

1975 WL 29747 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
April 22, 1975

***1 RE: Promulgation of Rules and Regulations Under the State Occupational Safety and Health Laws**

Commissioner Edgar L. McGowan
S. C. Department of Labor
Landmark Center
3600 Forest Drive
P. O. Box 11329
Columbia, South Carolina 29211

Dear Commissioner McGowan:

You have inquired as to whether you have the authority, as Commissioner of Labor, to promulgate a regulation requiring employers in this State to allow Federal officials to inspect and copy their records.

As you indicated, the S. C. Department of Labor is required, in the administration of its OSHA Program, to adopt certain rules and regulations which are identical to rules and regulations provided by Federal Law and promulgated by the U. S. Secretary of Labor. Act [29 U.S.C.S. §§ 651-678](#). (See § 667(c)(7).

It is evident from a practical standpoint that such rules and regulations must be adopted in order for this State to gain Federal approval under the 18(b) plan. As a general proposition of administrative law, the Federal authority is supreme and the authority of the Federal officer or agency will prevail over that of the State officer or agency where the power and jurisdiction of Federal and State administrative offices or agencies conflict or overlap. 73 C.J.S. Public Administrative Bodies and Procedure, § 53b.

The adoption of a regulation required by the U. S. Secretary of Labor which is identical to a Federal regulation providing for the inspection and copying by the indicated Federal officials of various OSHA records, which are required to be maintained by employers in this State, is deemed both necessary and reasonable and appears in no way to be inconsistent with State law. § 40-261, Code of Laws of South Carolina (1962) as amended. § 1-11, Code of Laws of South Carolina, supra; 73 C.J.S., Public Administrative Bodies and Procedure, § 93.

If further information in regard to this subject is needed, please do not hesitate to call on me. Please accept my highest regards.

Very truly yours,

H. Brent Fortson
Assistant Attorney General

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