



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Oregon State Plan; Extension of Final Approval of a State Plan to Cover the Separable Portion of Temporary Labor Camps

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

ACTION: Notification of extending final approval of a State Plan over a separable portion.

SUMMARY: This document gives notice of final approval of the Oregon State occupational safety and health plan (State Plan) over temporary labor camps under section 18(e) of the Occupational Safety and Health Act of 1970 (OSH Act). As a result of this affirmative 18(e) determination, the Federal standard and enforcement authority as derived from the OSH Act will no longer apply to temporary labor camps in Oregon. This notification does not affect or disturb any other provisions or standards enforced by the U.S. Department of Labor's Wage and Hour Division at temporary labor camps in Oregon pursuant to an authority other than the OSH Act. This notification also does not affect or disturb the previous grant of final approval in 2005 as to all other issues covered by the Oregon State Plan.

DATES: The notification of extension of final approval is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, OSHA 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.

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. 667, provides that states which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a state plan (State Plan or Plan). State Plan approval occurs in stages, beginning with initial approval under section 18(c) of the Act. If, after a period of no less than three years following initial approval, the Assistant Secretary determines that the State Plan has satisfied and continues to meet all criteria in section 18(e) of the OSH Act, the Assistant Secretary may make an affirmative determination under section 18(e) of the Act (referred to as “final approval” of the State Plan), which results in the relinquishment of concurrent Federal authority in the state with respect to occupational safety and health issues covered by the Plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found in 29 CFR part 1902, subpart D. In general, to be granted final approval, actual operation of the occupational safety and health Plan by the state must be at least as effective as the Federal OSHA program in all areas covered under the State Plan.

II. State Plan History

A. Final Approval of the Oregon State Plan Except as to Temporary Labor Camps

The Oregon State Plan, administered by the Oregon Department of Consumer and Business Services, received initial approval on December 28, 1972 (37 FR 28628). On January 23, 1975, OSHA and the State of Oregon entered into an Operational Status Agreement (OSA), which suspended the exercise of concurrent Federal authority in Oregon in all except specifically identified areas (40 FR 18427). On December 16, 2004, OSHA published a notification (69 FR 75436) that the Oregon State Plan was eligible for a determination as to whether final approval of the Plan should be granted under section

18(e) of the Act for all issues covered by the Plan, with the exception of temporary labor camps in agriculture, general industry, construction, and logging. The notification stated that the issue of temporary labor camps was being excluded from final approval at that time pending resolution of OSHA's 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 43485), 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/J, 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 section 18(e) 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

¹ In January 1997, the Secretary of the Department of Labor issued Secretary's Orders 5-96 (62 FR 107) and 6-96 (62 FR 111), transferring some of OSHA's authority to enforce the Federal Field Sanitation standard (29 CFR 1928.110) and Temporary Labor Camps standard (29 CFR 1910.142) to what would later become WHD (see 74 FR 58836). Accordingly, WHD had an interest in the Oregon State Plan's temporary labor camps enforcement activity, and OSHA consequently sought WHD's input in evaluating the standards.

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.

C. Solicitation of Public Comment and Summary of Comments Received

On March 13, 2023, OSHA published in the *Federal Register* a notice announcing the Oregon State Plan's eligibility for a final approval determination under section 18(e) as to temporary labor camps in agriculture, general industry, construction, and logging (88 FR 15458). The March 13, 2023, notice invited interested persons to submit, by April 17, 2023, written comments and views regarding the Oregon State Plan and whether final approval over temporary labor camps should be granted. An opportunity to request an

² 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.

informal public hearing by the same date was also provided. To assist and encourage public participation in the 18(e) determination, a summary of the March 13, 2023 notice, with an invitation for public comments, was published in Oregon on April 1, 2023, in the Oregon Bulletin.³

In response to the March 13, 2023 proposal, OSHA received one comment, which supported the proposal, and no requests for an informal hearing. The one comment submitted was from Chuck Stribling, Chair of the Occupational Safety and Health State Plan Association (OSHSPA). OSHSPA is an organization of twenty-nine State Plans and U.S. Territories that have OSHA-approved State Plans. OSHSPA members work together to advance occupational safety and health in their respective States and Territories. OSHSPA also partners with OSHA, as well as many others, on key issues and concerns which impact employee safety and health. The comment stated that OSHSPA strongly supports OSHA's proposal to grant final approval to the Oregon State Plan over temporary labor camp enforcement authority in agriculture, general industry, construction, and logging. The comment further noted OSHSPA's observation that the Oregon State Plan temporary labor camp requirements are more protective than OSHA's requirements.

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

³ After OSHA publishes a *Federal Register* notice announcing a State Plan's eligibility for an 18(e) determination, OSHA's regulations at 29 CFR 1902.39(c) require that the State publish reasonable notice containing the same information within the State no later than ten days following the *Federal Register* publication. Oregon's notice in this instance was published nine days late. However, prior to the *Federal Register* publication, Oregon had notified OSHA that it would only be able to publish notice in the Oregon Bulletin on the first of the month in the month immediately following *Federal Register* publication. Moreover, OSHA is not aware of any party that was prejudiced by this slightly delayed State publication, nor has there been any request for additional time to provide public comment or other attempt to provide public comment after the April 17, 2023 deadline.

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 State Plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. 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 [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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 OSA 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

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC, 20210, authorized the preparation of this document 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 (Sept. 18, 2020)), and 29 CFR part 1956.

Signed in Washington, D.C.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

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