

have been raised which warrant public discussion, and, if so, will publish notice of the time and place of an informal hearing.

The Assistant Secretary will consider all relevant comments, arguments, and requests submitted concerning these standards, including the record of any hearing held, and will publish notice of the decision approving or disapproving them.

#### E. Location of Supplement for Inspection and Copying

A copy of the California Hazard Communication standard may be inspected and copied during normal business hours at the following locations: Docket Office (Docket T-032), Room N-2625, U.S. Department of Labor, OSHA, 200 Constitution Avenue, N.W., Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, Suite 415, San Francisco, CA 94105; California Division of Occupational Safety and Health, Department of Industrial Relations, 45 Fremont Street, Room 1200, San Francisco, CA 94105.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed this 6th day of September, 1996 in Washington, D.C.

Joseph A. Dear,

*Assistant Secretary.*

[FR Doc. 96-23458 Filed 9-12-96; 8:45 am]

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## 29 CFR Part 1952

[Docket No. T-031]

### North Carolina State Plan; Eligibility for Final Approval Determination; Proposal To Grant an Affirmative Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

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

**ACTION:** Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

**SUMMARY:** This document gives notice of the eligibility of the North Carolina State occupational safety and health plan, as administered by the North Carolina Department of Labor, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the North Carolina plan. This notice announces that OSHA is soliciting written public comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

**DATES:** Written comments or requests for a hearing should must be received by October 15, 1996.

**ADDRESSES:** Written comments or requests for a hearing should be submitted, in quadruplicate, to the Docket Officer, Docket No. T-031, U.S. Department of Labor, Room N2625 200 Constitution Avenue NW, Washington, DC 20210, (202) 219-7894.

**FOR FURTHER INFORMATION CONTACT:** Anne Cyr, Acting 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:

##### Background

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 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO v. Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, 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 approval.

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

#### *North Carolina Plan*

On November 27, 1972, North Carolina submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C and on December 9, 1972 a notice was published in the Federal Register (37 FR 26371) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan.

Written comments concerning the plan were submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the U.S.S. Agri-Chemicals. No other written comments were received, and no request for an informal hearing was received.

On February 1, 1973, the Assistant Secretary published a Federal Register notice (38 FR 3041) granting initial approval of the North Carolina plan as a developmental plan and adopting Subpart I of Part 1952 containing the decision and describing the plan.

The North Carolina Department of Labor is designated as the agency having responsibility for administering the plan throughout the State under the authority of the North Carolina Occupational Safety and Health Act (S.B. 342, Chapter 295). The plan provides for the adoption by North Carolina of standards which are "at least as effective" as Federal occupational safety and health standards. In most cases the State standards are identical to the Federal. The plan requires employers to furnish employment and place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the State agency. Employees are required to comply with all standards and regulations applicable to their conduct.

The plan contains provisions similar to Federal procedures governing emergency temporary standards;

imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. The notice of initial approval noted that the State does not cover private sector maritime employment, employment on military bases, or domestic workers.

Notices of contest of citations and penalties are filed with the Commissioner of Labor and are heard by the North Carolina Occupational Safety and Health Review Board, an independent administrative review board. Decisions of the North Carolina Occupational Safety and Health Review Board may be appealed to the North Carolina Superior Court and those decisions may be ultimately appealed to the North Carolina State Supreme Court.

The Assistant Secretary's initial approval of the North Carolina developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart I (38 FR 3041, February 1, 1973)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before March 31, 1976. These "developmental steps" included enactment of the North Carolina Occupational Safety and Health Act, promulgation of State occupational safety and health standards essentially identical to Federal standards and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things: documentation of staff training; a merit staffing system; regulations for inspections, citations and proposed penalties; record keeping and reporting regulations; standards and variances regulations; compliance procedures; and, rules of procedure for the North Carolina Occupational Safety and Health Review Board.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and

29 CFR 1902.3 and 1902.4. The North Carolina Subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.152).

On October 5, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that North Carolina had satisfactorily completed all developmental steps (41 FR 43896). In certifying the plan, the Assistant Secretary found the structural features of the program—the statutes, standards, regulations, and written procedures for administering the North Carolina plan—to be as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory or regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On February 20, 1975, OSHA and the State of North Carolina entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in all except specifically identified areas. (See 40 FR 16843).

On September 3, 1991, a tragic fire occurred at the Imperial Food Products chicken processing plant in Hamlet, North Carolina, which resulted in the deaths of 25 workers. In response to that event OSHA undertook a comprehensive reevaluation of the performance of the North Carolina State Plan and a special evaluation of all other State Plans. On October 24, 1991 (56 FR 55192) OSHA reasserted concurrent Federal enforcement jurisdiction in North Carolina with respect to all currently pending and new complaints of discrimination filed either with OSHA or the State; all complaints of unsafe or unhealthful working conditions brought to OSHA's attention on or after October 24, 1991 by employees or referred by others; and referrals from the North Carolina Governor's 800 "Safety Line." This action was responsive to the State's request for assistance. Upon further request, on March 31, 1992, (57 FR 10820) OSHA extended its jurisdiction to include all as yet uninvestigated workplace complaints filed with the State as of March 20, 1992.

Congressional oversight hearings were held on the Hamlet fire and the AFL-

CIO, on September 11, 1991, petitioned the Assistant Secretary to withdraw approval of the North Carolina State Plan. (See September 30, 1991, Request for Public Comment (56 FR 49444) and January 16, 1992, Extension of the Comment Period and Announcement of the Availability of a Special Evaluation report on North Carolina (57 FR 1889).) On January 7, 1992, OSHA issued a Special Evaluation report on North Carolina finding significant deficiencies and giving the State 90 days to take corrective action. On April 23, 1992, OSHA determined that the State's response to the Special Evaluation findings was insufficient and gave North Carolina 45 days to show cause why plan withdrawal action should not be initiated. Fully satisfactory assurances that necessary corrective action would be undertaken were received in June 1992.

North Carolina subsequently made substantive and significant improvements to its program. Major modifications were made to the State's occupational safety and health program enabling legislation; State funding and staffing were increased. The State dedicated the inspection resources to the program necessary to provide effective worker protection in the State and addressed all of the deficiencies identified as a result of OSHA's 1991 Special Evaluation Report. The State increased its allocated enforcement staff to 115 (64 safety and 51 health) and trained its new compliance officers in accord with the schedule outlined in the State's June 1992 corrective action commitments. North Carolina resumed responsibility for all discrimination complaints effective July 1, 1992, as a result of enactment of legislation creating the Workplace Retaliatory Discrimination (WORD) Division, selection and training of dedicated staff, and revision of its discrimination manual to be comparable to OSHA's. These and other actions also resolved all issues raised in the AFL-CIO's petition for withdrawal of approval of the North Carolina State Plan.

OSHA evaluation reports on North Carolina's performance subsequent to the Special Evaluation, documented continuing improvement and indicated that the program was operating in an effective manner with an outstanding commitment to necessary enforcement as well as creative outreach and other voluntary compliance activities. Based on this record, OSHA on March 7, 1995, determined that the exercise of concurrent Federal enforcement jurisdiction was no longer warranted and suspended Federal enforcement authority except with regard to those

issues not covered by the State. OSHA similarly determined that no further action was necessary or appropriate with regard to the AFL-CIO petition for North Carolina plan withdrawal. (See 44 FR 12416.)

#### *North Carolina Benchmarks*

Under the terms of a 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 1980, in response to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 83 safety and 119 health compliance officers for North Carolina. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In September 1984 North Carolina in conjunction with OSHA, completed a reassessment of the levels resulting in proposed revised compliance staffing 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 (51 FR 2481).

In March 1989 the North Carolina House Appropriations Committee of the North Carolina General Assembly passed a resolution instructing the Commissioner of Labor to again renegotiate the appropriate number of North Carolina occupational safety and health compliance officers with OSHA. In June 1990 the State of North Carolina requested that the Assistant Secretary approve revisions to its 1984 compliance staffing benchmark levels which the State found to be more reflective of current occupational safety and health needs and circumstances within the State. This reassessment resulted in a proposal to OSHA of revised compliance staffing benchmarks of 64 safety and 50 health compliance officers for the State of North Carolina. These revised benchmarks were approved by the Assistant Secretary on June 4, 1996, after opportunity for public comment and service on the AFL-CIO (61 FR 28053).

#### *Determination of Eligibility*

This Federal Register notice announces the eligibility of the North Carolina plan for final approval determination under section 18(e). (29 CFR 1902.39(c) requires that this preliminary determination of eligibility be made before section 18(e) procedures

begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The North Carolina plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are now prepared biennially and made available to the State and to the public. The results of OSHA's most recent post-certification monitoring are set forth in a biennial evaluation report covering the period of October 1, 1993 through September 30, 1995, and in a section 18(e) Evaluation Report of the North Carolina Plan, covering the period of October 1, 1995 through June 30, 1996, which have been made part of the record of the present proceedings.

(2) The plan meets the State's revised benchmarks for enforcement staffing. On June 4, 1996, pursuant to the terms of the Court Order and the 1980 Report to the Court in *AFL-CIO v. Marshall*, OSHA approved revised fully effective benchmarks of 64 safety and 50 health compliance officers for North Carolina based on an assessment of State-specific characteristics and historical experiences. North Carolina has allocated these positions, as evidenced by the FY 1996 Application for Federal Assistance in which the State has committed itself to funding the State share of salaries for 64 safety and 51 health compliance officers. The FY 1996 application has been made part of the record in the present proceeding.

(3) North Carolina participates and has assured its continued participation in the Integrated Management Information System (IMIS) developed by OSHA.

#### *Issues for Determination in the 18(e) Proceedings*

The North Carolina plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the North Carolina program as described in the most recent biennial evaluation report and the section 18(e) Performance Evaluation Report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that

the regulatory indices and criteria are being met. The Assistant Secretary accordingly has made an initial determination that the North Carolina plan is eligible for an affirmative section 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative section 18(e) determination to North Carolina. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

#### (a) Standards and Variances

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. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate State standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). The North Carolina plan provides for adoption of standards, through an expedited process, which are in most cases identical to Federal standards. North Carolina's adoption process continues to meet the six-month time frame for adoption of OSHA standards requiring State action during the section 18(e) evaluation period. [18(e) Evaluation Report, p. 3]

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure protection at least as effective as comparable Federal standards and enforcement procedures. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902(c)(1), 1902.3(d)(1), 1903.4(a), and 1902.4(b)(2). As already noted, the North Carolina plan provides for adoption of standards identical to Federal standards. North Carolina also adopted interpretations which are identical to the Federal interpretations in most instances.

The State is required to take the necessary administrative judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is identical to the Federal

standards or developed by the State. See § 1902.37(b)(5). No such challenge to State standards has ever occurred in North Carolina. [18(e) Evaluation Report, p. 3.]

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). North Carolina had one request for a permanent variance during the 18(e) evaluation period. That request is currently under review by the State. [18(e) Evaluation Report, p. 3.]

Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The North Carolina temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the section 18(e) evaluation period, no temporary variance requests were received. [18(e) Evaluation Report, p. 3.]

#### (b) Enforcement

Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA. Section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in section 8 of the Act

Inspection Targeting. The State inspection program must provide for sufficient resources to be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). North Carolina targets establishments for programmed inspections based on industry injury/illness rates for safety and chemical exposure and violation experience for health. As of July 1992, the State began a priority targeting system directed at employers with a workers compensation experience rate modifier of 1.5 or greater. North Carolina has also implemented a cooperative compliance targeting program, known as the "North Carolina 248" program, which targets the 248 employers with the highest worker's compensation claim rates for a period of three years. Since the inception of the "North Carolina 248" program, 154 of the 248 establishments have received an inspection by NC-

OSH. North Carolina continues to conduct a high percentage of all programmed inspections in the high hazard industries in the state. [18(e) Evaluation Report, p. 4-5].

Denials of Entry. In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3(e) and (f), and 1902.4(c)(2) (I) and (ix). Title 40.1 of the Code of North Carolina allows the Commissioner to seek a warrant to permit entry into such establishment that has refused entry for the purpose of inspection or investigation. North Carolina obtained entry in 90% of refusals during this nine month evaluation period. [18(e) Evaluation Report, p. 6]

Inspection Procedures. Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See §§ 1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2). 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, and thus follows inspection procedures, including documentation procedures, which are similar to Federal procedures. The Evaluation Report notes overall adherence by North Carolina to these procedures.

Identifying and Citing Hazards: North Carolina cited an average of 5 violations per safety inspection and 3.9 violations per health inspection. 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. [18(e) Evaluation Report, p. 8]

Advance Notice: State plans must include a prohibition on advance notice, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). North Carolina adopted approved procedures for advance notice similar to the Federal procedures.

Employee Participation: State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 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. [18(e) Evaluation Report, p. 7]

**Nondiscrimination.** State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). Title 40.1 of the Code of North Carolina 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. A total of 66 complaints alleging discrimination were received during the evaluation period, of which, only 6 had lapse times of more than 90 days from date of receipt to the date of determination. 60 of the cases had been settled, withdrawn, dismissed, or filed for litigation by the end of the period. [18(e) Evaluation Report, p. 13]

**Citations and Proposed Penalties.** The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2) (x) and (xi). The State's lapse time from last day of inspection 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 time lapse.

The State must propose penalties in manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c) (x) and (xi). North Carolina's procedures for penalty calculation are the similar to the Federal procedures. The section 18(e) Evaluation Report noted that North Carolina proposes appropriate penalties. The average penalty for serious safety violations was \$1215.10 and the average serious health penalty was \$1056.30. [18(e) Evaluation Report, p. 8–9]

**Abatement.** The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c) (vii) and (xi). North Carolina's abatement periods for serious violations averaged 15.5 days for safety and 6.8 days for health. [18(e) Evaluation Report, p.9]

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). The North Carolina section 18(e) Evaluation Report noted no instances of adverse adjudications.

#### (c) Staffing and Resources

The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1), 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(l). As discussed above, the North Carolina plan provides for 64 safety compliance officers and 51 industrial hygienists as set forth in the North Carolina FY 1996 grant. 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. [18(e) Evaluation Report, p. 17]

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. [18(e) Evaluation Report, p. 14]

#### (d) Other Requirements

**Public Employees:** States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). 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. [18(e) Evaluation Report, p. 9–11]

**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 rate for all industries remained at 3.5 as it has been since 1989. There were slight increases in, manufacturing—1993–4.0, 1994–4.1, and construction—1993–4.7, 1994–5.1, but both areas were still below the nationwide rate of 3.8 for all industries, 5.5 for manufacturing, and 5.5 for construction. [18(e) Evaluation Report, p. 18]

**Required 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. See section 18(c)(7) of the Act; 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; 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 noted above, 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.

**Voluntary Compliance:** Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. In the private sector the State 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. [18(e) Evaluation Report, p.14]

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 has been selected as 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 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. (The State's on-site consultation program for the private sector is conducted apart from the State plan under an agreement with OSHA under section 7(c)(1) of the OSH Act.)

#### Effect of § 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the North Carolina plan, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). North Carolina has excluded from its plan: Safety and health coverage in private sector maritime activities (enforcement of 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). In addition, North Carolina does not cover 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. Thus, Federal coverage of these areas would be unaffected by an affirmative section 18(e) determination.

In the event an affirmative section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the Federal Register in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in

effect, and will state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart C of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the North Carolina plan, would be amended to reflect the section 18(e) determination if an affirmative determination is made.

#### Documents of Record

All information and data presently available to OSHA relating to the North Carolina section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room N-2625, Docket No. T-031, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, N.E., 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.

To date, the record on final approval determination includes copies of all Federal Register documents regarding the plan, including notices of plan submission, initial Federal approval, certification of completion of developmental steps, codification of the State's operational status agreement, and other plan supplements. The record also includes the State plan document, which includes a plan narrative, the State legislation, regulations and procedures, an organizational chart for State staffing; the State's FY 1997 Federal grant; and the October 1, 1995 through June 30, 1996 18(e) Evaluation Report and all previous, post-certification reports.

#### Public Participation

##### *Request for Public Comment and Opportunity To Request Hearing*

The Assistant Secretary is directed under § 1902.41 to make a decision

whether an affirmative section 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by North Carolina of the requirements of section 18(c) of the Act and all specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the factors in 29 CFR 1902.37 (b)(1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they apply to North Carolina State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and arguments with respect to this proposed section 18(e) determination. These comments must be received on or before (30 days) and submitted in quadruplicate to the Docket Officer, Docket No. T-031, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. The State of North Carolina will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed section 18(e) determination. Such requests also must be received on or before (30 days) and should be submitted in quadruplicate to the Docket Officer, Docket T-031, at the address noted above. Such requests must present particularized written objections to the proposed section 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the Federal

Register. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N-2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

#### 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, Occupational Safety and Health Administration.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (43 FR 35736))

Signed at Washington, DC, this 6th day of September, 1996.

Joseph A. Dear,

*Assistant Secretary of Labor.*

[FR Doc. 96-23459 Filed 9-12-96; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-5609-5]

### 40 CFR Ch I

#### Notice of First Meeting of the Industrial Combustion Coordinated Rulemaking Advisory Committee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of the Industrial Combustion Coordinated Rulemaking Advisory Committee first meeting date.

**SUMMARY:** As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, § 9(c), EPA published a notice of the establishment of the Industrial Combustion Coordinated Rulemaking Advisory Committee (hereafter referred to as the

Coordinating Committee) in the Federal Register on August 2, 1996 (61 FR 40413). The purpose of today's action is to announce the first meeting date of the Coordinating Committee and associated Work Groups.

**DATES:** The first meeting of the Industrial Combustion Coordinated Rulemaking (ICCR) Coordinating Committee will be held on October 1, 1996 and the morning of October 2, 1996. The meeting on October 1 will start at 9:00 a.m. The first Work Group meetings will be held on October 2, 1996, starting in the mid-morning.

**ADDRESSES:** The October 1 and 2, 1996 Coordinating Committee meeting will be held at the Omni Europa Hotel, 1 Europa Drive, Chapel Hill, North Carolina. The phone number for the hotel is (919) 968-4900. The Work Group meetings will be held on October 2, 1996 beginning about mid-morning at the same location.

**FOR FURTHER INFORMATION CONTACT:** Fred Porter, Combustion Group, U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711, (919) 541-5251; or Sims Roy at the same address, (919) 541-5263.

#### SUPPLEMENTARY INFORMATION:

##### Inspection of Documents: Docket

Minutes of the meetings, as well as other relevant material will be available for public inspection at EPA Air Docket No. A-96-17 and is also available on the Technology Transfer Network (see below). The docket is open for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC 6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260-7548. The docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

##### Technology Transfer Network

The TTN is one of EPA's electronic bulletin boards. Meeting agendas, meeting minutes, schedules, and documents developed by the ICCR Coordinating Committee and Work Groups will be posted on the TTN. Information on the ICCR can be downloaded by choosing the "ICCR-Industrial Combustion Coordinated Rulemaking Process" selection from the Technical Information Areas menu. The service can be accessed by modem or through the Internet and is free. Dial (919) 541-5472 for up to a 14,400 bits-

per-second (bps) modem. Alternatively, access the system through Telnet at "ttnbbs.rtpnc.epa.gov" or through the World Wide Web at "http://ttnwww.rtpnc.epa.gov". If more information on the TTN is needed, call the help desk at (919) 541-5384.

#### Additional Information

Two copies of the Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request. The purpose of the Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The regulations will cover boilers, process heaters, industrial/commercial and other (non-hazardous) waste incinerators, stationary internal combustion engines, and stationary gas turbines.

The Coordinating Committee will provide a means for considering important regulatory issues and building stakeholder consensus on these issues prior to proposal. The Committee will establish Work Groups as necessary to fulfill these objectives. The EPA will recommend Work Group membership for approval by the Coordinating Committee at the October 1, 1996 Coordinating Committee meeting. However, it is expected that Work Group membership will remain open for a period of time so that adjustments can be made. The first Work Group organizational meetings will take place on October 2, 1996, beginning about mid-morning and will consist of two combined meetings. One Work Group meeting will be a combination of the boilers, process heaters, and incinerators Work Groups; the other Work Group meeting will be a combination of the stationary internal combustion engines and stationary gas turbines Work Groups. The Work Groups for Test Methods and Economics will also meet either separately or combined with one of the Work Groups mentioned above.

The general agenda for the first Coordinating Committee meeting is as follows:

October 1: 9:00 a.m.—5:00 p.m.

Welcome and Introductions  
Summary of ICCR Goals and Structure  
Activities to Date  
Review, Discussion, and Approval of  
ICCR Document<sup>1</sup>  
Communication Methods and

<sup>1</sup> Industrial Combustion Coordinated Rulemaking—Proposed Organizational Structure and Process. June 1996.