§ 766.24 Temporary denials.

(a) * * * Without limiting any other action BIS may take under the EAR with respect to any application, order, license or authorization issued under ECRA, the EAR, or any other provisions or standards, if BIS believes that the temporary denial order is necessary in the public interest to prevent an imminent violation of the ECRA, the EAR, or any order, license or authorization issued thereunder.

(b) * * * * (1) The Assistant Secretary may issue an order temporarily denying to a person any or all of the export privileges described in part 764 of the EAR upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the ECRA, the EAR, or any order, license or authorization issued thereunder.

(d) * * * (1) If, no later than 20 days before the expiration date of a temporary denial order, BIS believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BIS may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order, with modifications, if any are appropriate, for an additional period not exceeding 180 days. In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year. BIS’s request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 766.5(b) of this part unless exceptional circumstances exist, which will constitute notice of the renewal application.

(e) * * * * 

§ 766.5(b) of this part unless exceptional circumstances exist, which will constitute notice of the renewal application.

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—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

1. The authority citation for 15 CFR part 766 continues to read as follows:


2. Section 766.24 is amended by revising the third sentence of paragraph (a), paragraphs (b)(1), (d)(1), and the last sentence of paragraph (e)(5), to read as follows:

§ 766.24 Temporary denials.

(a) * * * Without limiting any other action BIS may take under the EAR with respect to any application, order, license or authorization issued under ECRA, the EAR, or any other provisions or standards, if BIS believes that the temporary denial order is necessary in the public interest to prevent an imminent violation of the ECRA, the EAR, or any order, license or authorization issued thereunder.

(b) * * * * (1) The Assistant Secretary may issue an order temporarily denying to a person any or all of the export privileges described in part 764 of the EAR upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the ECRA, the EAR, or any order, license or authorization issued thereunder.

(d) * * * (1) If, no later than 20 days before the expiration date of a temporary denial order, BIS believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BIS may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order, with modifications, if any are appropriate, for an additional period not exceeding 180 days. In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year. BIS’s request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 766.5(b) of this part unless exceptional circumstances exist, which will constitute notice of the renewal application.

(e) * * * * 

§ 766.5(b) of this part unless exceptional circumstances exist, which will constitute notice of the renewal application.
concerns regarding the effectiveness of Oregon’s temporary labor camps standards.

After allowing a period for public comment, the Assistant Secretary subsequently granted the Oregon State Plan final approval on May 12, 2005, with respect to all issues covered by the Plan except temporary labor camps (70 FR 24947). In granting final approval, the Assistant Secretary made an affirmative determination that the Oregon State Plan had applied and implemented, in actual operations, each of the criteria set forth in section 18(e) of the Act and 29 CFR 1902.37 as to all portions of the State Plan except temporary labor camps. In doing so, the Assistant Secretary considered various elements of the state Plan, including standards, variances, enforcement measures, the public employee program, staffing and resources, records and reports, voluntary compliance, and injury/illness rates, finding the State Plan had effectively applied and implemented each of those elements. Thus, the Assistant Secretary determined, the State Plan was at least as effective as the Federal program and met the statutory and regulatory requirements for final approval.

As a result of this affirmative determination under section 18(e) of the Act, OSHA’s standards and enforcement authority over all worksites covered by the Oregon State Plan (except temporary labor camps) was relinquished. The OSA, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991, was superseded by the grant of final approval, except that it continued to apply to temporary labor camps in agriculture, general industry, construction, and logging.

B. Oregon’s Temporary Labor Camps Standards

OSHA had initially approved the Oregon State Plan’s Temporary Labor Camps standard on October 1, 1976 (41 FR 43465), concluding that the standard was at least as effective as the comparable Federal standard. The standard remained substantively unchanged until 2000, when the Oregon State Plan, on its own initiative through Administrative Order 5–2000, adopted revisions to the State’s Agricultural Labor Housing (ALH) and Related Facilities standard (Division 4), OAR 437–004–1120 and the Labor Camps standard (Division 2/J), OAR 437–002–0142. Some of the updates to the rules included regrouping subjects into more logical categories, synchronizing certain definitions to more closely match those of other state regulatory agencies such as the Oregon Building Codes Division, and changing requirements for garbage and refuse, emergency exits, bedding, and ratios of toilet, handwashing, and bathing facilities.

OSHA responded to the Oregon State Plan on February 28, 2001, identifying instances in which OSHA had concerns that the State’s standards were less effective than the comparable Federal rules. Over the next several years, OSHA, the Wage and Hour Division (WHD),1 and the Oregon State Plan continued to engage on this matter in order to resolve the identified concerns.

While those conversations were ongoing, OSHA and the Oregon State Plan began the separate process of final approval with the issuance of a Federal Register notification on December 16, 2004 (69 FR 75436). However, as noted above, the proposed grant of final approval excluded temporary labor camps due to OSHA’s then-unresolved concerns regarding the effectiveness of Oregon’s temporary labor camps standards. The 2004 notification of eligibility for final approval provided that OSHA intended to work with Oregon to resolve all effectiveness issues with regard to its two temporary labor camps standards so that final approval could be extended to all covered issues (69 FR 75438).

After further informal discussions with OSHA and WHD, along with feedback from its stakeholders, the Oregon State Plan subsequently filed changes to its ALH and Related Facilities and Temporary Labor Camps standards on March 24, 2008 (Administrative Order 4–2008), to make the rules as effective as Federal OSHA’s. Some of the major changes to the ALH and Related Facilities rule (OAR 437–004–1120) included updated requirements for: space and ceiling heights (with effective dates of 2018 in some cases); screens; minimum window area; shower and sink ratios; nearby livestock operations; ground clearance; heating equipment; water pressure; laundry facilities; garbage pickup; and privy distance from housing. References to tents were also removed. For the Temporary Labor Camps rule (OAR 437–002–0142), Oregon removed the entire text of the rule and added new language stating that the ALH and Related Facilities rule at OAR 437–004–1120 applies to general industry, construction, and forest activities as well as agriculture, except for a few limited paragraphs that address certain camp registration and closure requirements. Following further communication with OSHA, Oregon subsequently made additional changes to the ALH and Related Facilities rule on January 26, 2009 (Administrative Order 1–2009), to reflect changes in heater technology, clarify effective dates, and to require enclosed, screened shelters for cooking and eating facilities.

All changes promulgated by Oregon Administrative Orders 4–2008 and 1–2009 were effective as of January 1, 2018. On August 21, 2018, at the quarterly monitoring meeting, the Oregon State Plan Administrator requested that OSHA review and consider removal of the temporary labor camps exception to the State Plan’s 18(e) final approval status. WHD approved the changes on December 3, 2020, and the OSHA X regional office approved the rules and recommended removal of the temporary labor camps exception to Oregon’s 18(e) final approval status on December 18, 2020.2

Subsequently, on May 9, 2022, in response to a March 10, 2020, executive order issued by Oregon Governor Kate Brown, the Oregon State Plan adopted new “Rules to Address Employee and Labor Housing Occupant Exposure to High Ambient Temperatures” (pursuant to Administrative Order 3–2022), to take effect on June 15, 2022. Specifically, Administrative Order 3–2022 established a new Heat Illness Prevention standard applicable to general industry workers (OAR 437–002–0156), established a new Heat Illness Prevention standard applicable to agricultural workers (OAR 437–004–1131), and amended Oregon’s ALH and Related Facilities standard (OAR 437–004–1120) to add new provisions on heat illness prevention in labor housing. OSHA approved this state-initiated change on June 3, 2022, finding the rules to be at least as effective as and more stringent than Federal requirements.

1 OSHA’s December 18, 2020, approval letter referenced only Oregon’s ALH and Related Facilities standard, OAR 437–004–1120. However, OSHA intended to also approve the separate Temporary Labor Camps standard, OAR 437–002–0142, which is identical to the ALH and Related Facilities standard except as to certain limited provisions. Accordingly, the OSHA X regional office sent a subsequent approval letter on May 5, 2022, to clarify that the general industry provisions for temporary labor camps addressed by Administrative Order 4–2008 were also approved.
III. Decision

In accordance with section 18(e) of the Act and the procedures in 29 CFR part 1902, and after opportunity for public comment, the Assistant Secretary has considered all of the facts and comments presented in the record. Based on that record, and for the reasons described in further detail in the proposal (88 FR 15460–61), the Assistant Secretary has determined that Oregon’s occupational safety and health program pertaining to temporary labor camps in agriculture, general industry, construction, and logging is at least as effective as the Federal program in actual operations in providing safe and healthful employment and places of employment and meets the criteria for final approval. Accordingly, under section 18(e) of the Act, the exception to the Oregon State Plan’s final approval for temporary labor camps in agriculture, general industry, construction, and logging is hereby removed, effective August 30, 2023.

IV. Effect of Decision

The Assistant Secretary’s determination granting final approval to the Oregon State Plan under section 18(e) of the Act for temporary labor camps in general industry, agriculture, construction, and logging terminates OSHA authority for concurrent Federal enforcement over temporary labor camps in Oregon where such authority is covered under the Oregon State Plan, as of the effective date of this determination. Section 18(e) provides that upon making this final approval determination, “the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17 . . . shall not apply with respect to any occupational safety and health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.” 29 U.S.C. 667(e). Accordingly, this determination relinquishes concurrent Federal authority as derived from the OSH Act with respect to temporary labor camps in Oregon as follows: to issue citations for violations of the relevant Federal standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to evaluate the Plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Act under section 17. However, the Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 of the Act before the effective date of the 18(e) determination. Finally, this determination supersedes the OSHA between OSHA and the State of Oregon, which had remained in effect as to temporary labor camps only following the State Plan’s receipt of final approval as to all other issues in 2005 (70 FR 24955).

This final approval determination does not affect Federal authority under provisions of the OSH Act not listed in section 18(e), nor does it affect Federal enforcement authority over issues which are not subject to State Plan enforcement. Additionally, this determination does not affect or disturb the authority of the U.S. Department of Labor’s Wage and Hour Division to enforce Federal temporary labor camp standards pursuant to an authority other than the OSH Act, such as the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and WHD’s regulations governing H-2A employment.

Under this 18(e) determination, Oregon will be expected to maintain a State program that is at least as effective as operations under the Federal program in protecting employee safety and health at covered workplaces. As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its Plan. The right to revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State Plan is reserved should continuing evaluations show that the State has failed to maintain a program which is at least as effective as the Federal program, or that the State has failed to submit program change supplements as required by 29 CFR part 1953.

V. 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. Although the specific consultation procedures provided in section 6 of Executive Order...
13132 are not mandatory for final approval decisions under the OSH Act because they neither impose a burden upon the State nor involve preemption of any State law. OSHA has nonetheless consulted extensively with Oregon on the matter of final approval as to temporary labor camps.

VI. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this final approval determination will not have a significant economic impact on a substantial number of small entities. Final approval of Oregon’s temporary labor camps coverage does not place small employers in Oregon under any new or different requirements, nor does it add any additional burden upon the State government beyond the responsibilities already assumed as part of the approved Plan.

Authority


Signed in Washington, DC.

Douglas L. Parker,
Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–18717 Filed 8–29–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0697]

Special Local Regulations; Marine Events Within the Fifth Coast Guard District—Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for an event identified as “Triathlons in Atlantic City” on September 10, 2023, to provide for the safety of life on navigable waterways during the IRONMAN 70.3 Atlantic City Triathlon. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for this event in Atlantic City, NJ. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 100.501 for Atlantic City, NJ, will be enforced for the regulated areas listed in Table 1 to Paragraph (i)(1) of § 100.501 for an event identified in the table as “Triathlons in Atlantic City” from 6:30 a.m. to 11:30 a.m. on September 10, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Petty Officer Christopher Payne, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, telephone: 215–271–4889, Email: SecDelBayWMW@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.501 for the “Triathlons in Atlantic City” regulated Area from 6:30 a.m. to 11:30 a.m. on September 10, 2023. This action is being taken to provide for the safety of life on navigable waterways during the IRONMAN 70.3 Atlantic City Triathlon. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the exact location of the regulated area for “Triathlons in Atlantic City” events within portions of the New Jersey Intracoastal Waterway. As reflected in § 100.501(d)(2), during the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the Federal Register, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, and marine information broadcasts.


Roberto Rivera,
Captain, U.S. Coast Guard, Acting, Captain of the Port, Delaware Bay.

[FR Doc. 2023–18717 Filed 8–29–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0711]

Special Local Regulation; St. Petersburg P–1 Grand Prix; Waters of Tampa Bay

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the St. Petersburg P–1 Powerboat Grand Prix from September 2 through 3, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Seventh district identifies the regulated area for this event in St. Petersburg, FL. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the Captain of the Port St. Petersburg or a designated representative.

DATES: The regulations in 33 CFR 100.703, Table 1 to § 100.703, Item 5 will be enforced daily from 8 a.m. until 6 p.m., on September 2, 2023 through September 3, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician First Class Mara Brown, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email Mara.J.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.703, Table 1 to § 100.703, Item 5, for the St. Petersburg P–1 Powerboat Grand Prix regulated area from September 2, 2023 through September 3, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Sector St. Petersburg, § 100.703, Table 1 § 100.703, Item No. 5, specifies the location of the regulated area for the St. Petersburg Powerboat Grand Prix which encompasses portions of Tampa Bay in the vicinity of the St. Petersburg Pier, in St. Petersburg, FL. During enforcement periods, as reflected in § 100.703, if you are the operator of a vessel in the regulated area you must comply with direction from the Patrol Commander or any designated representative.