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§ 1952.153 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall*, compliance staffing levels (“benchmarks”) necessary for a “fully effective” enforcement program were required for each State operating an approved State plan. In September 1984, North Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised benchmarks of 50 safety and 27 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986. In June 1990, North Carolina reconsidered the information utilized in the initial revision of its 1980 benchmarks and determined that changes in local conditions and improved inspection data warranted further revision of its benchmarks to 64 safety inspectors and 50 industrial hygienists. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 4, 1996.

[61 FR 28055, June 4, 1996]

§ 1952.154 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after determination that the State met the “fully effective” compliance staffing benchmarks as revised in 1984 and 1996 in response to a court order in *AFL-CIO v. Marshall*, 570 F.2d 1030 (D.C. Cir. 1978), and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the North Carolina State plan for a period of at least one year following certification of completion of developmental steps (41 FR 43896). Based on the Biennial Evaluation Report covering the period of October 1, 1993, through September 30, 1995, an 18(e) Evaluation Report covering the period October 1, 1995, through June 30, 1996, and after opportunity for public comment, the Assistant Secretary determined that in

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operation the State of North Carolina’s occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the North Carolina plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective December 10, 1996.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in North Carolina. The plan does not cover Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the American National Red Cross; private sector maritime activities; employment on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government; railroad employment; and enforcement on military bases.

(c) North Carolina is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[61 FR 66601, Dec. 18, 1996, as amended at 65 FR 36621, June 9, 2000; 65 FR 62612, Oct. 19, 2000]

§ 1952.155 Level of Federal enforcement.

(a) As a result of the Assistant Secretary’s determination granting final approval to the North Carolina State plan under section 18(e) of the Act, effective December 10, 1996, occupational safety and health standards which have

been promulgated under section 6 of the Act do not apply with respect to issues covered under the North Carolina Plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the North Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime activities (occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919; gear certification, as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments); employment on Indian reservations; enforcement relating to any contractors or subcontractors on any Federal establishment where the land has been ceded to the Federal Government; railroad employment, not otherwise regulated by another Federal agency; and enforcement on military bases. Federal

jurisdiction is also retained with respect to Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and the American National Red Cross.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the State plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the North Carolina State plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor

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the operations of the North Carolina State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the revocation of the final approval determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[61 FR 66601, Dec. 18, 1996, as amended at 65 FR 36621, June 9, 2000; 65 FR 62612, Oct. 19, 2000]

§ 1952.156 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW, Room 6T50, Atlanta, Georgia 30303; and

Office of the Commissioner, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, North Carolina 27601-1092.

[65 FR 36621, June 9, 2000]

§ 1952.157 Changes to approved plan.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved North Carolina's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) *The Voluntary Protection Program.* On June 24, 1994, the Assistant Secretary approved North Carolina's plan supplement, which is generally identical to the Federal STAR Voluntary Protection Program. North Carolina's "Carolina" VVP is limited to the STAR Program, and excludes the MERIT and DEMONSTRATION Programs. Also, injury rates must be at or below 50 percent of the State injury average rather than the National injury average.

[59 FR 39257, Aug. 2, 1994]

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Subpart J—Iowa

§ 1952.160 Description of the plan as initially approved.

(a)(1) The plan identifies the Bureau of Labor as the State agency designated to administer the plan throughout the State. Its responsibilities include both occupational safety and occupational health, the latter on a developmental basis. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(i). Under existing occupational safety and health legislation, effective July 1, 1972, Iowa has adopted as interim standards all the occupational safety and health standards and amendments thereto which had been promulgated by the Secretary of Labor, except those found in 29 CFR parts 1915, 1916, 1917 and 1918 (Ship repairing, ship building, ship breaking and longshoring). Hearings have been held on the adoption, as permanent standards, of the standards in 29 CFR parts 1910 and 1926. Under its existing legislation, the Bureau of Labor has exercised statewide inspection authority to enforce State standards which are identical to Federal standards. The legislation covers all employers including the State and its political subdivisions and gives the Iowa Bureau of Labor full authority to administer and enforce all laws, rules, and orders protecting employee safety and health in all places of employment in the State.

(2) The legislation contains procedures for the promulgation of standards, including standards for the prompt protection of employees against new and unforeseen hazards; furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; procedures for granting temporary and permanent variances; and for the protection of employees from hazards. The law provides for inspections including inspections in response to complaints; ensures employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during and after inspections; protection of employees against discharge or discrimination in terms or conditions of employment through