.2 & 1903.16 incorporated by 454 CMR 25.02, 454 CMR 25.04, and the MA FOM Chapter 6(X), shall be assessed a penalty of not more than $1,000 for each violation pursuant to M.G.L. c. 149, § 6 (Document ID 0048, p. 27).

State and local Government employers in Massachusetts are required to maintain accurate records regarding occupational safety and health injuries, illnesses, deaths, and exposures to toxic materials, and employees and/or employee representatives have the right to access the records pursuant to 29 CFR 1904.35(b)(2) and 29 CFR 1910.1020 as incorporated by 454 CMR 25.02 and 25.06(1) (Document ID 0048, p. 18).

4. Nondiscrimination Protections

State Plans must provide necessary and appropriate protection to employees against discharge or discrimination for exercising their rights under the State program, including by such means as providing for employer sanctions and employee confidentiality (29 CFR 1956.11(c)(2)(v)).

The DLS has authority to remedy retaliation for a State or local Government employee who files a complaint, instituted any proceeding, testified, or exercised any rights afforded by 454 CMR 25.00, pursuant to 29 CFR 1977 as incorporated at 454 CMR 25.02 and 25.07. Any State or local Government employee who believes that they have been discharged or otherwise discriminated against in violation of 454 CMR 25.07 and incorporated 29 CFR 1977, may within 30 days after the alleged violation occurs, file a complaint with the DLS, alleging discrimination. The DLS may seek a remedy for an employee who files a retaliation complaint for discharge or discrimination within 30 days after any alleged violation pursuant to 29 CFR part 1977, in accord with 454 CMR 25.07 & 25.02 and the MA FOM Chapter 9(I)(J)(2). Massachusetts has also adopted, and will conduct inspections consistent with, the OSHA Whistleblower Investigations Manual, CPL 02–03–007. If upon investigation, the DLS determines that the provisions of 454 CMR 25.07 have been violated, an action shall be brought for all appropriate relief, including rehiring or reinstatement of the employee to their former position with back pay, pursuant to 29 CFR 1977.3 as incorporated by 454 CMR 25.02. In addition, the DLS has a fine structure that can increase the amount of future fines, up to the current maximum of one thousand dollars for each violation, if further discrimination were to occur, pursuant to M.G.L. c. 149, § 6, 454 CMR 25.05(1), 454 CMR 29.04(2)(d), and MA FOM Chapter 9(II) procedures.

Massachusetts also has a Whistleblower's Protection statute, M.G.L. c. 149, § 185, that protects State and local Government employees and prohibits retaliation through a right of private civil action. Any State or local Government employee or former employee aggrieved of a violation of M.G.L. c. 149, § 185 may, within two years, institute a civil action in Superior Court. All remedies available in common law tort actions shall be available to prevailing plaintiffs, including reinstatement and back pay (Document ID 0048, pp. 21–22).

The five commenters that provided nearly identical public comments in support of OSHA's proposal to grant the Massachusetts State Plan initial approval also raised concerns that the Massachusetts State Plan's adoption of OSHA's regulations at 29 CFR 1977 governing Discrimination Against Employees Exercising Rights Under the Williams-Steiger Occupational Safety and Health Act of 1970 and incorporation of these regulations at 454 CMR 25.07 may not provide Massachusetts with adequate legal

authority to investigate and take enforcement action if a State or local Government employee believes that they have been discharged or otherwise discriminated against in violation of the Massachusetts State Plan's regulations Document ID 0049; 0050; 0051; 0054; 0056).

OSHA's understanding is that Massachusetts adopted 454 CMR 25.07 and 29 CFR 1977 through the rulemaking process required by the State APA, and thus OSHA's understanding, consistent with the Massachusetts State Plan's assurances, is that the DLS currently has authority to enforce these provisions. OSHA notes that at least one other State and local Government State Plan, Maine, has recently similarly adopted 29 CFR 1977 without issue. However, OSHA agrees that, were a State court to determine that the Massachusetts State Plan lacked the authority to enforce its anti-retaliatory provisions, this would likely render the State Plan less effective than Federal OSHA and necessitate Massachusetts making further changes to its statutory or regulatory structure, as appropriate, to ensure its continued enforcement authority. OSHA will continue to evaluate the Massachusetts State Plan's ability to enforce its anti-retaliation provisions under 454 CMR 25.07 and 29 CFR 1977, as incorporated, including during the three-year developmental period following its initial approval.

In addition, these commenters expressed concerns that the Massachusetts State Plan does not include a penalty structure that is the equivalent of the punitive damages that may be available for violation of the antiretaliatory provisions in section 11(c) of the OSH Act (Document ID 0049; 0050; 0051; 0054; 0056). As noted above, Massachusetts has the authority to issue fines of up to one thousand dollars for each violation if repeat instances of discrimination occur, pursuant to M.G.L. c. 149, § 6, 454 CMR 25.05(1), 454 CMR 29.04(2)(d), and MA FOM Chapter 9(II) procedures. As discussed below, OSHA's indices of effectiveness for State and local Government State Plans provide that, in lieu of monetary penalties as sanctions, a complex system of enforcement tools and rights, including administrative orders and employees' right to contest, may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment (29 CFR 1956.11(c)(2)(x)). Thus, OSHA has found the Massachusetts State Plan to have met the statutory and regulatory requirements for initial plan approval with respect to its nondiscrimination protections.

5. Imminent Danger Procedures

A State Plan is required to provide for the prompt restraint or elimination of conditions or practices in places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through enforcement procedures otherwise provided for by the State Plan (29 CFR 1956.11(c)(2)(vii)).

In the case of such imminent danger, the DLS has the authority to issue a stop work order for violations of safety regulations pursuant to 454 CMR 25.03(7). The Attorney General may bring a civil action for declaratory or injunctive relief to enforce any order of the DLS pursuant to 454 CMR 25.05(4), as well as M.G.L. c. 149, §§ 2 and 6½. 454 CMR 25.08 provides that the DLS will follow procedures in 29 CFR 1903, which is incorporated by 454 CMR 25.02, for cases of imminent danger, and the MA FOM Chapter 11 also has imminent danger procedures. These procedures include that, upon discovering conditions or practices constituting an imminent danger, the inspector will immediately address the issue with the State or local Government employer and ask the employer to notify employees and remove them from exposure. If the employer does not or cannot voluntarily eliminate the hazard or remove affected employees from exposure, the DLS inspector will immediately notify the Program Supervisor. If necessary, the Program Supervisor will consult with the DLS's General Counsel, the Massachusetts State Police, and the Attorney General, and take action to eliminate the imminent danger to the State or local Government employees as soon as possible (Document ID 0048, pp. 19–20).

6. Right of Entry; Advance Notice

Section 18(c)(3) of the OSH Act requires State Plans to provide for a right of entry to inspect workplaces that is at least as effective as Federal OSHA's right under section 8 of the OSH Act, and which includes a prohibition on advance notice of inspections (29 U.S.C. 667(c)(3); 29 CFR 1956.10(e) and (f)).

Under the Massachusetts State Plan, inspectors have the authority to enter any place of employment without delay and at reasonable times, pursuant to M.G.L. c. 149, §§ 6½, 10 and 17 and 454 CMR 25.03(1)(a) (Document ID 0048, p.17). Anyone providing advance notice of any inspection, without permission from the Director, will be punished per M.G.L. c. 268A, §§ 23 & 26 and 454 CMR 25.03(4). Incorporated 29 CFR 1903.6 provides four exceptions to the prohibition of providing advance notice, which are: (1) in cases of imminent danger; (2) where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary; (3) where necessary to assure the presence of the employer and employees or needed personnel; (4) or in other circumstances where the Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection (Document ID 0048, pp. 18–19).

The five commenters that provided nearly identical public comments in support of OSHA's proposal to grant the Massachusetts State Plan initial approval raised concerns that the Massachusetts State Plan regulation, 454 CMR 25.03(4), allows advance notice of inspections if authorized by ''the Director'' without further limitation or reference to 29 CFR 1903.6 (Document ID 0049; 0050; 0051; 0054; 0056). The commenters request that the DLS be required to provide details on when and why the Director would give permission during the developmental period. In response to these concerns, OSHA notes, as discussed above, that the Massachusetts State Plan has adopted through rulemaking and incorporated the requirements of 29 CFR 1903.6, and thus is subject to their limitations. Further, OSHA finds that the reference to ''the Director'' in 454 CMR 25.03(4) is consistent with 29 CFR 1903.6, which vests decision-making authority with regard to giving advance notice of inspections with OSHA Area Directors. Finally, 454 CMR 25.03(4) makes clear that sanctions are available under M.G.L. c. 268A, sections 23 and 26, for persons who give advance notice of any inspection without authority from the DLS Director. Based on this, OSHA has determined that the Massachusetts State Plan's requirements regarding advance notice of inspections are at least as effective as Federal OSHA's requirements.

7. Citations, Sanctions, and Abatement

A State Plan for State and local Government must provide for prompt notice to State and local Government employers and employees when alleged violations have occurred, including proposed abatement requirements (29 CFR 1956.11(c)(2)(ix)). The State Plan must further provide the authority for effective sanctions to be issued against employers violating State occupational safety and health standards. In lieu of monetary penalties as sanctions, a

complex system of enforcement tools and rights, including administrative orders and employees' right to contest, may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment (29 CFR 1956.11(c)(2)(x)).

The DLS's authority to issue Civil Citations and penalties is established in M.G.L. c. 149, §§ 6 and 6½, 454 CMR 25.00, and 454 CMR 29.00, and 29 CFR part 1903, as incorporated by 454 CMR 25.02. If an inspector believes that a violation of a safety and health standard exists, the inspector will issue a written Order to Correct within 180 days of the completion of the inspection process. This report will describe the nature of the violation, including reference to the appropriate regulation, the corrective action to abate the violation, and an abatement date for each violation, pursuant to 454 CMR 25.05(2). The DLS shall provide written notification to the appropriate governing official, public administrator, agency head, and/or personnel director, pursuant to 454 CMR 25.05(3). No reports will be issued after 180 days from the initiation of an inspection. Massachusetts will amend 454 CMR 25.05(2) during its developmental period to reflect this policy (Document ID 0048, p. 22).

The Director has the discretion to issue civil penalties of up to $1,000 per violation, pursuant to M.G.L. c. 149, § 6, and 454 CMR 29.04(2)(d). The DLS generally issues a Written Warning as the first enforcement action taken against a State or local Government employer. However, an employer's failure to correct a violation within the period of time specified in a Written Warning and Order to Correct issued by the DLS may result in the issuance of a Civil Citation or other enforcement action. The DLS may also issue penalties as a first method of enforcement, without a prior written warning, depending on the gravity of the violation and when the violation warrants such action. The DLS has authority to take other enforcement actions, including issuing a Stop Work Order in cases of imminent danger or other cases as deemed appropriate, and the Massachusetts Attorney General may bring a civil action for declaratory or injunctive relief where necessary (Document ID 0048, pp. 23–26).

The DLS will offer appropriate abatement assistance during the walkaround to explain how workplace hazards might be eliminated and advise a State or local Government employer of apparent violations and other pertinent issues during the closing conference, in the interest of providing the employer an opportunity to reduce the risk to employees from that hazard. In some circumstances, the employer's immediate correction or initiation of steps to abate a hazard during the inspection may result in a good faith reduction in any proposed penalty, pursuant to 29 CFR 1903.15(b) and (c) as incorporated by 454 CMR 25.02, 454 CMR 29.00 and the MA FOM Chapter 6(III)(B)(3)(b) (Document ID 0048, p. 23).

Covered employers must provide documentation of abatement pursuant to 29 CFR 1903.19(d), incorporated by 454 CMR 25.02 and the MA FOM Chapter 6(X)(C), or a follow-up inspection may be scheduled after the abatement time frame has expired. A written response from the employer will be evaluated by the DLS for completeness and appropriateness in relation to the report. If the written response is inadequate, a follow-up inspection can be scheduled after the abatement time frame, per the MA FOM Chapter 7(XI)(B). The results of the follow-up inspection will then be documented in a report that includes any corrective measures taken by the employer. This report will be sent to the complainant if the original inspection was initiated by a complaint. The complainant may refute or question any abatement measure, per the MA FOM (Document ID 0048, p. 23).

8. Contested Cases

A State Plan for State and local Government employees must have authority and procedures for employer contests of violations alleged by the State, penalties/sanctions, and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 2956.11(c)(2)(xi)).

Under the Massachusetts State Plan, any person, State or local Government employer, or other entity aggrieved by a Civil Citation, Order, or Penalty for violation of a standard under 454 CMR 25.00, promulgated pursuant to M.G.L. c. 149, § 6½, may request that an administrative hearing be held by submitting a written request to the Director or their representative within fifteen business days after the receipt of the Civil Citation or Order, pursuant to M.G.L. c. 149, § 9 and as detailed in 454 CMR 29.04(6) as referenced by 454 CMR 25.05(1). A State or local Government employer may contest a Civil Citation, penalty, or abatement period at an informal conference and an administrative hearing, pursuant to M.G.L. c. 149, § 9 and as detailed in 454 CMR 29.04(6) as referenced by 454 CMR 25.05(1) and the MA FOM Chapter 8. Employees or their authorized representatives may question the reasonableness of abatement periods pursuant to 29 CFR 1903, as adopted in 454 CMR 25.00, M.G.L. c. 149, § 9 as detailed in 454 CMR 29.04(6) and the MA FOM. Employees or their authorized representatives may participate in review proceedings pursuant to 29 CFR 1903, as adopted in 454 CMR 25.00, M.G.L. c. 149, § 9 as detailed in 454 CMR 29.04(6) and the MA FOM Chapter 8.

Informal conferences may be held prior to a formal administrative hearing pursuant to 29 CFR 1903.20, as incorporated by 454 CMR 25.02 and the MA FOM Chapter 8. At the request of an affected State or local Government employer, employee, or employee representative, an informal conference may be held within fifteen business days of receipt of a Civil Citation to discuss any issues raised by an inspection, citation, penalty, or intention to appeal. The requesting party may attend the conference by right, and the other parties shall be afforded the opportunity to participate in the informal conference.

All administrative hearings shall be held in accordance with the requirements of M.G.L. c. 30A and 801 CMR 1.00: Standard Adjudicatory Rules of Practice and Procedure, pursuant to 29 CMR 29.04(6). Any person, State or local Government employer, or other entity aggrieved by the decision of an administrative hearing may request judicial review of the decision by the Superior Court with jurisdiction, pursuant to M.G.L. c. 149, § 9 and as detailed in 454 CMR 29.04(6), 801 CMR 1.01(13), and M.G.L. c. 30A, § 14 (Document ID 0048, pp. 25–26).

Enforcement Conclusion

OSHA finds that all of the enforcement provisions of the Massachusetts State Plan described above meet the statutory and regulatory requirements for initial State Plan approval, or that Massachusetts has provided sufficient assurances that such requirements will be met during the developmental period.

F. Staffing and Resources

Section 18(c)(4) of the OSH Act requires State Plans to provide the qualified personnel necessary for the enforcement of standards (29 U.S.C. 667(c)(4)). OSHA's regulations also require OSHA to evaluate whether a State Plan for State and local Government has or will have a sufficient number of adequately trained and competent personnel to discharge its

responsibilities under the Plan (29 CFR 1956.10(g)). Section 18(c)(5) of the OSH Act requires that the State Plan devote adequate funds for the administration and enforcement of its standards (29 U.S.C. 667(c)(5); see also 29 CFR 1956.10(h)).

The Massachusetts State Plan provides assurances of a fully trained, adequate staff within three years of plan approval, including a program supervisor, an operations supervisor, 10 safety inspectors and three health inspectors. The DLS currently has eleven inspectors, seven safety inspectors, and four health inspectors, all of whom perform duties related to both enforcement and consultation. If granted initial approval, the DLS will add three safety enforcement inspectors. The DLS will redesignate two of its safety enforcement inspectors and one health inspector to exclusively perform consultation. These re-designated employees will be part of a separate consultation division with distinct supervision from the enforcement inspectors. The DLS will also train one supervisor and two enforcement inspectors to conduct whistleblower investigations (Document ID 0048, pp. 33–35).

The accomplishment of hiring to achieve staffing goals, reorganization of the DLS staffing pattern described above, adoption of OSHA's Mandatory Training Program for OSHA Compliance Personnel Directive (TED 01–00–019) and Mandatory Training Program for OSHA Whistleblower Investigators Directive (TED 01–00–020), and accomplishment of all personnel training consistent with these Directives, are all included as developmental steps in the Massachusetts State Plan's timetable for accomplishment within three years, during the Massachusetts State Plan's developmental period (Document ID 0048, pp. 37–38).

The compliance staffing requirements (or benchmarks) for State Plans covering both the private and public sectors are established based on the ''fully effective'' test established in *AFL–CIO* v. *Marshall,* 570 F.2d 1030 (D.C. Cir. 1978). This staffing test, and the complicated formula used to derive benchmarks for Full Coverage Plans is not intended, nor is it appropriate, for application to the staffing needs of State Plans for occupational safety and health programs covering only State and local Government workers. However, the DLS has given satisfactory assurances that it will meet the requirements of 29 CFR 1956.10 for an adequately trained and qualified staff sufficient for the enforcement of standards. The DLS has also given satisfactory assurances of adequate State matching funds (50 percent) to support the Plan and is requesting initial Federal funding of $1,250,000, for a total initial program effort of $2,500,000.

Accordingly, OSHA finds that the Massachusetts State Plan has provided for sufficient, qualified personnel and adequate funding for the various activities to be carried out under the Plan.

G. Records and Reports

Section 18(c)(7) of the OSH Act requires State Plans to make reports to the Assistant Secretary in the same manner as if the Plan were not in effect (29 U.S.C. 667(c)(7)). State and local Government State Plans must ensure that covered employers will maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private sector employers under the OSH Act (29 CFR 1956.10(i)). Section 18(c)(8) of the OSH Act requires State Plans to make such reports to the Assistant Secretary in such form and containing such information as they may from time to time require (29 U.S.C. 667(c)(8); 29 CFR 1956.10(j)).

The Massachusetts State Plan requires State and local Government employers to comply with Recordkeeping and Reporting Requirements at 454 CMR 25.06 and 29 CFR 1904, which is incorporated per 454 CMR 25.02. Under 454 CMR 25.06 and 29 CFR 1904, the DLS requires State and local Government employers to maintain accurate records for every occupational death, and every occupational injury and illness that results in death, loss of consciousness, days away from work, restricted work activity or job transfer, or medical treatment beyond first aid in a manner consistent with OSHA's requirements for private sector employers.

Covered employers in Massachusetts are required to maintain in each workplace an OSHA 300 Log, or equivalent, of all recordable occupational injuries and illnesses for that workplace. Within seven calendar days after receiving information about a case, the employer shall: decide if the case is recordable, determine if it is a new case or a recurrence of an existing one, establish whether the case was work-related, and decide whether to fill out the OSHA 301 Incident Report, the Massachusetts Department of Industrial Accidents form, or a suitable substitute that contains the same information as these first report of injury forms, pursuant to 29 CFR part 1904, incorporated per 454 CMR 25.02, and 454 CMR 25.06. Covered employers must post an annual summary of work-related injuries and illnesses for each workplace on the OSHA 300A form, or equivalent, from February 1 to April 30 of the year following the year covered by the form in a conspicuous location where employees can view it and it must be certified by an executive of the State or local Government employer, pursuant to 29 CFR 1904.32, incorporated per 454 CMR 25.02. The OSHA 300A Summary of Work-Related Injuries and Illnesses, the OSHA 301 Injury and Illness Incident Report, and the OSHA 300 Log of Work-Related Injuries and Illnesses, or suitable substitutes, must be retained for five years following the end of the calendar year that the records cover, pursuant to 29 CFR 1904.33, incorporated per 454 CMR 25.02. Such records are available to the DLS through inspection or by request, pursuant to M.G.L. c. 149, §§ 10 & 17 and 454 CMR 25.03(1)(c) (Document ID 0048, pp. 30–31).

The Massachusetts State Plan has also provided assurances in its State Plan that it will continue to participate in the Bureau of Labor Statistics' Annual Survey of Injuries and Illnesses in the State to provide detailed injury, illness, and fatality rates for the public sector. The State Plan will also provide reports to OSHA in the desired form and will join the OSHA Information System within 90 days of plan approval, including the implementation of all hardware, software, and adaptations as necessary (Document ID 0048, p. 31).

Accordingly, OSHA finds that the Massachusetts State Plan meets, or has adequately provided assurances that it will meet within the developmental period, the requirements of Sections 18(c)(7) and (8) of the OSH Act on the employer and State reports to the Assistant Secretary, as required for initial State Plan approval.

H. Voluntary Compliance Program

State Plans for State and local Government employees must undertake programs to encourage voluntary compliance by covered employers and employees, such as by conducting training and consultation, and encouraging agency self-inspection programs (29 CFR 1956.11(c)(2)(xii)).

The Massachusetts State Plan provides that the DLS will continue to provide and conduct educational programs for public employees specifically designed to meet the regulatory requirements and needs of covered employers. The Plan also provides that consultations, including site visits, compliance assistance and training classes, are individualized for

each work site and tailored to the public employer's concerns. The DLS has conducted over 250 on-site consultations (*i.e.,* voluntary compliance inspections) for State and local Government workplaces since 2015. The DLS will continue to offer this service as it is a vital component of creating a culture of safety and proactively preventing accidents. In addition, public agencies are encouraged to develop and maintain their own safety and health programs as an adjunct to but not a substitute for the Massachusetts State Plan's enforcement program (Document ID 0048, p. 28).

The DLS will adopt OSHA's regulation governing Consultation Agreements, 29 CFR 1908, during the developmental period. The DLS has also agreed to adjust its organizational structure to ensure separation between enforcement and compliance assistance (Document ID 0048, p. 28).

OSHA finds that the Massachusetts State Plan provides for the establishment and administration of an effective voluntary compliance program.

V. Decision

OSHA has conducted a careful review of the Massachusetts State Plan for the development and enforcement of State standards applicable to Massachusetts State and local Government employment, and the record developed during the above-described proceedings, including public comments received in support of OSHA's June 30, 2022, proposal. Based on this review, and on the assurances provided by the Massachusetts State Plan of the steps that it will take during the developmental period, OSHA has determined that the requirements and criteria for initial approval of a developmental State Plan have been met. The Massachusetts State Plan is hereby approved as a developmental State Plan for State and local Government under Section 18 of the OSH Act.

OSHA notes that Massachusetts already has authority to enforce and is carrying out enforcement of its occupational safety and health standards in Massachusetts places of State and local Government employment. However, this determination by OSHA to grant the Massachusetts State Plan initial approval makes Massachusetts eligible to apply for and receive up to 50% matching Federal grant funding, as authorized by the OSH Act under section 23(g) (29 U.S.C. 672(g)). In addition, this determination signifies the beginning of the Massachusetts State Plan's three-year developmental period, during which Massachusetts will be required to address the developmental steps identified in the Massachusetts State Plan narrative that is included in the docket of this rulemaking at *www.regulations.gov* (29 CFR 1956.2(b)(1)) (Document ID 0048, pp. 37–38). OSHA will publish a certification notice in the **Federal Register** to advise the public once Massachusetts has completed all developmental steps (29 CFR 1956.23; 29 CFR 1902.33; 1902.34).

VI. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.)* that the initial approval of the Massachusetts State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment and is limited to the State of Massachusetts and its political subdivisions. Compliance with State OSHA standards is required by State law; Federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan. Accordingly, no new obligations would be placed on State and local Government employers as a result of Federal approval of the Massachusetts State Plan. The approval of a State Plan for State and local Government employers in Massachusetts is not a significant regulatory action as defined in Executive Order 12866.

VII. Federalism

Executive Order 13132, ''Federalism,'' emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal Government must follow as it carries out policies which affect State or local Governments. OSHA has consulted extensively with Massachusetts throughout the development, submission, and consideration of its State Plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the Act, which have no effect outside the particular State receiving the approval, OSHA has reviewed the Massachusetts initial approval decision and believes it is consistent with the principles and criteria set forth in the Executive Order.

VIII. Effective Date

OSHA's decision granting initial Federal approval to the Massachusetts State and local Government State Plan is effective August 18, 2022. OSHA has determined that good cause exists for making Federal approval of the Massachusetts State Plan effective upon publication, pursuant to Section 553(d) of the Administrative Procedure Act. Massachusetts' program has been in effect for many years, and further modification of the program will be required over the next three years, following this decision to grant initial approval. OSHA's proposal provided an opportunity for the submission of comment and requests for a public hearing. The seven comments received during this rulemaking strongly supported OSHA's grant of initial approval. Further, Federal funds for the Massachusetts State Plan are available through the Fiscal Year 2022 Omnibus Appropriations Act. Therefore, for these reasons, this decision is immediately effective.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393), and 29 CFR parts 1902 and 1956.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble, 29 CFR part 1952 is amended as follows:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

■ 1. The authority citation for part 1952 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), or 8–2020 (85 FR 58393, Sept. 18, 2020), as applicable.

Subpart B—List of Approved State Plans for State and Local Government Employees

■ 2. Add § 1952.29 to read as follows:

§ 1952.29 Massachusetts.

(a) The Massachusetts State Plan for State and local Government employees received initial approval from the Assistant Secretary on August 18, 2022.

(b) The Plan further provides assurances of a fully trained, adequate staff within three years of plan approval, including 8 safety and 3 health compliance officers for enforcement inspections, and 2 safety and 1 health consultants to perform consultation services in the public sector. The State has assured that it will continue to provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards as required by 29 CFR 1956.10. The State has also given satisfactory assurance of adequate funding to support the Plan.

(c) The plan only covers State and local government employers and employees within the State. For additional details about the plan, please visit *https://www.osha.gov/dcsp/osp/stateprogs/massachusetts.html.*

[FR Doc. 2022–17803 Filed 8–17–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0670

RIN 1625–AA00

Safety Zone; Cumberland River, Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Cumberland River on mile marker (MM) 190 to 192. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by Nashville CVC–ASAE Fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective 9 p.m. through 9:30 p.m. on August 20, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0670 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Third Class Benjamin Gardner, Marine Safety Detatchment Nashville, U.S. Coast Guard; telephone 615–736–5421, email, *Benjamin.T.Gardner@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
MM Mile marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. It is impracticable to publish an NPRM because we must establish this safety zone by August 20, 2022 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the Nashville CVC–ASAE Fireworks event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with the Nashville CVC—ASAE Fireworks starting August 20, 2022, will be a safety concern for anyone within mile marker 190 to 192. on the Cumberland River. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the firework display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9 p.m. until 9:30 p.m. on August 20, 2022. The safety zone will cover all navigable waters between MM 190 to 192 on the Cumberland River, extending the entire width of the river. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the fireworks display is occuring. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 502–779–5422 or on VHF–FM channel 16.

Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and Marine Safety Information Bulletins (MSIBs) about this safety zone, enforcement period, as well as any changes in the dates and times of enforcement.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).