§ 301.7701–6 Definitions; person, fiduciary.

(a) *Person.* The term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. The term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(b) *Fiduciary*—(1) *In general.* Fiduciary is a term that applies to persons who occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary is a person who holds in trust an estate to which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or guardian of the property of an incompetent person is a fiduciary.

(2) *Fiduciary distinguished from agent.* There may be a fiduciary relationship between an agent and a principal, but the word agent does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Internal Revenue Code. In cases when no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

(c) *Effective date.* The rules of this section are effective as of January 1, 1997.

§ 301.7701–7 [Removed]

Par. 10. Section 301.7701–7 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 12. In § 602.101, paragraph (c) is amended by adding a new entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.7701–3	1545–1486
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 10, 1996.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 96–31997 Filed 12–17–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–031]

North Carolina State Plan; Final Approval Determination

December 10, 1996.

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final State plan approval.

SUMMARY: This document amends OSHA's regulations to reflect the Assistant Secretary's decision granting final approval to the North Carolina State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA's standards and enforcement authority no longer apply to occupational safety and health issues covered by the North Carolina plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over 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. Federal jurisdiction remains in effect with respect to Federal government employers and employees.

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq*, (the ''Act'') provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State Plan submission and approval are set forth in regulations at 29 CFR part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and .4, finds that the plan provides or will provide for State standards and enforcement which are ''at least as effective'' as Federal standards and enforcement, ''initial approval'' is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary ''developmental steps'' to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a ''certification of completion of developmental steps'' when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an ''operational status agreement'' with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under

the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as ''final approval'' of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found at 29 CFR part 1902, subpart D. In general, in order to be granted final approval, actual performance by the State must be ''at least as effective'' overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a court order by the U.S. District Court for the District of Columbia pursuant to the U.S. Court of Appeals'' decision in *AFL–CIO* v. *Marshall, 570 F.2d 1030 (D.C. Cir 1978),* that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a ''fully effective'' enforcement program.

The last requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final and continuing approval.

History of the North Carolina Plan and of Its Compliance Staffing Benchmarks

North Carolina Plan

A history of the North Carolina State plan, a description of its provisions, and a discussion of the compliance staffing benchmarks established for North Carolina was contained in the September 13, 1996, Federal Register notice (61 FR 48446) proposing that final approval under Section 18(e) of the Act be granted. The North Carolina State plan was submitted on November 27, 1972, initially approved on February 1, 1973 (38 FR 3041), certified as having completed all developmental steps on October 5, 1976 (41 FR 43896), concurrent Federal enforcement jurisdiction suspended on February 20, 1975 (40 FR 16843), reinstated on October 24, 1991 (56 FR 55192) and again suspended on March 7, 1995 (44 FR 12416); and revised compliance staffing benchmarks for North Carolina were approved on January 17, 1986 (51 FR 2481) and June 4, 1996 (61 FR 28053).

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR 1902, Subpart D. On September 13, 1996, OSHA published notice (61 FR 48446) of the eligibility of the North Carolina State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted. The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Integrated Management Information System, and staffing which meets the revised State staffing benchmarks.

The September 13 Federal Register notice set forth a general description of the North Carolina State plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1, 1993 through June 30, 1996. In addition to the information set forth in the notice itself, OSHA made available as part of the record extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which North Carolina operates its plan, and copies of all previous Federal Register notices regarding the plan.

Copies of the most recent comprehensive evaluation report, the October 1, 1993 through September 30, 1995, Biennial Evaluation Report, and the ''18(e) Evaluation Report'', covering the period of October 1, 1995 through June 30, 1996 of the North Carolina Plan which was extensively summarized in the September 13 proposal and provided the principal factual basis for the proposed 18(e) determination, were included in the docket.

To assist and encourage public participation in the 18(e) determination, copies of all docket materials were maintained in the OSHA Docket Office in Washington, DC., in the OSHA Regional Office in Atlanta, Georgia, and at the North Carolina Department of Labor, Division of Occupational Safety and Health in Raleigh, North Carolina. Summaries of the September 13 notice, with an invitation for public comments, were published in North Carolina on September 20, 1996, in the following newspapers: Charlotte Observer, Winston-Salem Journal, Asheville Citizen Times, Wilmington Morning Star, Raleigh News and Observer, and The Greensboro New and Record.

The September 13 notice invited interested persons to submit by October 15 written comments and views regarding the North Carolina plan and whether final approval should be granted. An opportunity to request an informal public hearing also was provided. Twenty-six (26) comments were received in response to this proposal; none requested an informal hearing.

Summary and Evaluation of Comments

OSHA has encouraged interested members of the public to provide information and views regarding operations under the North Carolina plan to supplement the information already gathered during OSHA monitoring and evaluation of plan administration.

In response to the September 13 proposal, OSHA received comments from: Don Beussee, Director, Health and Safety Services, Burlington Industries, Inc. [Ex. 14–1]; Jim H. Conner, Executive Vice President, The American Yarn Spinners Association, Inc. [Ex. 14–2]; Linda Moore, Chairperson, NC Tarheel Association of Occupational Health Nurses [Ex. 14–3]; R. Paul Wilms, Director, Regulatory Affairs, NC Home Builders Association [Ex. 14–4]; Garry Moore, Director of Human Resources, Kentucky Derby Hosiery Co., Inc. [Ex. 14–5]; Douglas Brackett, Executive Vice President, American Furniture Manufacturers Association [Ex. 14–6]; Thomas F. Cecich, Vice President, Environmental Safety, GlaxoWellcome, Inc. [Ex. 14–7]; Dennis M. Julian, Executive Vice President, NC Textile Manufacturers Association, Inc. [Ex. 14–8]; W. B. Jenkins, President, NC Farm Bureau Federation [Ex. 14–9]; Robert W. Slocum, Jr., Executive Vice President, NC Forestry Association., Inc. [Ex. 14–10]; James E. McCauley, Director, Safety and Security, Perdue Farms Inc. [Ex. 14–11]; Judith S. Ostendorf, President, NC Tarheel Association of Occupational Health Nurses [Ex. 14–12]; Cheryl N. Kennedy, NC Costal Plains Association of Occupational Health Nurses [Ex. 14–13]; Ginger Lusk, President, NC Foothills Association of Occupational Health Nurses [Ex. 14–14]; Robin Lee, Vice President, Metrolina of NC Association of Occupational Health Nurses [Ex. 14–15]; Lisa Ramber, Manager, Safety and Health, American Textile Manufacturers Institute [Ex. 14–16]; Henry L. Schmulling, Jr., Manager, Corporate Safety and Industrial Hygiene, Duke Power Company [Ex. 14–17]; Timothy J. Pizatella, Acting Director, Division of

Safety Research, NIOSH [Ex. 14–18]; Belinda S. Worsham, Occupational Health Nurse Consultant [Ex. 14–20]; June H. Hoyle, Occupational Health Nurse Practitioner, City of High Point, NC [Ex. 14–21]; Patricia Dalton, Administrator/Occupational Health, Pitt County Memorial Hospital [Ex. 14–22]; Lynn H. Hollifield, President, Western NC Association of Occupational Health Nurses [Ex. 14–23]; Liza Gregg, RN, MSN, CIC, CPHQ, NC Association of Occupational Health Nurses [Ex. 14–24]; Connie Bandy, Vice President, NC Costal Plains AOHN [Ex. 14–25]; Bonnie Rogers, President, The American Association of Occupational Health Nurses, Inc. [Ex. 14–26]; and Doug E. Croft, President, Chamber of Commerce, Thomasville, North Carolina [Ex. 14–27].

Of the 26 written comments received, ten (10) expressed full unqualified support for final approval on the grounds of State competence, responsiveness, innovation and specific knowledge of local conditions. All of these comments indicated that the State has established and operates an effective safety and health program without adversarial relations with local industries and workers, and that the State has been effective in protecting employees in North Carolina. Specifically, the commenters commended the State program for, among other things: its growth over the last four years, doubling its enforcement and education staffs; offering a full range of educational and consultative programs to the regulated community to augment a more focused and efficient enforcement effort; a decline every year since 1992 in the overall occupational injury and illness rate in the State; and its establishment of an Ergonomics Resource Center in conjunction with North Carolina State University; its initiation of a series of partnerships with business and industry trade associations to address hazards in areas such as logging, home-building, bottling, and furniture.

Twelve (12) [Exhibits 14–3, 14–12, 14–13, 14–14, 14–15; 14–20; 14–21; 14–22; 14–23; 14- 24; 14–25; and 14–26] comments were received from North Carolina affiliates of the Association of Occupational Health Nurses recommending that the North Carolina program include occupational health nursing positions in its staffing benchmarks. As Deputy Commissioner Charles N. Jeffress noted in his responses [Ex. 14–19A–D; Ex. 14–28; and Ex. 14–29], this issue was also raised by the Association during OSHA's consideration of the State's proposal to revise its compliance staffing benchmark levels. However, benchmark staffing requirements apply solely to personnel engaged in the enforcement of standards and while an individual with an educational background in occupational health nursing would be eligible to apply for such compliance positions, it would be inappropriate to reserve staffing positions for individuals with a particular occupational health degree. However, Mr. Jeffress concurs that occupational health nurses can add value to an occupational safety and health program particularly in the areas of training and compliance assistance. An occupational nurse has served as a member of the North Carolina Occupational Safety and Health Advisory Council and one is on the staff of the North Carolina Ergonomics Resource Center joint program. Further, Mr. Jeffress indicates that they have relied on the expertise and advice of occupational health professionals in other departments with which they conduct cooperative efforts especially in the areas of worker health and reporting of occupational illnesses.

Four (4) commenters, Don Beussee, Director, Health and Safety Services, Burlington Industries, Inc. [Ex. 14–1]; Jim H. Conner, Executive Vice President, The American Yarn Spinners Association, Inc. [Ex. 14–2]; Dennis M. Julian, Executive Vice President, North Carolina Textile Manufacturers Association, Inc. [Ex. 14–8]; and Lisa Ramber, Manager, Safety and Health, American Textile Manufacturers Institute [Ex. 14–16], raise concerns about North Carolina's adoption of more stringent enforcement policies with regard to engineering controls for noise levels between 90 dBA and 100 dBA and full-shift use of respirators for cotton dust exposures in the textile industry. All suggest that these interpretations are inconsistent with Federal OSHA's standards interpretations and have not been demonstrated to comply with the ''product clause'' test of the Act that different State standards must be ''required by compelling local conditions and not cause an undue burden on interstate commerce.'' Mr. Julian and Mr. Beusse, nonetheless, support the granting of final approval while Ms. Ramber requests that the State be required to revise its policies prior to OSHA granting final approval. Charles Jeffress, Deputy Commissioner of Labor, responded individually to each of the comments on October 9, 1996, Burlington Industries, Inc. (Ex. 14–19); October 15, 1996, American Yarn Spinners Association, Inc. (Ex. 14–19A); October 17, 1996, North Carolina Textile Manufacturers Association, Inc. (Ex. 14–19B); and October 18, 1996, American Textile Manufacturers Institute (Ex. 14–19C).

North Carolina's standard for noise is identical to the Federal standard (29 CFR 1910.95). However, North Carolina requires employers to implement engineering controls, where feasible, when noise levels are between 90 dBA and 100 dBA. One commenter indicates that this policy ''* * * requires employers to spend significant resources to engineer incremental reductions in noise levels * * *'' while still requiring the use of hearing protection devices. (Federal OSHA policy allows employers to rely on an effective hearing conservation program in lieu of engineering controls for noise levels between 92 dBA and 100dBA when this is demonstrated to be more cost effective.) Mr. Jeffress indicates that North Carolina's policy is consistent with the Federal policy in effect in 1983 and retention of this policy is ''more protective'' with the State's emphasis being on ''solving the problem'' rather than relying on a ''difficult to administer'' hearing conservation program. He further notes that North Carolina requires only ''feasible'' engineering and administrative controls in these situations and accepts hearing conservation methods when it is the only technologically or economically feasible means to control employee overexposure to noise at these levels. A case contesting this policy, brought by one of the commenters, Burlington Industries, is currently before the North Carolina Occupational Safety and Health Review Board.

North Carolina's standard for cotton dust is also identical to the Federal standard (29 CFR 1910.1043). Federal OSHA's interpretation of this standard allows the partial-shift wearing of respiratory protection where engineering controls alone do not reduce each employee's eight-hour time-weighted exposure to below the permissible exposure limit (PEL). North Carolina requires that respirators be worn during the full shift when engineering controls alone have not reduced exposure to below the PEL in order to afford workers the ''greatest protection possible'' and in recognition of lung function recovery which occurs when workers are removed from dusty environments even for short periods of time. The commenters are particularly concerned that this policy is also applied to extended shifts of 12 hours where the eight-hour time weighted average has been engineered below the PEL. Mr. Jeffress responds that he met

with representatives of the various associations on this issue on March 27, 1995, and subsequently Commissioner of Labor Harry Payne agreed to reevaluate North Carolina's policy upon the submission by the industry of data, such as medical or spirometry data, which can be used to evaluate the comparative benefits of full-shift respirator usage versus partial shift. A second meeting occurred on April 17, 1996, with two industry representatives but no data on health effects has been made available and no research authorized. North Carolina reiterated its offer to reconsider its policy upon the submission of appropriate comparative data. OSHA also investigated a Complaint About State Program Administration (CASPA) on this issue in 1992 and found the State's policy to be acceptable. No further comments or objections were received with regard to that finding at that time.

The OSH Act and implementing regulations require that both State standards, and the State's interpretations of those standards, be ''at least as effective as'' corresponding Federal OSHA standards and interpretations. (Section 18(c)(2); 1902.37(b)(4.) The differences between State and Federal standards identified in these comments describe State standards interpretations which are more stringent than those of Federal OSHA. Therefore, by definition these interpretations meet the ''at least as effective'' criterion. The further issues as to whether these standards, as interpreted and administered by the State, are applicable to products moved or used in interstate commerce; impose an undue burden on commerce; and are justified by compelling local conditions are not yet ripe for review as both polices are still under active consideration within the State, i.e., the noise policy through on-going contested cases challenging the policy; the full-shift use of respirators through the State's offer to reconsider the policy through negotiation with the textile industry.

OSHA, therefore, does not believe that any of the concerns expressed are sufficient to warrant withholding of final approval of the North Carolina State Plan especially in light of on-going State administrative and adjudicatory procedures.

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the North Carolina State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period October 1, 1993 through June 30, 1996 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

(1) *Standards.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(I)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and, where applicable to a product, must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved North Carolina State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the September 13 notice, the North Carolina plan provides for the adoption of standards and amendments thereto which are, in most cases, identical to Federal standards. The State's laws and regulations, previously approved by OSHA and made a part of the record in this proceeding, include provisions addressing all of the structural requirements for State standards set out in 29 CFR part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the ''18(e) Evaluation Report'' and summarized in the September 13, 1996, Federal Register notice, North Carolina has adopted standards in a timely manner which are, in nearly all cases, identical to Federal standards. Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. North Carolina has generally adopted standards interpretations which are identical to the Federal but in few cases, e.g., noise and cotton dust standards, has adopted more protective, but nonetheless at least as effective interpretations. (See discussion above on Comments received from the textile industry on this issue.)

OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to State standards have occurred in North Carolina.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds that the North Carolina program in actual operation provides for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal Program.

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The North Carolina State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval, permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliances as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the September 13 notice, North Carolina received one request for a permanent variance during the reporting period. That request is currently under review by the State. No temporary variance request was received during the evaluation period and there are no outstanding issues on variances previously granted.

Accordingly, OSHA finds that the North Carolina program is able to

effectively grant variances from its occupational safety and health standards.

(3) *Enforcement.* Section 18(c)(2) of the Act and 29 CFR 1902.3(c)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The North Carolina occupational safety and health statutes and implementing regulations, previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The ''18(e) Evaluation Report'' indicates no signficiant lack of adherence to such procedures.

(a) Inspections. In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Data contained in the 18(e) Evaluation Report noted that North Carolina targets establishments for programmed inspections based on industry injury/illness rates for safety and chemical exposure and violation experience for health. North Carolina has also implemented a cooperative compliance targeting program, known as the ''North Carolina 248'' program, which targets employers with the highest worker's compensation claim rates for a period of three years. North Carolina continues to conduct a higher percentage of all programmed inspections in the high-hazard industries in the State.

(b) Employee Notice and Participation in Inspections: State plans must provide for inspections in response to employee complaints and must provide for an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(i) through (iii)). North Carolina has procedures similar to Federal OSHA for processing and responding to complaints and providing for employee participation in State inspections. The data indicates that during the evaluation period the State responded to 85% of serious safety and health complaints within the prescribed time frame of 30 days. No complaints were classified as imminent danger during the review period. Employees participated in inspections in almost every case.

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)), and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, North Carolina requires that a poster approved by OSHA be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variances applications are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards which are, in most instances, identical to the Federal. Federal OSHA concluded that the State's performance is satisfactory.

(c) Nondiscrimination. A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). North Carolina General Statute 95–240 and State regulations provide for discrimination protection equivalent to that provided by Federal OSHA. Employees have up to 180 days to file a complaint, compared to the Federal 30 days. The State received a total of 66 complaints alleging discrimination during the evaluation period; 60 of the cases had been settled, withdrawn, dismissed, or filed for litigation by the end of the period. Federal OSHA concluded that the State's performance is satisfactory.

(d) Restraint of Imminent Danger; Protection of Trade Secrets. A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii)), and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and field operations manual which are similar to the Federal requirements. There were no imminent danger situations identified during the evaluation period. There were no Complaints About State Program Administration (CASPA's) filed concerning the protection of trade secrets during the report period.

(e) Right of Entry; Advance Notice. A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). In addition, a State is expected to prohibit advance notice of inspection, allowing exceptions thereto no broader than the Federal program (29 CFR 1902.3(f)). North Carolina General Statute 95–133 authorizes the Commissioner to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. The North Carolina statute also allows the Commissioner to apply for a warrant to permit entry into such establishments that have refused entry for the purpose of inspection or investigation. The North Carolina law allows the Commissioner to issue subpoenas ''to require the attendance and testimony of witnesses and the production of evidence under oath'' in regard to Divisional inspections and investigations. The North Carolina law also prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal procedures.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. North Carolina had 10 denials of entry, during the 18(e) evaluation period, and was successful in obtaining warrants for nine (90%) of them. North Carolina has adopted and implemented procedures for advance notice similar to the Federal procedures.

(f) Citations, Penalties, and Abatement. A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspections, for the purpose of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The North Carolina plan, through its law, regulations and field operations manual has established a system similar to the Federal program to provide for the prompt issuance of citations to

employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information, and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first-instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Procedures for the North Carolina occupational safety and health compliance program are set out in the North Carolina Field Operations Manual, which is patterned after the Federal manual. The State follows inspection procedures, including documentation procedures, which are similar to the Federal procedures. The 18(e) Evaluation Report notes overall adherence by North Carolina to these procedures. North Carolina cited an average of 5 violations per safety inspection and 3.9 violations per health inspection; and 30.7% of safety violations and 30.5% of health violations were cited as serious. The percentage of serious safety and health violations were lower than the comparable Federal percentages. The State continues to provide compliance officers with specific training and direction to ensure the proper classification of violations of standards. North Carolina's lapse time from the opening conference to issuance of citation averaged 36.7 days for safety and 57.9 days for health. Both of the lapse times compare favorably to Federal OSHA's lapse time.

North Carolina's procedures for calculation of penalties are similar to those of Federal OSHA. The 18(e) Evaluation Report noted that North Carolina proposes appropriate penalties. The average penalty for serious safety violations was $1,215.10 and the average serious health penalty was $1,056.30. North Carolina's abatement periods for serious violations averaged 15.5 days for safety and 6.8 days for health.

(g) Contested Cases. In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). North Carolina's procedures for employer and employee contest of citations, penalties and abatement requirements and for ensuring employees' rights are contained in the law, regulations and field operations manual made a part of the record in this proceeding. As noted elsewhere in this notice, the North Carolina plan provides for the review of contested cases by the independent North Carolina Occupational Safety and Health Review Board. State regulation and procedures provide a 20 working day period for informal conference which, if held, results in either a settlement agreement or a Notice of No Change which, in turn, may be contested to the Review Board within 15 working days. On average 4.6% of all inspections with citations are contested.

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The North Carolina 18(e) Evaluation Report noted no instances of adverse adjudications.

(h) Enforcement Conclusion. In summary, the Assistant Secretary finds that enforcement operations provided under the North Carolina plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) Public Employee Program: Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as the State's program for private employees covered by the plan. The North Carolina plan provides a program in the public sector which is comparable to that in the private sector, including assessment of penalties. Injury and illness rates are lower in the public sector than in the private.

During the 18(e) Evaluation period, North Carolina conducted 136 public sector inspections. The proportion of inspections dedicated to the public sector (5% of total inspections) during the evaluation period was appropriate to the needs of public employees.

Because North Carolina's performance in the public sector is comparable to that in the private sector, OSHA concludes that the North Carolina program meets the criteria in 29 CFR 1902.3(j).

(5) Staffing and Resources. Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The North Carolina plan provides for 64 safety compliance officers and 51 industrial hygienists as set forth in the North Carolina FY 1996 and FY 1997 grant applications. This staffing level meets the approved, revised ''fully effective'' benchmarks for North Carolina for health and safety staffing, as discussed elsewhere in this notice. At the close of the evaluation period the State had 60 safety and 47 health compliance officers positions filled.

North Carolina provides its safety and health personnel with formal training based on the needs of the staff and availability of funds. The OSHA Training Institute is utilized for staff training, and the State conducts quarterly conferences to train personnel in new and updated policy and technical changes.

Because North Carolina has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the court order in *AFL–CIO* v. *Marshall,* supra, are being met by the North Carolina plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The North Carolina plan was funded at $12,469,715 in FY 1996. ($3,131,400 (25%) of the funds were provided by Federal OSHA and $9,338,315 (75%) were provided by the State.)

As noted in the 18(e) Evaluation report, North Carolina's funding is judged sufficient in absolute terms; moreover, the State allocates its resources to the various aspects of the program in an effective manner. On this basis, OSHA finds that North Carolina has provided sufficient funding and

resources for the various activities carried out under the plan.

(6) Record and Reports: State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.4(1)).

North Carolina employer recordkeeping requirements are identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries as well as the OSHA Data Initiative. The State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

For the foregoing reasons, the OSHA finds that North Carolina has met the requirements of sections 18(c) (7) and (8) of the Act on employer and State reports to the Secretary.

(7) Voluntary Compliance: A State plan is required to undertake programs to encourage voluntary compliance by employers and employees (29 CFR 1902.4(c)(2)(xiii)).

North Carolina, in the private sector, conducted 178 employer and employee training sessions with 3,117 employer attendees and 5,445 employee attendees at the sessions. The State, through a cooperative agreement with the North Carolina Community College System Small Business Centers, also participated in conducting 43 workshops covering several safety and health subjects.

The State has entered into a partnership with North Carolina State University to provide comprehensive ergonomic services to citizens and employers through the Ergonomics Resource Center. The Center has developed a comprehensive outreach program which includes education, research, on-site consultation, technology transfer and monitoring, on a fee basis. The Center was one of the semi-finalists in the 1996 Innovations in American Government Awards program.

North Carolina also has initiated a Cooperative Assessment Program for ergonomics which encourages employers who are being inspected to voluntarily address ergonomic problems through an agreement similar to a post-citation settlement agreement. The State has also entered into a Memorandum of Understanding with the State Department of Agriculture, Meat and Poultry Inspection Services to train MPIS inspectors to recognize and address workplace hazards.

In addition, on-site consultation services are provided in the public sector under the plan. In the private sector on-site consultation services are provided to employers under a cooperative agreement with OSHA under section 7(c)(1) of the Act and 29 CFR Part 1908.

Accordingly, OSHA finds that North Carolina has established and is administering an effective voluntary compliance program.

(8) Injury/Illness Rates: As a factor of its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). In 1994, the private sector lost workday case rate for all industries remained at 3.5 as it has been since 1989. There were slight increases in manufacturing, from 4.0 in 1993 to 4.1 in 1994, and in construction, from 4.7 in 1993 to 5.1 in 1994, but both areas were still below the nationwide rate of 3.8 for all industries, 5.5 for manufacturing, and 5.5 for construction.

OSHA finds that during the evaluation period trends in worker injury and illness in North Carolina were comparable with those in States with Federal enforcement; actual injury and illness rates within the State were lower.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present Federal Register document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that the North Carolina State plan for occupational safety and health, which has been monitored for at least one year subsequent to certification, is in actual operation at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the North Carolina State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR part 1902, effective December 10, 1996.

Under this 18(e) determination, North Carolina will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State-initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, North Carolina must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State compliance staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the North Carolina plan terminates OSHA authority for Federal enforcement of its standards in North Carolina, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination ''the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, shall not apply with respect to any occupational safety and health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.''

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act (section 17) is relinquished as of the effective date of this determination.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. 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 initially referred to the State for investigation. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination would remain under Federal jurisdiction. 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. In the event that a 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 the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the North Carolina plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health coverage of 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 standards (29 CFR part 1910) 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, and enforcement on military bases. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons which OSHA determines are not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has subsequently failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceeding to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to part 1952 reflecting the final approval decision. This notice makes changes to subpart I of part 1952 to reflect the final approval of the North Carolina plan.

The table of contents for part 1952, subpart I, has been revised to reflect the following changes:

The heading of section 1952.152, Completion of developmental steps, has been revised by adding the words ''and certification'' at the end.

A new section 1952.154, Final approval determination, which formerly was reserved, has been added to reflect the determination granting final approval of the plan. This section contains a more accurate description of the current scope of the plan than the one contained in the initial approval decision.

Section 1952.155, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. This replaces the former description of the relationship of State and Federal enforcement under an Operational Status agreement voluntarily suspending Federal enforcement authority, which was entered into on February 20, 1975. (Federal enforcement jurisdiction was partially reinstituted on October 24, 1991, and again fully suspended on March 7, 1995.) Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for North Carolina. Section 1952.155 describes the issues over which Federal authority has been terminated and the issues for which it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present Federal Register notice.

Section 1952.156, Where the plan may be inspected, has been revised to reflect a new room number N3700 for the Office of State Programs, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210; and a new street address 319 Chapanoke Road—Suite 105 for the North Carolina Department of Labor, Division of Occupational Safety and Health, Raleigh, North Carolina 27603–3432.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in North Carolina under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033)).

Signed at Washington, DC, this 10th day of December 1996.

Joseph A. Dear,

Assistant Secretary.

Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read as follows:

Authority: Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. The table of contents for part 1952, subpart I is revised to read as follows.

Subpart I—North Carolina

§ 1952.152 [Amended]

3. The heading of § 1952.152 is revised to read ''Completion of developmental steps and certification.''

4. A new § 1952.154 is added, and §§ 1952.155 and 1952.156 are revised to read as follows:

§ 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* versus *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 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; 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.

§ 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 section 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 standards (29 CFR Part 1910) 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; and enforcement on military bases. Federal jurisdiction is also retained with respect to Federal government employers and employees.

(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 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.

§ 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, Directorate of Federal-State Operations, 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, 1375 Peachtree Street, NE, Suite 587, Atlanta, Georgia 30367; and

North Carolina Department of Labor, Division of Occupational Safety and Health, 319 Chapanoke Road—Suite 105, Raleigh, North Carolina 27603–3432.

[FR Doc. 96–32083 Filed 12–17–96; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID5–2–7075a; FRL–5665–1]

Clean Air Act Promulgation of Reclassification of PM–10 Nonattainment Areas in Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action identifies those nonattainment areas in the State of Idaho which have failed to attain the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM–10) by the applicable attainment date of December 31, 1995. This action also grants a second one-year extension to the attainment date for the Power-Bannock Counties PM–10 nonattainment in Idaho.

DATES: This action is effective on February 18, 1997, unless adverse or critical comments are received by January 17, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Montel Livingston, SIP Manager, EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle Washington, 98101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements Concerning Designation and Classification

Areas meeting the requirements of section 107(d)(4)(B) of the Act [1] were designated nonattainment for PM–10 by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. *See generally*, 42 U.S.C. section 7407(d)(4)(B). These areas included all former Group I PM–10 planning areas identified in 52 FR 29383 (August 7, 1987) as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the National Ambient Air Quality Standards (NAAQS) for PM–10 prior to January 1, 1989.[2] A Federal Register notice announcing the areas designated nonattainment for PM–10 upon enactment of the 1990 Amendments, known as ''initial'' PM–10 nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent Federal Register notice correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). *See* 56 FR 56694 (November 6, 1991) and 40 CFR 81.313 (codified air quality designations and classifications for the State of Idaho). All initial moderate PM–10 nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant two one-year extensions to the attainment date provided certain requirements are met as described below.

States containing initial moderate PM–10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM–10 NAAQS by the December 31, 1994 attainment date was practicable. *See* section 189(a).

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law 101–549, 104 Stat. 2399. References herein are to the Clean Air Act as amended (''Act'' or ''CAA''), which is codified at 42 U.S.C. 7401 *et seq.*

[2] Many of these other areas were identified in footnote 4 of the October 31, 1990 Federal Register notice.

B. Attainment Determinations

All PM–10 nonattainment areas are initially classified ''moderate'' by operation of law when they are designated nonattainment. *See* section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, EPA has the responsibility of determining within six months of the applicable attainment date whether PM–10 nonattainment areas have attained the NAAQS. Determinations under section 179(c)(1) of the Act are to be based upon an area's ''air quality as of the attainment date.'' Section 188(b)(2) is consistent with this requirement. Generally, EPA will determine whether an area's air quality is meeting the PM–10 NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established State and Local Monitoring Stations (SLAMS) in the nonattainment area and entered into the Aerometric Information Retrieval System (AIRS). Data entered into the AIRS has been determined by EPA to meet federal monitoring requirements (see 40 CFR 50.6 and appendix J, 40 CFR part 53, 40 CFR part 58 appendix A & B) and may be used to determine attainment status of areas. EPA will also consider air quality data from other air monitoring stations in the nonattainment area provided that it meets the federal monitoring requirements for SLAMS. All data will be reviewed to determine the area's air quality status in accordance with EPA guidance at 40 CFR part 50, appendix K.

Attainment of the annual PM–10 standard is achieved when the annual arithmetic mean PM–10 concentration over a three year period (for example, 1993, 1994, 1995 for areas with a December 31, 1995 attainment date) is equal to or less than 50 micrograms per cubic meter (ug/m3). Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM–10 concentrations greater than 150 ug/m3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m3 (averaged over a three year period) is less than or equal to one (1.0). Three consecutive years of air quality data is generally necessary to show attainment of the 24-hour and annual standard for PM–10. *See* 40 CFR part 50 and appendix K.

C. Reclassification to Serious

A PM–10 nonattainment area may be reclassified to ''serious,'' which requires new air quality planning obligations, in one of two ways. First, EPA has general discretion to reclassify a moderate PM–10 area to serious if at any time EPA