

manual was approved by the Assistant Secretary on January 26, 1982.

(j) In accordance with §1952.123(c), the Washington Department of Labor and Industries adopted administrative regulations providing procedures for conduct and scheduling of inspections, extension of abatement dates, variances, employee complaints of hazards and discrimination, posting of citations and notices, effective May 14, 1975, and revisions effective December 31, 1980, and July 22, 1981. Likewise, the Washington Board of Industrial Insurance Appeals adopted rules effective April 4, 1975, governing practice and procedure for contested cases with revision effective March 26, 1976. These regulations and rules were approved by the Assistant Secretary on January 26, 1982. In accordance with State formal assurances the State added provision to the regulations effective July 11, 1982, to require posting of redetermination notices, settlements, notices related to appeals; deleting an incorrect reference to administrative hearing procedures used in workers compensation cases; requiring settlement agreements to address abatement dates and penalty payments; and deleting a requirement to put discrimination complaints in writing. These changes were approved by the Assistant Secretary on August 3, 1983.

(k) In accordance with §1902.34 of this chapter, the Washington occupational safety and health plan was certified effective January 26, 1982, as having completed all developmental steps specified in the plan as approved on January 26, 1973 on or before January 26, 1976. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[40 FR 59345, Dec. 23, 1975, as amended at 41 FR 12655, Mar. 26, 1976; 41 FR 17549, Apr. 27, 1976; 41 FR 23672, June 11, 1976; 41 FR 51016, Nov. 19, 1976; 47 FR 5889, 5891, Feb. 9, 1982; 48 FR 37025, Aug. 16, 1983]

#### §1952.125 Changes to approved plans.

(a) In accordance with subpart C of part 1953 of this chapter, the following Washington plan changes were approved by the Assistant Secretary on August 5, 1980.

(1) The State changed its record-keeping and reporting requirements to

provide for use of an OSHA Form 200 or its equivalent.

(2) The State changed its record-keeping and reporting regulations to provide access to records maintained under these regulations to present and former employees.

(3) The State changed its record-keeping and reporting regulations to exempt employers of ten or fewer employees from maintaining a log, summary, and supplementary record of occupational injuries and illnesses unless selected for participation in a statistical survey.

(b) In accordance with subpart E of part 1953 of this chapter, the Assistant Secretary has approved the participation of the Washington Department of Labor and Industries in its November 17, 1989, agreement with the Colville Confederated Tribes, concerning an internal occupational safety and health program on the Colville reservation. Under this agreement, Washington exercises enforcement authority over non-Indian-owned workplaces under the legal authority set forth in its State plan. (Federal OSHA will exercise enforcement authority over Indian-owned or Tribal workplaces, as provided in 29 CFR 1952.122.)

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

[45 FR 53459, Aug. 12, 1980, as amended at 55 FR 37467, Sept. 12, 1990; 59 FR 14555, Mar. 29, 1994]

### Subparts G–H [Reserved]

### Subpart I—North Carolina

#### §1952.150 Description of the plan as initially approved.

(a) The Department of Labor has been designated by the Governor of North Carolina to administer the plan throughout the State. The Department of Labor has entered into an agreement with the State Board of Health whereby the State Board of Health is to assist the Department of Labor in the administration and enforcement of occupational health standards. However,

full authority for the promulgation and enforcement of occupational safety and health standards remains with the Department of Labor. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in §1902.2(c)(1) of this chapter. Moreover, it is understood that the plan will cover all employers and employees in the State except those whose working conditions are not covered by the Federal act by virtue of section 4(b)(1) thereof, dockside maritime and domestic workers. The Department of Labor is currently exercising statewide inspection authority to enforce many State standards. The plan describes procedures for the development and promulgation of additional laws, and orders in all places of employment in the State; the procedures for prompt restraint or elimination of imminent danger conditions; and procedures for inspections in response to complaints.

(b) The plan includes proposed draft legislation to be considered by the North Carolina General Assembly during its 1973 session. Such legislation is designed to implement major portions of the plan and to bring it into conformity with the requirements of part 1902 of this chapter.

(c) Under this legislation, all occupational safety and health standards and amendments thereto which have been promulgated by the Secretary of Labor, except those found in parts 1915, 1916, 1917, and 1918 of this chapter (ship repairing, shipbuilding, shipbreaking, and longshoring) will be adopted upon ratification of the proposed legislation. Enforcement of such standards will take place 90 days thereafter.

(d) The legislation will give the Department of Labor full authority to administer and enforce all laws, rules and orders protecting employee safety and health in all places of employment in the State. It also proposes to bring the plan into conformity in procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances.

(e) The proposed legislation will insure employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections; protection of employees against discharge or discrimination in terms and conditions of employment; notice to employees of their protections and obligations; adequate safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; and employer's right to review of alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings.

(f) The Plan also provides for the development of a program to encourage voluntary compliance by employers and employees.

(g) The Plan includes a statement of the Governor's support for the proposed legislation and a statement of legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the constitution and laws of North Carolina. The Plan sets out goals and provides a timetable for bringing it into full conformity with part 1902 upon enactment of the proposed legislation by the State legislature.

(h) The North Carolina Plan includes the following documents as of the date of approval:

(1) The Plan description document with appendixes.

(2) Telegram from the Governor of North Carolina, James E. Holshouser, Jr., expressing his full support for the Occupational Safety and Health Act of North Carolina and his anticipation of its passage during the 1973 session of the North Carolina General Assembly.

(3) Letter from W. C. Creel, Commissioner, North Carolina Department of Labor, to Mr. Thomas C. Brown, Director, Federal and State Operations, clarifying several issues raised during the review process.

(4) Also available for inspection and copying with the Plan documents will

be the public comments received during the review process.

[38 FR 3042, Feb. 1, 1973, as amended at 51 FR 2488, Jan. 17, 1986]

**§ 1952.151 Developmental schedule.**

The North Carolina Plan is developmental. The following is the schedule of the developmental steps provided by the Plan:

(a) It is estimated that the draft bill will be enacted by April 1, 1973.

(b) The Federal standards will be adopted on the date the bill is ratified.

(c) A refresher course for inspectors will begin sixty (60) days after the enactment of the draft bill.

(d) Merit system examinations of current department of labor personnel will be completed within sixty (60) days after Federal acceptance of the State Plan.

(e) The hiring of new personnel in both the department of labor and the State board of health will begin thirty (30) days after the department is assured that State and Federal funds are available. Tentative plans provide for both agencies to be fully staffed within six (6) months after the enactment of the bill.

(f) All new personnel will receive official OSHA training in the National Institute of Training. Employment dates will generally correspond to dates established for the Institute schools.

(g) Employers and employees will be notified of the availability of consultative services within ninety (90) days after ratification of the draft bill.

(h) The Department of Labor will initiate a developmental plan for a "Management Information System" on the date of Plan approval. This program is to be fully implemented in ninety (90) days after enactment of the proposed legislation.

(i) The enforcement of standards will begin ninety (90) days after ratification of the draft bill.

(j) A State Compliance Operations Manual is to be completed ninety (90) days after ratification of the draft bill.

(k) The Commissioner will begin issuing administrative "rules and regulations" when necessary as stated in the draft bill ninety (90) days after ratification of the draft bill. Meanwhile, the Federal rules and regula-

tions will be adopted and applied until the State rules and regulations are acceptable.

(l) Safety programs for State employees will begin one (1) year and ninety (90) days after ratification of the draft bill, with full implementation scheduled a year later.

(m) Safety programs for large counties and municipalities with over 10,000 population will be initiated ninety (90) days after draft bill ratification. Full implementation will occur one (1) year later.

(n) Safety programs for other counties and municipalities with 4,000 to 10,000 population will be initiated within two (2) years and ninety (90) days after Plan grant is approved. Full implementation will occur three (3) years after grant award.

(o) Safety programs for towns and other governing units having between 1,000 and 4,000 population will be initiated within two (2) years and ninety (90) days after Plan grant is approved, with full implementation within three years after grant award.

(p) A State "Safety and Health" poster will be prepared within ninety (90) days after ratification of the draft bill.

(q) The State of North Carolina will be fully operational with respect to agriculture 1 year and 90 days after enactment of the draft bill.

[38 FR 3042, Feb. 1, 1973. Redesignated at 51 FR 2488, Jan. 17, 1986]

**§ 1952.152 Completion of developmental steps and certification.**

(a) In accordance with § 1952.153(a) the Occupational Safety and Health Act of North Carolina (S.B. 342, Chapter 295) was enacted by the State legislature on May 1, 1973, and became effective on July 1, 1973.

(b) In accordance with § 1952.153(b), the North Carolina occupational safety and health standards identical to Federal standards (thru 12-3-74) have been promulgated and approved, as revised, by the Assistant Regional Director on March 11, 1975 (40 FR 11420).

(c)(1) In accordance with § 1952.153(p) and the requirements of 29 CFR 1952.10, the North Carolina poster for private employers was approved by the Assistant Secretary on April 17, 1975.

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(2) In accordance with §1952.153(p) and the requirements of 29 CFR 1952.10, the North Carolina poster for public employees was approved by the Assistant Secretary on April 20, 1976.

(d) In accordance with §1952.153(q) full coverage of agricultural workers by the North Carolina Department of Labor began on April 1, 1974.

(e) The State plan has been amended to include an Affirmative Action Plan in which the State outlines its policy of equal employment opportunity.

(f) In accordance with §1952.153(c) all North Carolina compliance personnel have completed refresher training courses.

(g) In accordance with §1952.153(d) all occupational safety and health personnel in the North Carolina Department of Labor are covered by the State merit system which the U.S. Civil Service Commission (by letter dated January 22, 1976) has found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration." Agreement with the North Carolina Department of Human Resources specifies that all health personnel cooperating in the State occupational safety and health program are likewise covered by the State merit system.

(h) In accordance with §1952.153(f) all North Carolina compliance personnel have attended basic training courses at the OSHA Institute in Chicago.

(i) In accordance with §1952.153(g) the North Carolina Department of Labor has publicly disseminated information on the availability of consultative services.

(j) In accordance with §1952.153(h) a manual Management Information System which provides the quarterly statistical reports required by the Assistant Secretary as well as internal management data has been developed and is fully operational.

(k) In accordance with §1952.153(i) State enforcement of standards began on July 1, 1973.

(l) In accordance with §1952.153(k) the State has promulgated the following administrative "rules and regulations":

(1) Regulation 7B.0100: Inspections, Citations and Proposed Penalties.

(2) Regulation 7B.0300: Recording and Reporting of Occupational Injuries and Illnesses.

(3) Regulation 7B.0400: Rules of Practice for Variances.

(4) Regulation 7B.0500: Rules of Procedure for Promulgating, Modifying or Revoking Occupational Safety and Health Standards.

(5) Regulation 7B.0700: State Advisory Council on Occupational Safety and Health.

(m) The North Carolina Occupational Safety and Health Review Board has adopted Rules of Procedure governing its review of contested cases.

(n) In accord with §1952.153(l), Safety programs for State employees were initiated and implemented.

(o) In accord with §1952.153(m), Safety programs for large counties and municipalities with over 10,000 population were initiated and implemented.

(p) In accord with §1952.153(n), Safety programs for other counties and municipalities with 4,000 to 10,000 population were initiated and implemented.

(q) In accord with §1952.153(o), Safety programs for towns and other governing units having between 1,000 and 4,000 population were initiated and implemented.

(r) In accord with §1952.153(e) and §1902.3(d) the North Carolina occupational safety and health program has been fully staffed.

(s) In accordance with §1952.153(j) the State has developed and amended a Compliance Operations Manual which defines the procedures and guidelines to be used by the North Carolina compliance staff in carrying out the goals of the program.

(t) In accordance with §1902.34 of this chapter, the North Carolina occupational safety and health plan was certified, effective October 5, 1976, as having completed on or before March 31, 1976 all development steps specified in the plan as approved on January 26, 1973.

[40 FR 18429, Apr. 28, 1975, as amended at 41 FR 17547, Apr. 27, 1976; 41 FR 22562, June 4, 1976; 41 FR 41083, Sept. 21, 1976; 41 FR 43897-43900, 43902, Oct. 5, 1976. Redesignated at 51 FR 2488, Jan. 17, 1986]

**§ 1952.153 Compliance staffing benchmarks.**

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

[61 FR 28055, June 4, 1996]

**§ 1952.154 Final approval determination.**

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

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.

[61 FR 66601, Dec. 18, 1996]

**§ 1952.155 Level of Federal enforcement.**

(a) As a result of the Assistant Secretary's determination granting final approval to the North Carolina State plan under section 18(e) of the Act, effective December 10, 1996, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the North Carolina Plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections

5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the North Carolina plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to private sector maritime activities (occupational safety and health standards comparable to 29 CFR parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry 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.

[61 FR 66601, Dec. 18, 1996]

**§ 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.

[61 FR 66602, Dec. 18, 1996]

**§ 1952.157 Changes to approved plan.**

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

(2) [Reserved]

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

[59 FR 39257, Aug. 2, 1994]

**Subpart J—Iowa****§ 1952.160 Description of the plan as initially approved.**

(a)(1) The plan identifies the Bureau of Labor as the State agency designated to administer the plan throughout the State. Its responsibilities include both occupational safety and occupational health, the latter on a developmental basis. The plan defines the covered occupational safety and health issues as defined by the Sec-

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

(2) The legislation contains procedures for the promulgation of standards, including standards for the prompt protection of employees against new and unforeseen hazards; furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; procedures for granting temporary and permanent variances; and for the protection of employees from hazards. The law provides for inspections including inspections in response to complaints; ensures employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations before, during and after inspections; protection of employees against discharge or discrimination in terms or conditions of employment through court suits brought by the Bureau of Labor; notice to employees of their protections and obligations under the State law; imminent danger abatement through court injunctions; safeguards to protect trade secrets; prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers; employer right to review of alleged violations, abatement periods, and proposed penalties with an opportunity for employee participation