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U.S. Department of Labor

Home
Index
Search

Federal Register

California State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments - 59:14584-14586

◀ [Federal Register - Table of Contents](#)

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-028]

California State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

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

ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks applicable to the California State plan. California's benchmarks were originally established in April 1980 in response to the U.S. Court of Appeals decision in AFL-CIO v. Marshall,

570 F. 2d 1030 (D.C. Cir. 1978). The State of California has reconsidered the information utilized in the development of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant revision of its benchmarks. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the revised benchmarks for California should be approved.

DATES: Written comments must be received by May 3, 1994.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T-028, U.S. Department of Labor, room N-2625, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219-7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219-8148..

SUPPLEMENTARY INFORMATION:

Background Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval, and among these criteria is the requirement that the State's plan provide satisfactory assurances that the state agency or agencies responsible for implementing the plan have "* * * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals and the resultant implementing order issued by the U.S. District Court for the District of Columbia (AFL-CIO v. Marshall, C.A. No. 74-406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan. In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring California to allocate 334 safety and 471 health compliance personnel to conduct inspections under the plan.

Both the 1978 Court Order and the 1980 Report to the Court explicitly contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 **Federal Register** (50 FR 2491) regarding the Wyoming occupational safety and health plan.

The California plan, which was granted initial State plan approval on May 1, 1973 (38 FR 10717), is administered by the California Department of Industrial Relations. Concurrent Federal enforcement jurisdiction was suspended in California with the publication of an Operational Status Agreement on January 13, 1976 (41 FR 1904). The plan was certified as having satisfactorily completed all of its developmental commitments on August 19, 1977 (42 FR 161).

Proposed Revision of Benchmarks

In June 1993, the California Department of Industrial Relations (the designated agency or "designee" in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for California in 1980. In accord with the formula and general principles established by the joint Federal/State task group for the revision of the 1980 benchmarks, California reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal, contained in supporting documents, of revised staffing benchmarks of 118 safety and 80 health compliance officers.

The proposed revised safety benchmark contemplates biennial general schedule inspection of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the July 1991 Dun and Bradstreet listing of manufacturers for California) in Standard Industrial Classifications whose Lost Workday Case Injury Rate is higher than the overall State private sector rate (as determined by the Bureau of Labor Statistics' (BLS) Annual Occupational Injury and Illness Survey). Data indicate that the State is spending an average of 14 hours on such inspections, and each State safety inspector is able to devote 1,440 hours annually to actual inspection activity based on State personnel practices. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and

follow-up inspections to ascertain compliance, based upon recent historical experience and an assessment of proper safety coverage in the State of California.

The proposed revised health benchmark contemplates general schedule inspection coverage once every three years of all private sector manufacturing establishments with greater than 10 employees (based upon a computerized summary utilizing the July 1991 Dun and Bradstreet listing of manufacturing establishments for California) in the 150 Standard Industrial Classifications (SICs) in the State having the highest likelihood of exposure to health hazards. These SICs are determined by a health ranking system utilizing data from the National Occupational Hazards Survey (NOHS), as published in 1977, which assesses the potency and toxicity of substances in use in the State. The State has historically spent an average 30.5 hours on such inspections, and each health compliance officer is able to devote 1,440 hours annually to actual inspection activity, based upon State personnel practices. In addition, inspection resources are allocated to coverage of mobile and public employee (State and local government) work sites, response to complaints and accidents, and follow-up inspections to ascertain compliance, based on recent historical experience and an assessment of proper health coverage in the State of California.

OSHA has reviewed the State's proposed revised benchmarks and supporting documentation, prepared a narrative describing the State's submission, and determined that the proposed compliance staffing levels appear to meet the requirements of the Court in *AFL-CIO v. Marshall* and provide staff sufficient to ensure a "fully effective enforcement program."

Effect of Benchmark Revision

Consistent with the 1978 Court Order in *AFL-CIO v. Marshall* and the procedures for implementation of benchmarks described by OSHA in the 1980 Report to the Court, if the proposed revised benchmarks are approved by OSHA, the State must allocate a sufficient number of safety and health enforcement staff to meet the revised benchmarks in order to be eligible for final approval under section 18(e) of the Act. Approval of the revised benchmarks would be accompanied by an amendment to 29 CFR part 1952, subpart DD, which generally describes the California plan and sets forth the State's revised safety and health benchmark levels. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for final State plan approval consideration under section 18(e) of the Act.

Documents of Record

A comprehensive document containing the proposed revision to California's benchmarks, including a narrative of the State's submission and supporting statistical data has been made a part of the record in this proceeding and is available for public inspection and copying at the following locations:

Docket Office, Docket No. T-028, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Regional Administrator - Region IX, U.S. Department of Labor - OSHA, 71 Stevenson Street, San Francisco, California 94105.

California Department of Industrial Relations, 455 Golden Gate Avenue, 4th Floor, San Francisco, California 94102.

In addition, to facilitate informed public comment, an informational record has been established in a separate docket (No. T-018) containing background information relevant to the benchmark issue in general and the current benchmark revision process. This information docket includes, among other material, the 1978 Court of Appeals decision in AFL-CIO v. Marshall, the 1978 implementing Court Order, the 1980 Report to the Court, and a report describing the 1983-1984 benchmark revision process. It is also available for public inspection and copying at the following location:

Docket Office, Docket No. T-018, U.S. Department of Labor, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210.

Public Participation

OSHA is soliciting public participation in its consideration of the approval of the revised California benchmarks to assure that all relevant information, views, data and arguments are available to the Assistant Secretary during this proceeding. Members of the public are invited to submit written comments in relation to whether the proposed revised benchmarks will provide for a fully effective enforcement program for California in accordance with the Court Order in AFL-CIO v. Marshall. Comments must be received on or before May 3, 1994, and be submitted in quadruplicate to the Docket Office, Docket No. T-028, U.S. Department of Labor, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Written submission must be directed to the specific benchmarks proposed for California and must clearly identify the issues which are addressed and the positions taken with respect to each issue.

All written submissions as well as other information gathered by OSHA will be considered in any action taken. The record of this proceeding, including written comments and all material submitted in response to this notice, will be made available for public inspection and copying in the Docket Office, room N-2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 9-83 (43 FR 35736))

Signed at Washington, DC, this 18th day of March 1994.

Joseph A. Dear,
Assistant Secretary of Labor.

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◀ [Federal Register - Table of Contents](#)