
29 C.F.R. § 1954.3

Exercise of Federal discretionary authority.

(a)

(1) When a State plan is approved under section 18(c) of the Act, Federal authority for enforcement of standards continues in accordance with section 18(e) of the Act. That section prescribes a period of concurrent Federal-State enforcement authority which must last for at least three years, after which time the Assistant Secretary shall make a determination whether, based on actual operations, the State plan meets all the criteria set forth in section 18(c) of the Act and the implementing regulations in 29 CFR part 1902 and subpart A of 29 CFR part 1952. During this period of concurrent authority, the Assistant Secretary may, but shall not be required to, exercise his authority under sections 5(a)(2), 8, 9, 10, 13 and 17 of the Act with respect to standards promulgated under section 6 of the Act where the State has comparable standards. Accordingly, section 18(e) authorizes, but does not require, the Assistant Secretary to exercise his discretionary enforcement authority over all the issues covered by a State plan for the entire 18(e) period.

(2) Existing regulations at 29 CFR part 1902 set forth factors to be considered in determining how Federal enforcement authority should be exercised. These factors include:

- (i) Whether the plan is developmental or complete;
- (ii) Results of evaluations conducted by the Assistant Secretary;
- (iii) The State's schedule for meeting Federal standards; and
- (iv) Any other relevant matters.

(29 CFR 1902.1(c)(2) and 1902.20(b)(1)(iii).

(3) Other relevant matters requiring consideration in the decision as to the level of Federal enforcement include:

- (i) Coordinated utilization of Federal and State resources to provide effective worker protection throughout the Nation;
- (ii) Necessity for clarifying the rights and responsibilities of employers and employees with respect to Federal and State authority;
- (iii) Increasing responsibility for administration and enforcement by States under an approved plan for evaluation of their effectiveness; and

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