

AGREEMENT UNDER SECTION 18(e) OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

The California Occupational Safety and Health State Plan was initially approved on May 1, 1973 (38 FR 10719) in conformance with sections 18 (b) and (c) of the Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 667 (b) and (c)) and has been revised by subsequent Plan amendments. Pursuant to Section 18(e) of the Act, 29 U.S.C. 667(e), as implemented by 29 CFR 1954.3, this agreement, effective immediately, is hereby entered into between the Regional Administrator for Occupational Safety and Health, Region IX, and the Director of the Department of Industrial Relations of the State of California.

- I. This agreement replaces the agreement previously entered into, and subsequent amendments, between the Department of Industrial Relations of the State of California and the Occupational Safety and Health Administration (OSHA), Region IX.
- II. This agreement updates and sets forth the scope of the exercise of Federal authority under section 18(e) of the Act (29 U.S.C. 657(e)) in the State of California with respect to occupational safety and health standards promulgated under Section 6 the Act (29 U.S.C. 655), by specifying areas of State responsibility and delineating continuing Federal responsibilities.
- III. This agreement is based on a finding by the Assistant Secretary of Labor for Occupational Safety and Health under section 18(e) of the Act (29 U.S.C. 667(e)) that the State has achieved operational status in the issues covered by the California Occupational Safety and Health Plan because the State has met the criteria specified by 29 CFR 1954.3. Therefore, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667)) will not be initiated with regard to Federal occupational health and safety standards in issues covered under 29 CFR Part 1910, 29 CFR Part 1915, 29 CFR Part 1917, 29 CFR Part 1926, and 29 CFR Part 1928, except as set forth below.
 - a. Federal responsibility under the Act will continue to be exercised with regard to, among other things: Federal Government employers, including the United States Postal Service (USPS), as well as contractors and contractor-operated facilities engaged in USPS mail operations.
 - b. Private sector employers within the borders of all United States military installations.
 - c. Private sector employers within the borders of U.S. National Parks, National Monuments, National Memorials, and National Recreation Areas, such as: Kings Canyon National Park, Lassen Volcanic National Park, Redwood National Park, Sequoia National Park, Yosemite National Park, Cabrillo National Monument, Port Chicago Naval Magazine, and the Golden Gate National Recreation Area, which includes, among other things, Alcatraz Island, Fort Mason, Fort Barry, Fort Baker, Fort Cronkhite, Presidio of San Francisco (including San Francisco National Cemetery) Baker Beach, Battery Chamberlin, Crissy Airfield, and Fort Point National Historic Site.
 - d. Private-sector and tribal employers within the borders of all U.S. Government-recognized Native American reservations and trusts lands.

- e. Maritime employment (except marine construction, which the State covers on bridges, and on shore) on the navigable waters of the United States. Navigable waters of the United States are State territorial seas (waters which extend 3 nautical miles from the general coastline, the line of ordinary high water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of U.S. inland waters) and U.S. inland waters (.e., rivers, tributaries, lakes, bays, and sounds shoreward of the territorial sea baseline) that: 1) are subject to tidal influence, or 2) are or have been used for interstate or foreign commerce). Maritime employment includes:
 - 1. Longshore operations on all vessels from the shore side of the means of access to said vessels.
 - 2. Shipbuilding, shipbreaking, and ship repair on vessels afloat, shipbuilding, shipbreaking, and ship repair in graving docks or dry docks, and ship repair and shipbreaking done on marine railways or similar conveyances used to haul vessels out of the water. This includes ship repair activities from a scaffold or other equipment adjacent to the ship that allows employees direct access to perform work on the vessel.
 - 3. Floating fuel operations.
 - 4. Diving from vessels afloat on the navigable waters.
- f. Investigation and inspection for the purpose of carrying out the monitoring obligations of the Assistant Secretary of Labor for Occupational Safety and Health (OSHA) under section 18(f) of the Act, 29 U.S.C. 667(f), as implemented by 29 CFR Part 1954.
- g. Complaints filed with Federal OSHA under section 11(c) of the Act, 29 U.S.C. 660(c), prohibiting retaliation against employees for activity protected by the Act..

IV. Additional Provisions

- a. Federal OSHA and the State will immediately refer notifications concerning fatalities and/or catastrophes to the appropriate agency that has coverage.
- b. Federal OSHA and the State will promptly refer complaints filed about workplace safety and health conditions to the appropriate agency that has coverage.
- c. The State will take appropriate action upon all notification of fatalities, catastrophes and complaints about workplace safety and health conditions within covered issues.
- d. The State will continue to submit change supplements to its Occupational Safety and Health Plan pursuant to 29 CFR Part 1953 as necessary.

V. Notwithstanding the above, Federal OSHA retains the right to exercise concurrent Federal authority:


- a. To inspect any establishment and take appropriate enforcement action, without notice to the employer, when such establishment has refused entry to the State and the State is unable to obtain a warrant to enforce the right of entry. The State agrees to advise the OSHA Regional Office of each instance of its inability to obtain a warrant to gain entry to a workplace. The OSHA Regional Office will make a determination as to the appropriate Federal action and will thereafter notify the State in writing of this determination and the ultimate action taken.
- b. To enforce any safety or health standard where specific California Standards are deemed not to be at least as effective as those of Federal OSHA within an issue, or where the State has not adopted a new safety or health standard promulgated by Federal OSHA.

When exercising such enforcement authority, the Assistant Secretary will notify the State designee promptly of Federal OSHA's intention to enforce the particular standards in a particular establishment. The State may assist in any such inspection to the extent determined appropriate, at the discretion of the State designee and Federal OSHA. S


- c. To inspect and take appropriate enforcement action in extraordinary circumstances, when the State is not able to fully or effectively exercise its enforcement authority. Examples of these circumstances include, among others, a substantial, temporary reduction of State resources or staff, legal limitations on State enforcement authority, worksites which lie within more than one State, State inability to enforce effectively a particular standard, or interference with State enforcement due to natural or man-made disasters or emergencies. Such circumstances may call for a limited resumption of Federal enforcement authority, which may occur at the State's request or upon the Federal OSHA's determination, after consideration of all relevant factors and after discussion with the State.
- d. To inspect and take appropriate enforcement action at an entire project or facility where Federal and State authorities both have enforcement authority in the interest of administrative practicability. Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

VI. This agreement does not cover every single right and duty of the respective parties. However, it does describe in broad terms the general agreement between the State of California and the Occupational Safety and Health Administration as to the scope of State authority and to the exercise of Federal discretionary authority within the State during the term of this agreement.

VII. This agreement is subject to revision or termination by the Assistant Secretary of Labor upon substantial failure by the State to comply with any of its provisions. Evaluation and monitoring of State operations shall be conducted pursuant to section 18(f) of the Act, 29 U.S.C. 667(f), as implemented by 29 CFR Part 1954. If evaluation and monitoring reveal that State operations fail in substantial manner to be at least as effective as the Federal program, the Regional Administrator will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act, 29 U.S.C. 667(e), whenever, and to the degree necessary, to assure occupational safety and health protection to employees in California. Any decision by the Assistant Secretary to revise or terminate this agreement shall provide the State a reasonable time, generally not to exceed 30 days, to submit justification to the Regional Administrator for review and submission to the Assistant Secretary showing cause why such decision should not be made.


Christine Baker, Director
Department of Industrial Relations,
State of California

4/28/2014
Date


Ken Nishiyama Atha, Regional Administrator
Occupational Safety and Health Administration,
Region IX

4/30/2014
Date

DEPARTMENT OF INDUSTRIAL RELATIONS

Christine Baker, Director
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April 28, 2014

Ken Nishiyama Atha
Regional Administrator
Occupational Safety and Health Administration
Region IX
90 7th Street, Suite 18100
San Francisco, California 94103

Re: California Occupational Safety and Health State Plan

Dear Mr. Atha:

I have signed and am returning the updated Operational Status Agreement that you recently forwarded to our office. Once you have added your signature, please return a copy of the fully executed agreement to my office.

We appreciate your efforts to get this agreement updated and look forward to a continuing relationship of mutual support and assistance on worker safety and health issues.

Sincerely,

A handwritten signature in cursive script that reads "Christine Baker".

Christine Baker
Director

Enclosure

cc: David Lanier, Secretary
Labor Workforce and Development Agency

Juliann Sum, Acting Chief
Division of Occupational State and Health