

## § 1952.323

approved by the Assistant Secretary on September 24, 1981.

(j) Indiana promulgated rules for variances, limitations, variations, tolerances, and exemptions, parallel to 29 CFR part 1905 on December 17, 1976, which were revised June 3, 1977 and September 5, 1981. These regulations were approved by the Assistant Secretary on September 24, 1981.

(k) Indiana adopted rules of procedure for the Board of Safety Review on September 19, 1976, which were subsequently amended on September 5, 1981. These regulations were approved by the Assistant Secretary on September 24, 1981.

(l) Indiana deleted coverage of the maritime and longshoring issues from its plan on June 9, 1981. This supplement was approved by the Assistant Secretary on September 24, 1981.

(m) Indiana submitted documentation on establishment of its Management Information System on May 20, 1974. This supplement was approved by the Assistant Secretary on September 24, 1981.

(n) In accordance with §1902.34 of this chapter, the Indiana occupational safety and health plan was certified, effective October 16, 1981 as having completed all developmental steps specified in the plan as approved on February 25, 1974 on or before February 25, 1977. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[46 FR 49119, 49121, Oct. 6, 1981; 47 FR 28918, July 2, 1982. Redesignated at 51 FR 2488, Jan. 17, 1986]

## § 1952.323 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 to be established for each State operating an approved State plan. In September 1984 Indiana, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 47 safety and 23 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary ap-

## 29 CFR Ch. XVII (7-1-06 Edition)

proved these revised staffing requirements on January 17, 1986.

[51 FR 2488, Jan. 17, 1986]

## § 1952.324 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 1986 in response to a Court Order in *AFL-CIO v. Marshall* (CA 74-406), 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 Indiana State plan for a period of at least one year following certification of completion of developmental steps (46 FR 49119). Based on the 18(e) Evaluation Report for the period of March 1984 through December 1985, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Indiana'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 Indiana plan was granted final approval, and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective September 26, 1986.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Indiana. The plan does not cover maritime employment in the private sector; 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 enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal

Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Indiana retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Indiana 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.

[51 FR 34215, Sept. 26, 1986, as amended at 62 FR 2564, Jan. 17, 1997; 65 FR 36628, June 9, 2000]

**§ 1952.325 Level of Federal enforcement.**

(a) As a result of the Assistant Secretary's determination granting final approval to the Indiana plan under section 18(e) of the Act, effective September 26, 1986, 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 Indiana 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

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 Indiana 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 maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 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. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.324(b). Federal jurisdiction is also retained with respect to Federal government employers and employees, and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the 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