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AUTHORITY: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

SOURCE: 38 FR 24361, Sept. 7, 1973, unless otherwise noted.

Subpart A—General

§ 1953.1 Purpose and scope.

(a) This part applies to the provisions of section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (hereinafter referred to as the Act) relating to State plans for the development and enforcement of State safety and health standards. The provisions of this part set forth the procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 36 FR 8754, May 12, 1971) will review changes in a State plan approved in accordance with section 18(c) of the Act and part 1902 of this chapter, and also provide advisory opinions on proposed changes to be

made by a State in implementing its plan.

(b)(1) States may submit plans covering any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. These plans must meet the criteria in section 18(c) of the Act and part 1902 either at the time of submission or in any event not later than the three year period immediately following commencement of the plan's operation, where the plan is developmental.

(2) The Act provides for discretionary concurrent Federal and State authority during this three year developmental period and until the Assistant Secretary determines on the basis of actual operations that the State is applying the criteria of section 18 of the Act and part 1902. During the period of concurrent Federal and State authority, as well as after a determination has been under section 18(e) that the plan is meeting the criteria of the Act and part 1902, the State plan will be continually evaluated under section 18(f) of the Act as to the manner in which the provisions (including any assurances) are implemented.

(c)(1) In accordance with section 18(c) of the Act the Assistant Secretary is authorized to approve State plans and any modifications to these plans. In submitting plans the States have provided assurances that they will continue to meet the requirements in section 18(c) of the Act and 29 CFR part 1902 during the time the States participate in the Federal program. Such assurances are a fundamental basis for approval of plans. (See 29 CFR 1902.3(c)(1), (d)(1)). This part establishes procedures for review of those modifications (hereinafter referred to as changes) that are necessary to fulfill the State's assurances, the requirements of the Act, and 29 CFR part 1902. Responsibility for review of changes is a separate function, but related to the exercise of concurrent authority under section 18(e) of the Act and continuing evaluation under section 18(f) of the Act.

(2) Changes to a plan can be separated into several categories. As the

State plan is implemented, supplements will be required to meet developmental schedules approved as part of the plan. These developmental step supplements must be completed within three years after commencement of operations under the plan. The development of the Federal program and the continuing evaluation of the State programs will also require that changes be made in the plans. In addition there could be State initiated changes that would have an impact on the effectiveness of the State program.

(d) Because of the States' need to continue an on-going program, this part also provides for advisory opinions to requesting States. These opinions, while not final decisions under the review procedures established in this part will provide the States with a basis for operation pending formal review of a change supplement.

§ 1953.2 General policies.

(a) Approval of a plan submitted under section 18(b) of the Act is based on a finding that the State has or will have, an "at least as effective" program for the enforcement and setting of standards and will meet the criteria in § 1902.3 of the chapter within a three year developmental period when all of the planned activities are performed. The State must also continue to apply the criteria in section 18(c) of the Act and 29 CFR part 1902, as well as comply with the provisions of the plan and any assurances contained therein as long as the plan continues in operation. Supplements to the plan will be reviewed in the context of the entire plan as it moves through its developmental and operational stages.

(b) The regulations in this part will apply both before and after determinations have been made under section 18(e) of the Act and will be amended as necessary. Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210, a written petition for revision, amendment or revocation of any of the provisions of this part. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

(c) Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding prescribe additional or alternative procedures in order to expedite the review process or for any other good cause which may be consistent with the applicable laws.

(d) Advisory opinions are designed to facilitate implementation of changes in a State plan. In general these opinions will be given for proposed changes such as the adoption of regulations or standards prior to promulgation by the States and submission as a formal change.

(e) Copies of all supplements to a plan, all public comments thereon, and all advisory opinions shall be available for inspection and copying at the expense of the person requesting the copy at the locations specified in the subpart of part 1952 of this chapter relating to the State plan. The locations include the Office of Federal and State Operations, the Office of the Regional Administrator for the Occupational Safety and Health Administration (hereinafter referred to as the Regional Administrator) in whose Region the State is located, and an office or offices of the State which have been designated by the State for this purpose. The most current copy of a State plan will be located in the State and Regional office pending submission of the change supplements to the Assistant Secretary.

§ 1953.3 Publication.

Whenever a State is required under its law to publish notice of the subject matter of any change required by this part prior to its adoption by the State, a republication by the State as in § 1902.11(a) of this chapter will not be required. Where the subject matter of the change is not subject to public notice under State law, republication by the State as provided in § 1902.11(a) of this chapter may be required unless the Assistant Secretary determines the change is minor. Such a minor change could include notice that the State had completed intermediate steps in the implementation of its Management Information System or its staff training program.

§ 1953.4 Delegation of authority.

(a)(1) Under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health, the Regional Administrators shall be responsible for review and approval of changes to occupational safety and health standards in approved State plans in accordance with the procedures specified in the applicable subparts of this part.

(2) In conjunction with this delegation of authority, the Assistant Secretary of Labor for Occupational Safety and Health, after consultation with the Office of the Solicitor, will be responsible for advising the Regional Administrators as to interpretations of Federal and State standards so as to avoid inconsistent interpretations particularly in States adopting other than Federal standards. Any person may request such an interpretation from the Assistant Secretary.

(b) Regional Administrators means the employee or officer regularly or temporarily in charge of a Regional Office of the Occupational Safety and Health Administration, U.S. Department of Labor, or any other person or persons who are specifically designated to act for such employee or officer in his absence. The term also includes any employee or officer in the Occupational Safety and Health Administration exercising supervisory responsibility over the Regional Administrator. Such supervisory employee or officer is considered to exercise concurrent authority with the Regional Administrator.

[39 FR 5629, Feb. 14, 1974]

Subpart B—Developmental Change Supplements

§ 1953.10 Definitions.

(a) Each State with a developmental plan must set forth in its plan those changes which are designed to make its program at least as effective as the Federal program and a timetable for making such changes in accordance with 29 CFR 1902.2(b). A developmental change includes the completion of these developmental steps as well as amendments required in response to failure to meet any steps in the developmental schedule.

(b) Developmental steps must be completed within the three year period immediately following commencement of operations. (See §1902.2(b) of this chapter). The date of "commencement of operations" is ordinarily the plan approval date if the State initiates inspections and enforcement activity with respect to standards covered by the approved plan in accordance with the legal authority existing in the State at the time of approval. But in any case, commencement of operations can be no later than the effective date of the grant approved under section 23(g) of the Act. A State may also commence operations by initiating inspections and enforcement activity at some point after approval and prior to the effective date of the grant. Following approval, each State will submit a letter to the Regional Administrator setting the date for commencement operations. These letters will be included in the approved plans.

§ 1953.11 Submission and consideration.

(a) A supplement is required whenever a State completes a developmental step or fails to meet any developmental step. If a State fails to submit the required supplement when the developmental step was scheduled for completion, the Regional Administrator shall notify the State that a supplement is required and set a time period for submission of the supplement generally not to exceed 30 days.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator for the Occupational Safety and Health Administration.

(2) When a developmental step is missed, the supplement should contain the change with related documentation on the impact of the change on the State plan as well as the following information:

- (i) An explanation of why the step was not completed;
- (ii) A new date for completion of the step;
- (iii) A revised developmental schedule showing specific actions the State

proposes to take whenever the missed step would require a new timetable; and

(iv) A demonstration that the current operating program is substantial enough to contribute to the protection of employees in the State through the enforcement of standards.

Where appropriate, changes requiring legislative action will be supported as required in §1902.2(b) of this chapter.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Regional Administrator, except as provided in §1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedures provided in §§1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to meet the developmental schedule, in accordance with the procedures in §1902.17 of this chapter on rejection of State plans.

(e) The Assistant Secretary shall review a supplement in the context of the entire plan to see whether it meets the assurances provided in the plan for an "at least as effective" program and whether there is a reasonable expectation that the plan will meet the requirements of the Act and the criteria in part 1902 within the three year de-

velopmental period. The decision shall reflect the Assistant Secretary's determination as to whether the supplement meets these requirements.

(f) If a timely request is submitted by the State, a final decision on a developmental change supplement will, to the extent practicable, be made no later than 60 days after the close of the period for written public comment or a hearing, whichever is relevant, unless the Assistant Secretary determines that the change is minor. The Assistant Secretary may defer publication of minor changes until the end of each full year of operations under the plan. The deferral of publication would not be appropriate where the change under consideration included a failure to meet a developmental step.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5629, Feb. 14, 1974]

Subpart C—Federal Program Change Supplements

SOURCE: 39 FR 32905, Sept. 12, 1974, unless otherwise noted.

§ 1953.20 Definitions.

When the Assistant Secretary determines that any alteration in the Federal program could have an adverse impact on the "at least as effective as" status of the State program, a program change supplement to a State plan shall be required. Examples of Federal program changes that would require a supplement include promulgation or modification of standards, including emergency temporary standards; revisions in enforcement policies or procedures; and legislative or regulatory changes in the Federal program, including recordkeeping and reporting requirements. A Federal program change that would either not affect or that would result in no diminution of the effectiveness of a State plan, generally would not require action by the States.

§ 1953.21 Standards supplements.

(a)(1) In accordance with section 18(c) of the Act, §1902.3(c)(1) and (2) and §1902.4(b)(2)(i) through (vii) of this chapter, and the assurances contained in an approved plan, each State has

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agreed that its standards, including emergency temporary standards, will continue to be identical to or at least as effective as Federal standards promulgated under section 6 of the Act relating to issues covered by the approved plan. The requirement to be at least as effective includes promulgation of new standards as well as modifications, revisions, or revocations of existing standards. Since a State may include standards in addition to Federal standards within an issue covered by an approved plan. It would generally not be necessary for a State to revoke a standard when the comparable Federal standard is revoked and no substitute Federal standard is promulgated.

(2) However, in the case of product standards where section 18(c)(2) of the Act requires that State plans meet certain tests before more stringent standards can be adopted or retained by the States, the modification, revision, or revocation of the Federal product standards would necessitate the modification, revision, or revocation of the comparable State standard unless the State product standard is required "by compelling local conditions and [does] not unduly burden interstate commerce." (See 29 CFR 1952.7).

(b) The procedures in §1953.22 are applicable to the submission of emergency temporary standards. The procedures in §1953.23 of this subpart apply to submission of supplements for permanent standards as well as to other Federal program changes. When an emergency temporary standard is adopted as a permanent standard the procedure in §1953.23 is applicable.

§ 1953.22 Emergency temporary standards.

(a)(1) Immediately upon publication of an emergency temporary standard in the FEDERAL REGISTER, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of the standard and the reason why a Federal program change supplement shall be required. The notification shall also provide that the State has 30 days after the effective date of the Federal standard to adopt, under the emergency procedures contained in the plan as required under §1902.4(a)(1)

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or (b)(2)(v) of this chapter, a State emergency temporary standard if the State plan covers that issue.

(2) Within 15 days after receipt of the notice of a Federal emergency temporary standard from the Regional Administrator, the State shall advise the Assistant Regional Director, of the action it will take. The State should advise whether:

(i) It plans to adopt the Federal standard,

(ii) It plans to adopt an "at least as effective as" State standard,

(iii) The State has an existing standard that is at least as effective,

(iv) The Federal standard is not within an issue covered by the State plan, or

(v) The State wants to exclude the issue as defined in 29 CFR 1902.2(c) from the plan, which shall be considered as a request for an advisory opinion under subpart F of this part as to the separability of that issue.

(3) The State shall also include an estimated date of promulgation generally not to exceed 30 days as set out in paragraph (a) of this section. Where the date will exceed 30 days the State shall include a date and the reason why a greater period of time is needed under State law.

(4) The State may also request a finding from the Regional Administrator that there is good cause why the State is not required to adopt the standard on an emergency basis. The request must be supported by relevant data as provided under §1902.2(c)(2) and (3) of this chapter to show that there is no occupational exposure to the hazard within the State such as to warrant an emergency standard. The provisions in paragraph (b) of this section will be applicable to such a request. The application of this paragraph to emergency temporary standards does not mean that a permanent standard would not be required to be promulgated by the State.

(b)(1) The emergency temporary standard when required under paragraph (a) of this section, shall be submitted to the Regional Administrator within 5 days following its adoption by the State. The Assistant Regional Director shall review the supplement and if examination discloses that the State

standard is identical to or at least as effective as the comparable Federal standard, the Regional Administrator shall, within a reasonable time generally not to exceed 20 days, publish a notice to that effect approving the State change.

(2) If examination discloses that the State standard is not at least as effective as the comparable Federal standard, or that the period of time for promulgation which is longer than 30 days is not warranted under paragraph (a)(3) of this section, the Regional Administrator shall immediately notify the State of such findings and of an opportunity to cure such defect or show cause why the State temporary emergency standard should not be rejected. Within a reasonable time, generally not to exceed 20 days from the date of such notification, the Regional Administrator shall cause to be published in the FEDERAL REGISTER a notice approving or rejecting the State standard, whichever is appropriate. Where the State has not taken the opportunity to show cause why the standard should not be rejected, the notice of rejection shall have immediate effect. Where the State has presented arguments and data for approval of the standard and the question of rejection of the standard is still in issue, a limited public comment period may be provided before decision as to approval or rejection of the standard. The Regional Administrator may, in his discretion hold an informal hearing on rejection of the State emergency standard.

§ 1953.23 Submission and consideration of Federal Program changes.

(a)(1) Within a reasonable time after the occurrence of a Federal program change, other than promulgation of emergency temporary standards, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of a Federal program change which requires a State supplement. This notification shall also contain a date by which States must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the

completed Federal program change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that a state has made a timely and specific showing that good cause exists to extend the time limitation for that State.

(2) Where the Federal program change is a new permanent standard, or a more stringent amendment to an existing permanent standard, the State shall promulgate a State standard adopting such new Federal standard, or more stringent amendment to an existing Federal standard, or an at least as effective equivalent thereof, within six months of the date of promulgation of the new Federal standard or more stringent amendment. The Assistant Secretary may permit a longer time period if the State makes a timely demonstration that good cause exists for extending the time limitation.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) of the Act to administer the plan shall submit the supplement with 6 copies to the Regional Administrator. The supplement shall contain the completed change or a schedule for completion of the change where necessary. Whenever the State change differs from the Federal program change, the supplement shall contain documentation on how the change maintains the "at least as effective as" status of the plan.

(2) The State may show cause why a supplement should not be required on the grounds that the State program is already the same as or at least as effective as the Federal program change, or that the failure to adopt the Federal program change would not diminish the effectiveness of the State program. The procedures in this section would be applicable thereto.

(3) Where the Federal program change is a permanent standard the State may also advise the Regional Administrator that the State wants to exclude the issue from the plan. Such a submission shall be considered as a request for an advisory opinion under subpart F of this part as to the severability of that issue.

(c) Upon receipt of the Federal program change supplement or schedule

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submitted by the State, the Regional Administrator shall make a preliminary review of the change. If his examination reveals any defect in the supplement or the schedule, the Regional Administrator shall offer assistance to the State and shall provide the agency with an opportunity, generally not to exceed 30 days, to cure such defect either by revising the change or submitting a new or revised schedule for completion of the change. After the preliminary review and after affording the State such opportunity to cure any defects, the Regional Administrator shall submit the Federal program change supplement promptly to the Assistant Secretary, except as provided in §1953.4 for review and publication of standards supplements.

(d)(1) Upon receipt of the Federal program change supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses that the State change is identical to the Federal program change, the Assistant Secretary shall, within a reasonable time, publish notice to that effect approving the State change. If examination discloses that the Federal program change supplement submitted by the State differs significantly from the Federal change or when the timetable for an identical Federal change supplement might require substantial revision, the procedures provided in §§1902.11 and 1902.12 of this chapter shall be followed.

(2) If examination discloses cause for rejecting the change or when the State declines to submit a change without sufficient reasons, the Assistant Secretary shall provide the State with a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator, for review and submission to the Assistant Secretary, a revised supplement or to show cause why a proceeding should not be commenced for rejection of the change or for failure to submit change, in accordance with the procedures in §1902.17 of this chapter.

(e) A Federal program change supplement will be reviewed in the context of the entire plan to determine its impact on the "at least as effective as" status of the plan. The decision shall reflect

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the Assistant Secretary's determination as to whether the change meets those requirements.

[39 FR 32905, Sept. 12, 1974, as amended at 44 FR 51761, Nov. 7, 1978]

Subpart D—Evaluation Change Supplements

§ 1953.30 Definitions.

An evaluation change would be required as a result of an evaluation finding by the Assistant Secretary. Special and periodic evaluations of a State program may show that some portion of a State plan has an adverse impact on the implementation of the State program. Examples of such evaluation findings would include a report that the public employee program as approved is not, in operation, providing for a program as effective as the standards in the approved plan; or that through a reduction in personnel or funding, the State may no longer have adequate resources for administration and enforcement of standards.

§ 1953.31 Submission and consideration of evaluation changes.

(a) Within 30 days after an evaluation report has been made, the Regional Administrator shall advise the State of the evaluation findings that require a supplement and the reasons supporting this decision. This notification shall also contain a date by which State must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that the State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator. The supplement shall contain the change as well

as a timetable for completion of any change when necessary with related documentation on the impact of the change on the State plan and its responsiveness to the Federal evaluation report.

(2) The State may also show cause, in response to the request for an evaluation change supplement, why a supplement should not be required on the ground that the State program is meeting the requirements for an "at least as effective" program. The procedures in this subpart would be applicable thereto.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Regional Administrator, except as provided in §1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedure provided in §§1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced for rejection of the change or for failure to submit a change, in accordance with the procedures in §1902.17 of this chapter on rejection of State plans.

(e) The Assistant Secretary shall review the supplement in the context of the entire plan to see whether it meets the objections set out in the evaluation report as well as the requirements for an "at least as effective" State pro-

gram. The decision shall reflect the Assistant Secretary's determination as to whether the supplement meets those requirements.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5629, Feb. 14, 1974; 43 FR 51761, Nov. 7, 1978]

Subpart E—State Initiated Change Supplements

§ 1953.40 Definitions.

A State initiated change would be any change to the State plan other than those defined in subparts B, C, and D of this part. Examples of State initiated changes include actions which would effect Federal funding under section 23(g) of the Act such as an increase or decrease in personnel, or coverage of additional issues under the plan; and also legislative, regulatory or administrative policy changes which impact on the effectiveness of the State program including a reassignment of enforcement personnel or legislation restricting coverage under the plan. Such policy changes would not ordinarily include court cases or administrative decisions in individual cases except as they are reflected in State legislative, regulatory, or administrative policy changes.

§ 1953.41 Submission and consideration.

(a) A State initiated change supplement is required whenever the State takes with regard to its plan an action not otherwise covered by this part that would impact on the effectiveness of the State program. The State shall notify the Regional Administrator of the change and submit the required supplement within 30 days after notifying the Regional Administrator if the change involves legislative amendments or affects Federal funding under section 23(g) of the Act. Other State initiated changes may be submitted at any time generally not to exceed 6 months after the change occurred. If the State fails to notify the Regional Administrator of the change or fails to submit the required supplement within 30 days after notification, the Regional Administrator shall notify the State that a supplement is required and set a time

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period for submission of the supplement generally not to exceed 15 days.

(b)(1) An authorized representative of the State agency or agencies designated under section 18(c)(1) to administer the plan shall submit the supplement with 6 copies to the appropriate Regional Administrator. The supplement shall contain the change with related documentation on the impact of the change on the State plan.

(2) The State may also show cause why a supplement should not be required on the grounds that it does not impact on the effectiveness of the State program and that additional Federal funding is not required. The procedures in this subpart would be applicable thereto.

(c) Upon receipt of the supplement, the Regional Administrator shall make a preliminary review of the changes. If his examination reveals any defect in the supplement, the Regional Administrator shall offer assistance to the State and shall provide the agency an opportunity, generally not to exceed 30 days, to cure such defect. After the preliminary review and after affording the State such opportunity to cure defects, the Regional Administrator, except as provided in §1953.4 for review of standards supplements, shall promptly submit the supplement to the Assistant Secretary.

(d)(1) Upon receipt of the supplement from the Regional Administrator, the Assistant Secretary shall examine the change and supporting material. If examination discloses no cause for rejecting the change, the procedures provided in §§1902.11 and 1902.12 of this chapter for public comment and approval of State plans shall be followed.

(2) If examination discloses cause for rejecting the change, the Assistant Secretary shall provide the State a reasonable time, generally not to exceed 30 days, to submit to the Regional Administrator for review and submission to the Assistant Secretary a revised supplement, or to show cause why a proceeding should not be commenced either for rejection of the change or for failure to submit the change, in accordance with the procedures in §1902.17 of this chapter on rejection of state plans.

(e) The Assistant Secretary shall review the supplement in the context of

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the entire plan to determine its impact on the "at least as effective as" status of the plan. The decision shall reflect the Assistant Secretary's determination as to whether the change meets that requirement.

[38 FR 24361, Sept. 7, 1973, as amended at 39 FR 5630, Feb. 14, 1974]

Subpart F—Advisory Opinions

§ 1953.50 Definitions.

(a) An authorized representative of a State agency or agencies designated under section 18(c)(1) to administer a plan may request an advisory opinion from the Regional Administrator. These opinions are designed to provide the State with a basis for implementing a change. For example, prior to publication of standards, the State may want a preliminary opinion that the standards are at least as effective as the Federal standards or that a regulation that will be proposed for public comment in the State appears to meet the requirements of section 18 of the Act and part 1902.

(b) A request for an advisory opinion ordinarily will be considered inappropriate when extensive investigation or evaluation would be necessary. A requesting State will be informed if the same or substantially similar course of action is under review for an advisory opinion in another State or if it has been the subject of a current evaluation, approval, or disapproval proceeding by the Assistant Secretary.

§ 1953.51 Submission and consideration.

(a) The request for advice should be submitted in writing to the Regional Administrator in whose Region the State is located and should include full and complete information regarding the proposed course of action. Conferences with members of the Regional and National office staff may be held before and after submittal of the request and submission of additional information may be required.

(b)(1) On the basis of the facts submitted, as well as other information available to him, including information from interested persons where relevant, the Regional Administrator, after appropriate consultation with the

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Office of Federal and State Operations and the Office of the Solicitor will provide an advisory opinion to the State and may take such other action as may be appropriate.

(2) Because of the possibility that the subject matter of an advisory opinion may change during promulgation by the State as a final change, and in order to provide for public comment on the final change, these opinions cannot bind the Assistant Secretary in making his final decision following the procedures specified in the appropriate subparts of this part. If the Assistant Secretary decides to revoke or rescind the advisory opinion, notice of such rescission or revocation will be given to the requesting State so that it may discontinue the course of action taken. The Assistant Secretary will not proceed against the requesting State with respect to any action taken in good faith reliance upon the advice given under this subpart, where all relevant facts are fully, completely, and accurately presented and where such action was promptly discontinued upon notification by the Assistant Secretary.

(c) When a State has obtained an advisory opinion under this part, the formal change supplement submitted under the applicable subpart of this part shall specify in what areas, if any, it differs from the material submitted for an advisory opinion.

(d) No later than 15 days after the State has been sent the requested advice, the advisory opinion, and any supplementary information will be placed with the requesting State's plan at the location specified in the subpart of part 1952 of this chapter relating to the State plan.

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

Subpart A—General

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Subpart B—State Monitoring Reports and Visits to State Agencies

1954.10 Reports from the States.

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Subpart C—Complaints About State Program Administration (CASPA)

1954.20 Complaints about State program administration.

1954.21 Processing and investigating a complaint.

1954.22 Notice provided by State.

AUTHORITY: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

SOURCE: 39 FR 1838, Jan. 15, 1974, unless otherwise noted.

Subpart A—General

§ 1954.1 Purpose and scope.

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

(b) This part 1954 applies to the provisions of section 18(f) of the Act relating to the evaluation of approved plans for the development and enforcement of State occupational safety and health standards. The provisions of this part 1954 set forth the policies and procedures by which the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) under a delegation of authority from the Secretary of Labor (Secretary's Order 12-71, 36 FR 8754, May 12, 1971) will continually monitor and evaluate the operation and administration of approved State plans.

(c) Following approval of a State plan under section 18(c) of the Act, workplaces in the State are subject to a period of concurrent Federal and State authority. The period of concurrent enforcement authority must last for at least three years. Before ending Federal enforcement authority, the Assistant Secretary is required to make a