



October 19, 2021

James Ashley
Director
Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007

Dear Director Ashley:

This letter is to inform you that, based on its continued evaluations of the Arizona State Plan, the Occupational Safety and Health Administration (OSHA) is reconsidering its decision granting the Arizona State Plan's affirmative Section 18(e) determination, otherwise known as final approval. Accordingly, OSHA will be initiating reconsideration proceedings with a proposal to revoke Arizona's final approval, during which time any interested persons will be given an opportunity to provide OSHA with reasons why the proposed revocation should not be finalized.

Arizona was granted final approval on June 20, 1985, and as such, was thereafter bound by the requirements of being a State Plan, as set forth in Title 29 of the Code of Federal Regulations, Section 1902.32(e), which provides:

Once a State's plan, or any modification thereof, has been given an affirmative 18(e) determination, the State is required to maintain a program which will meet the requirements of section 18(c) [of the Occupational Safety and Health Act (OSH Act)] and will continue to be "at least as effective as" the Federal program operations in the issues covered by the determination. As the Federal program changes and thereby becomes more effective, the State is correspondingly required to adjust its program at a level which would provide a program for workplace safety and health which would be "at least as effective as" the improvements in the Federal program. A failure to comply with this requirement may result in the revocation of the affirmative 18(e) [final approval] determination and the resumption of Federal enforcement and standards authority and/or in the commencement of proceedings for the withdrawal of approval of the plan, or any portion thereof, pursuant to 29 CFR part 1955.

As a result of Arizona's continued failure to adopt a COVID-19 Healthcare Emergency Temporary Standard (Healthcare ETS), the Arizona State Plan is less effective than the Federal program. Moreover, Arizona failed to meet any of its required regulatory timeframes with respect to adoption of OSHA's Healthcare ETS, including failing to notify OSHA of the action it intended to take within 15 days of promulgation (by July 6, 2021) and failing to adopt the Healthcare ETS or an "at least as effective" alternative within 30 days of promulgation (by July

21, 2021), without providing any reasoned basis for these failures.¹ OSHA has serious concerns about the Arizona State Plan's overall ability to maintain an "at least as effective" safety and health program.

Arizona's ongoing failure to adopt the Healthcare ETS is continuously placing healthcare workers at risk as they are deprived of "at least as effective" protections against the grave danger from the hazard of workplace exposures to SARS-CoV-2 (the virus that causes COVID-19). And at this time, OSHA's concerns about the Arizona State Plan are serious enough that it believes action is necessary under the OSH Act to ensure workers throughout the State receive workplace protections that are "at least as effective" as those provided by OSHA. Accordingly, OSHA will be publishing a *Federal Register Notice* announcing its intent to reconsider Arizona's final approval status, and the reasons supporting its proposal to revoke Arizona's final approval. No later than 10 days following the publication of this *Federal Register Notice*, Arizona is required to publish reasonable notice within the State containing the same information. 29 CFR § 1902.49(a). A docket will be opened for public comment, at which time any interested persons will be afforded an opportunity to submit comment as to whether OSHA should finalize its proposed revocation. 29 CFR § 1902.49(c). OSHA will consider all the relevant information that has been submitted before making a final decision on the continuation or revocation of Arizona's final approval. 29 CFR § 1902.52(a). If OSHA finalizes its proposed revocation, concurrent Federal enforcement and standards authority will be reinstated in Arizona. 29 CFR § 1902.53(b). The extent to which Federal OSHA may decide to reassert Federal enforcement activities throughout the State will be dependent, in part, on Arizona's response to these proceedings.

We very much value the partnership OSHA has with its State Plan partners, including Arizona, and we would like to continue to work cooperatively on all issues impacting worker safety and health. However, OSHA is taking action at this time due to its obligation under the OSH Act to ensure that State Plans are "at least as effective" as the Federal program. If you have any questions about this process, please let me know.

Thank you for your attention and prompt response to this serious matter.

Sincerely,



James S. Frederick
Acting Assistant Secretary

¹ The Arizona Division of Occupational Safety and Health (ADOSH) responded on July 16, 2021, after the 15 day timeframe, with a proposal to adopt only portions of OSHA's Healthcare ETS, while relying on existing state law to cover the remaining issues. OSHA had several conversations with ADOSH about its intent to rely on existing state law to cover certain issues and came to a mutual understanding that this proposal would not be "at least as effective" as OSHA's provisions in the ETS. OSHA sent a letter to ADOSH on September 16, 2021, memorializing this understanding. Meanwhile, ADOSH never took action to adopt the other provisions of OSHA's Healthcare ETS.