that removed or replaced any components of the fuel pump system. Information regarding instructions on the engine test run can be found in the accomplishment instructions of Rotax GmbH MSB No. SB–912–031, dated October 2001.

Repetitive Inspections and Leakage Tests

(b) Visually inspect and test the fuel pump assembly at each 100-hour, annual, or progressive inspection, or within 110 hours time-in-service since last inspection, whichever occurs first, in accordance with paragraph (a)(1) through (a)(3) of this AD.

Optional Terminating Action

(c) Installation of a fuel pump assembly other than fuel pump assembly P/N 996.596 constitutes terminating action to the repetitive inspections specified in paragraph (b) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(f) The inspections and tests must be done in accordance with Rotax GmbH mandatory service bulletin No. SB–912–031, dated October 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier-Rotax GmbH, Welser Strasse 32, A–4623 Gunskirchen, Austria; telephone 7246–601–232; fax 7246–601–370. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Austro Control airworthiness directive No. 109, dated November 15, 2001.

Effective Date

(g) This amendment becomes effective on October 10, 2002.

Issued in Burlington, Massachusetts, on September 16, 2002.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–24280 Filed 9–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1902, 1952, 1953, 1954, and 1955

[Docket No. T–035]

RIN 1218–AB 91

Changes to State Plans: Revision of Process for Submission, Review and Approval of State Plan Changes

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

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising its regulation concerning changes to approved State plans. The revised rule streamlines the process for submission, review and approval of plan supplements documenting such changes, including changes to occupational safety and health standards, and standardizes timeframes.

DATES: This final rule will become effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant, Director, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Directorate of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–2244.

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards relating to any occupational safety or health issues with respect to which a Federal standard has been promulgated may do so only by submitting and obtaining Federal approval of a State plan. State plans may be ''complete'' plans covering both the private sector and State and local government employees (*see* 29 CFR part 1902) or State plans limited in scope to State and local government employees only (*see* 29 CFR part 1956). A State plan consists of the laws, standards and other regulations, and procedures as well as administrative and budgetary information under which the State operates its occupational safety and health program. From time to time after initial plan approval, States may, and in many cases are required to, make changes to their plans as a result of State and Federal legislative, regulatory or administrative actions. State plans and their subsequent modifications are required to be ''at least as effective as'' the Federal program. (*See* section 18(c) of the Act, and 29 CFR 1902.2 and 1956.2.) If a State makes a change to its plan, either on its own initiative or in response to a change in the Federal program or as a result of program monitoring, the State is required to notify OSHA of the change. 29 CFR part 1953 provides the regulatory framework for the submission, review and approval of these changes.

On November 6, 2001, OSHA published notice in the **Federal Register** and requested public comment (66 FR 56043) on its proposed revisions to 29 CFR part 1953, Changes to State Plans, which were designed to update the rule to reflect current practice and experience since its original issuance and to streamline the process for submission, review and approval of state plan changes. The proposed rule was developed with input from all parties involved in the submission and review of State plan changes and in conjunction with a Federal/State Task Force after interviews with staff in 24 of the 26 States that operate OSHA-approved State plans . The proposed regulatory revisions were presented to the affected States, and their input was incorporated.

The public comment period closed on January 7, 2002. OSHA received one comment on the proposed rule, from Mr. Peter De Luca, Administrator of the Oregon Occupational Safety and Health Division. Mr. De Luca expressed his support of the sections of the proposed regulation regarding delegation of approval authority to Regional Administrators, seeking public comment only on significant differences, and allowing electronic submission of all required documents. However, one area according to Mr. De Luca that ''has not received adequate attention * * * is a definition of ''at least as effective as.''' He stated that without ''adequate guidance'' the term ''at least as effective as'' has often been interpreted to mean ''identical to,'' and often some State plan innovations are ''viewed as less effective until proven otherwise.'' According to Mr. DeLuca,

States are ''burdened with submitting * * * justification documents to defend their programs. Finally, Mr. DeLuca states that the ''lack of clarity around 'at least as effective as' only stifles and discourages creativity [in State plan States] that could result in greater safety and health for workers.''

OSHA greatly appreciates receiving these views and has carefully considered them in preparing the final rule. OSHA agrees that the principle that State plan requirements are not required to be identical is an important statutory feature of the State plans program. The language and structure of the part 1953 regulation acknowledge the important principle that State plan requirements need not be identical, in providing different procedures for ''identical'' and ''different'' State plan changes and in eliminating the requirement for a written plan supplement for ''identical'' changes. Moreover, throughout its history OSHA has repeatedly acknowledged the latitude of States to develop alternative ''at least as effective'' requirements.

OSHA believes it would not be practicable or advisable to issue guidance defining the term ''at least as effective.'' The comparative test comes up a very broad variety of contexts involving a wide variety of State regulations, procedures, and statutory requirements. It would be difficult if not impossible to develop a ''one size fits all'' definition that works well in all contexts.

OSHA must and should continue to rely on the States to demonstrate that particular State-developed alternative standards or procedures are ''at least as effective.'' The determination may not always be an easy one. Each different plan change should be evaluated individually on its own merits within the context of that State's program. For example, in making a program change the State may rely, in some instances, on other provisions in the State Plan that are not in the Federal program. Certainly, in enacting a program change, it is the State rather than OSHA that is most likely to have the requisite information to determine if the State's program change is ''as effective as'' the Federal component.

OSHA believes that its Part 1953 regulation will not unduly impair the State's ability to be ''creative'' and ''innovative'' in seeking ways to enhance the health and safety of the workers it covers. OSHA does not view State plan changes as ''less effective until proven otherwise,'' and we believe that there is nothing in the revised Part 1953 suggesting this. On the contrary, a State makes the initial determination as to whether a particular requirement is ''at least as effective'' at the time it adopts and begins to enforce the new requirement, and if OSHA disagrees, it must institute an adjudicatory rejection proceeding in which the burden of proof rests with OSHA, not the State.

In light of these comments and the absence of any requests for significant modification, OSHA is proceeding with the promulgation of a final rule which is identical to the proposed rule with only several technical modifications which are described below.

II. Summary and Explanation of Final Rule

A. Submission of Plan Changes

29 CFR part 1953, as originally promulgated, required that whenever a State changed any component of a State's plan that the State was required to provide a copy of the implementing documents, *e.g.,* standards, regulations, operating policies and procedures, administrative and budgetary information, and submit a written description of the change, including the identification of and rationale for any differences from the Federal program (referred to as a plan supplement). This was required whether the change was identical to the Federal regulation, policy or procedure or if it differed. OSHA then reviewed the change; if it met the approval criteria, OSHA was expected to publish a notice announcing the approval of the change; if it did not meet the criteria OSHA initiated procedures to reject the change.

The existing regulation required the submission of a formal written plan supplement even if the State's change to its program is identical to the Federal program component. OSHA is amending this regulation to provide that States must submit written supplements only when the State change is different from the Federal program. State adoption of a standard, regulation, policy or procedure that is identical to the parallel Federal component, an ''identical change,'' would *per se* be at least as effective as the Federal program and, if a standard, could not ''pose an undue burden on interstate commerce'' or otherwise not meet the criteria for approval. (A State submission is considered ''identical'' if the State adopts the same program provisions and documentation as the Federal program with the only differences being those modifications necessary to reflect a State's unique structure (*e.g.,* organizational responsibility within a State and corresponding titles or internal State numbering system).) Therefore, State submission and OSHA review of these changes has been a procedural formality as there is no issue as to approvability. Under the provisions of the revised final rule, States will now be required to submit only documentation attesting to their adoption of the identical Federal change, (such as the cover page of an implementing State directive or a notice of State promulgation) for inclusion in the State Plan documentation and to maintain all other implementing documentation of the actual program change (standard, regulation, policy or procedure) available for review within the State. No formal approval process will be undertaken for such ''identical changes.'' However, if a State makes a change to its program which differs from (*i.e.*, is not identical to) the Federal program, the State must notify OSHA of the change, within an established time frame, provide a copy of all the implementing documents, including documentation as to adoption, and submit a written description of the change, which includes the identification of and rationale for each of the differences from the Federal program. OSHA will then review and either approve or reject the plan change.

B. Pre-approval State Enforceability; Federal Review and Approval of Plan Change Supplements

The revised final regulation expressly sets forth OSHA's longstanding interpretation of the Act to the effect that States which have submitted and obtained Federal approval of a State plan under section 18(b) may adopt modifications to their State plan (such as new standards, regulations, amendments to State OSHA legislation, or revised enforcement procedures) and may implement these modifications upon adoption, without prior approval of each particular modification by Federal OSHA. Initial Federal approval of a State plan under section 18(b) lifts the barrier of Federal preemption and allows the State to ''adopt and enforce standards'' under State law. Accordingly, OSHA has always viewed its enabling statute as not requiring pre-enforcement/pre-implementation Federal approval of new standards, regulations or other requirements issued by States with Federally-approved plans. Instead, OSHA reviews these State standards and regulations after they are enacted and subsequently submitted to OSHA for review, and, if there is reason to believe a particular plan modification fails in some way to meet the requirements of the Act, OSHA regulations, both the existing rule and this final revised rule, provide that OSHA will initiate an adjudicative

rejection proceeding, in a similar manner to that prescribed by section 18(d) of the Act for Federal rejection of a State plan. 29 CFR 1953.23(d)(2) of the existing regulation now recodified as § 1953.6(e). Upon completion of such a rejection proceeding and any judicial review resulting therefrom, the State plan modification would be excluded from the plan and thus subject to preemption, but until the prescribed process for rejection is completed, the State's health or safety regulation or other State plan modification would remain enforceable. OSHA's longstanding interpretation that section 18 of its enabling statute does not require pre-enforcement/pre-implementation Federal approval for each new safety or health requirement adopted by a State with an approved State plan is consistent with the wording of that statutory provision (which envisions that States with approved plans will ''adopt and enforce'' their own standards) as well as the Congressional objective set forth in section 2(b)(11) of the Act of ''encouraging the States to assume the fullest responsibility for the administration and enforcement of their own occupational safety and health laws.'' This interpretation has routinely been incorporated in OSHA **Federal Register** notices approving or requesting comment on various State plan modifications (*see,* e.g, 62 FR 31159 (June 6, 1997) (approval of California hazard communication standard); 50 FR 46460 (November 8, 1985) (New Mexico hearing conservation standard)), and has been judicially upheld in *Florida Citrus Packers* v. *California*, 549 F. Supp. 213 (N.D. Cal. 1982). No public comments were received with regard to the inclusion of this interpretation in the proposed regulation. It is therefore included in the final rule, as proposed.

The existing regulation provided that the OSHA Regional Administrators, by authority delegated from the Assistant Secretary, would review and approve State change supplements involving occupational safety and health standards. The Assistant Secretary retained sole authority for review and approval of change supplements not involving standards. The amended regulation simply states that OSHA will review and approve State plan supplements. OSHA will issue appropriate written, publicly available, procedures assigning organizational responsibility for Federal review and approval of State plan supplements. This change provides the Assistant Secretary with the flexibility to modify the strictly internal review procedures without the need for formal rulemaking. It is OSHA's current intent to assign approval authority for all, except the most unusual, plan changes, including standards, to Regional Administrators.

The existing regulation provided for an opportunity for public comment whenever a plan change differs significantly from the Federal program and the publication of a **Federal Register** notice approving all State plan changes, even those which are identical to a corresponding Federal program component. This revised final rule provides that generally, OSHA will seek public comment only if a State plan change differs significantly from the comparable Federal program component *and* if OSHA needs additional information on its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program and, in the case of a standard applicable to products used or distributed in interstate commerce, whether it is required by compelling local conditions or unduly burdens interstate commerce. After public comments are reviewed, a **Federal Register** notice will be published either approving the State plan modification or announcing OSHA's intention to initiate proceedings to reject it.

The existing regulation discussed four types of plan changes (developmental, in response to Federal program changes, as a result of program evaluation, or at the State's initiative), with the submission and review process for each type addressed separately. Because all plan supplements will be subject to the same review and approval process, OSHA reorganized the regulation to first address the submission of each of the four types of plan supplements, followed by one section on the review and approval of all types of supplements.

The existing regulation required States to submit six copies of all plan supplements. This revised final rule requires States to submit only one copy and provides for the electronic notification and submission of all required documentation.

One minor change has been made to the proposed regulations, to standardize and clarify the time limits for adoption and submission of State plan change supplements or other documentation. Under both the existing rule and the November 6, 2001 proposed revision, State changes in response to new or revised Federal standards were required to be adopted within 6 months of adoption of the Federal standard. However, plan changes in response to changes in the Federal program other than standards were generally required to be both adopted and submitted within six months of notification of the Federal change. (States have been required by OSHA Instruction but not by regulation to submit all new standards within 30 days of adoption.) State-initiated changes not involving standards were required to be submitted within 30 days or 6 months, depending on the nature of the change, under the existing rule, and within 60 days or 6 months under the proposal. Evaluation changes and developmental changes had set time frames for adoption but not for submission in both the existing rule and the proposed revision.

The final regulation has been modified from the proposal to provide uniformity in the time frames for adoption and submission. The regulation continues to provide that State standards in response to Federal standards must be promulgated within six months of Federal adoption. Similarly, changes in response to other Federal program changes requiring adoption will now generally be required to be adopted (rather than submitted) within six months of the Federal change, still allowing some flexibility based on the nature of the change. All changes, regardless of type, must now be submitted within 60 days of adoption (with the exception of emergency temporary standards which, because of their short duration, require submission within 10 days). Section 1953.3(b) contains a general statement of this principle, and it is specifically stated in the sections on submission of the various types of plan changes.

Conforming technical amendments are also being made to sections in Parts 1952, 1954 and 1955 which include references to particular sections in Part 1953, to reflect the revisions.

C. Paperwork Reduction Act

On September 4, 2001, OSHA published notice in the **Federal Register** (66 FR 46291) providing a 60 day opportunity for public comment on the information collection requirements associated with Federal regulations governing OSHA-approved State plans (29 CFR parts 1902, 1952, 1953, 1954, 1955, and 1956). This was part of a pre-clearance process under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(a)), prior to review by the Office of Management and Budget (OMB). No public comments were received, and this Information Collection Request was approved by OMB on February 12, 2002 (Approval Number 1218–0247). The November 6, 2001 Notice of Proposed Rulemaking for this revision of 29 CFR part 1953

included OSHA's proposal to reduce the burden hours associated with the paperwork requirements of this part. The agency received one comment which supported the revision. This final regulation implements a significant reduction of the paperwork required of the States by reducing the number of Federal Program Changes to which they will be required to respond as well as the complexity of those responses. (In addition, an automated system to track plan changes is being implemented which will also reduce the number of direct inquiries to the States for information.) OMB approval of this reduction in burden hours is pending.

D. Regulatory Review

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the proposed revisions will not have a significant economic impact on a substantial number of small entities. These proposed regulations apply only to certain State agencies and would not place small units of government 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.

Unfunded Mandates Reform Act

The procedures in 29 CFR part 1953 for submission and approval of plan changes apply only to States which have voluntarily submitted a State plan for OSHA approval under the OSH Act, and accordingly these procedures do not meet the definition of a ''Federal intergovernmental mandate'' under section 421(5) of UMRA (2 U.S.C. 658(5)).

Federalism

Executive Order 13132, ''Federalism,'' (64 FR 43255; Aug. 4, 1999) establishes fundamental Federalism criteria to be applied in formulating and implementing Federal policies, and requires agencies to consult with affected state and local officials in the development of regulatory policies. OSHA has included in the Supplementary Information section of today's notice a general explanation of the relationship between Federal OSHA and the States with approved State plans under the Occupational Safety and Health Act. The proposed rule on which today's final rule is based was developed in coordination with representatives from the State plan States, and opportunities for additional State input have been afforded both during the public comment period and through consultation with the Occupational Safety and Health State Plan Association (OSHSPA), the organization of State agencies which administer Federally-approved plans.

Executive Order

This final rule has been deemed not significant under Executive Order 12866.

List of Subjects in 29 CFR Parts 1902, 1952, 1953, 1954, and 1955

Administrative practice and procedure, Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), and Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

Signed at Washington, DC, this 19th day of September, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

Accordingly, 29 CFR Ch. XVII is amended as follows:

1. 29 CFR Part 1953 is revised to read as follows:

PART 1953—CHANGES TO STATE PLANS

Sec.

1953.1 Purpose and scope.
1953.2 Definitions.
1953.3 General policies and procedures.
1953.4 Submission of plan supplements.
1953.5. Special provisions for standards changes.
1953.6 Review and approval of plan supplements.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

§ 1953.1 Purpose and scope.

(a) This part implements the provisions of section 18 of the Occupational Safety and Health Act of 1970 (''OSH Act'' or the ''Act'') which provides for State plans for the development and enforcement of State occupational safety and health standards. These plans must meet the criteria in section 18(c) of the Act, and part 1902 of this chapter (for plans covering both private sector and State and local government employers) or part 1956 of this chapter (for plans covering only State and local government employers), either at the time of submission or—where the plan is developmental—within the three year period immediately following commencement of the plan's operation. Approval of a State plan is based on a finding that the State has, or will have, a program, pursuant to appropriate State law, for the adoption and enforcement of State standards that is ''at least as effective'' as the Federal program.

(b) When submitting plans, the States provide assurances that they will continue to meet the requirements in section 18(c) of the Act and part 1902 or part 1956 of this chapter for a program that is ''at least as effective'' as the Federal. Such assurances are a fundamental basis for approval of plans. (*See* § 1902.3 and § 1956.2 of this chapter.) From time to time after initial plan approval, States will need to make changes to their plans. This part establishes procedures for submission and review of State plan supplements documenting those changes that are necessary to fulfill the State's assurances, the requirements of the Act, and part 1902 or part 1956 of this chapter.

(c) Changes to a plan may be initiated in several ways. In the case of a developmental plan, changes are required to document establishment of those necessary structural program components that were not in place at the time of plan approval. These commitments are included in a developmental schedule approved as part of the initial plan. These ''developmental changes'' must be completed within the three year period immediately following the commencement of operations under the plan. Another circumstance requiring subsequent changes to a State plan would be the need to keep pace with changes to the Federal program, or ''Federal Program Changes.'' A third situation would be when changes are required as a result of the continuing evaluation of the State program. Such changes are called ''evaluation changes.'' Finally, changes to a State program's safety and health requirements or procedures initiated by the State without a Federal parallel could have an impact on the effectiveness of the State program. Such changes are called ''State-initiated changes.'' While requirements for submission of a plan supplement to OSHA differ depending on the type of change, all supplements are processed in accordance with the procedures in § 1953.6.

§ 1953.2 Definitions.

(a) *OSHA* means the Assistant Secretary of Labor for Occupational Safety and Health, or any representative authorized to perform any of the functions discussed in this part, as set out in implementing Instructions.

(b) *State* means an authorized representative of the agency designated to administer a State plan under § 1902.3(b) of this chapter.

(c) *Plan change* means any modification made by a State to its approved occupational safety and health State plan which has an impact on the plan's effectiveness.

(d) *Plan supplement* means all documents necessary to accomplish, implement, describe and evaluate the effectiveness of a change to a State plan which differs from the parallel Federal legislation, regulation, policy or procedure. (This would include a copy of the complete legislation, regulation, policy or procedure adopted; an identification of each of the differences; and an explanation of how each provision is at least as effective as the comparable Federal provision.)

(e) *Identical plan change* means one in which the State adopts the same program provisions and documentation as the Federal program with the only differences being those modifications necessary to reflect a State's unique structure (*e.g.*, organizational responsibility within a State and corresponding titles or internal State numbering system). *Different plan change* means one in which the State adopts program provisions and documentation that are not identical as defined in this paragraph.

(g) *Developmental change* is a change made to a State plan which documents the completion of a program component which was not fully developed at the time of initial plan approval.

(h) *Federal program change* is a change made to a State plan when OSHA determines that an alteration in the Federal program could render a State program less effective than OSHA's if it is not similarly modified.

(i) *Evaluation change* is a change made to a State plan when evaluations of a State program show that some substantive aspect of a State plan has an adverse impact on the implementation of the State's program and needs revision.

(j) *State-initiated change* is a change made to a State plan which is undertaken at a State's option and is not necessitated by Federal requirements.

§ 1953.3 General policies and procedures.

(a) *Effectiveness of State plan changes under State law.* Federal OSHA approval of a State plan under section 18(b) of the OSH Act in effect removes the barrier of Federal preemption, and permits the State to adopt and enforce State standards and other requirements regarding occupational safety or health issues regulated by OSHA. A State with an approved plan may modify or supplement the requirements contained in its plan, and may implement such requirements under State law, without prior approval of the plan change by Federal OSHA. Changes to approved State plans are subject to subsequent OSHA review. If OSHA finds reason to reject a State plan change, and this determination is upheld after an adjudicatory proceeding, the plan change would then be excluded from the State's Federally-approved plan.

(b) *Required State plan notifications and supplements.* Whenever a State makes a change to its legislation, regulations, standards, or major changes to policies or procedures, which affect the operation of the State plan, the State shall provide written notification to OSHA. When the change differs from a corresponding Federal program component, the State shall submit a formal, written plan supplement. When the State adopts a provision which is identical to a corresponding Federal provision, written notification, but no formal plan supplement, is required. However, the State is expected to maintain the necessary underlying State document (*e.g.*, legislation or standard) and to make it available for review upon request. All plan change supplements or required documentation must be submitted within 60 days of adoption of the change. Submission of all notifications and supplements may be in electronic format.

(c) *Plan supplement availability.* Copies of all principal documents comprising the State plan, whether approved or pending approval, shall be available for inspection and copying at the Federal and State locations specified in the subpart of Part 1952 of this chapter relating to each State plan. The underlying documentation for identical plan changes shall be maintained by the State and shall similarly be available for inspection and copying at the State locations. Annually, States shall submit updated copies of the principal documents comprising the plan, or appropriate page changes, to the extent that these documents have been revised. To the extent possible, plan documents will be maintained and submitted by the State in electronic format and also made available in such manner.

(d) *Advisory opinions.* Upon State request, OSHA may issue an advisory opinion on the approvability of a proposed change which differs from the Federal program prior to promulgation or adoption by the State and submission as a formal supplement.

(e) *Alternative procedures.* Upon reasonable notice to interested persons, the Assistant Secretary may prescribe additional or alternative procedures in order to expedite the review process or for any other good cause which may be consistent with the applicable laws.

§ 1953.4 Submission of plan supplements.

(a) *Developmental changes.*

(1) Sections 1902.2(b) and 1956.2(b) of this chapter require that each State with a developmental plan must set forth in its plan, as developmental steps, those changes which must be made to its initially-approved plan for its program to be at least as effective as the Federal program and a timetable for making these changes. The State must notify OSHA of a developmental change when it completes a developmental step or fails to meet any developmental step.

(2) If the completion of a developmental step is the adoption of a program component which is identical to the Federal program component, the State need only submit documentation, such as the cover page of an implementing directive or a notice of promulgation, that it has adopted the program component, within 60 days of adoption of the change, but must make the underlying documentation available for Federal and public review upon request.

(3) If the completion of a developmental step involves the adoption of policies or procedures which differ from the Federal program, the State must submit one copy of the required plan supplement within 60 days of adoption of the change.

(4) When a developmental step is missed, the State must submit a supplement which documents the impact on the program of the failure to complete the developmental step, an explanation of why the step was not completed on time and a revised timetable with a new completion date (generally not to exceed 90 days) and any other actions necessary to ensure completion. Where the State has an operational status agreement with OSHA under § 1954.3 of this Chapter, the State must provide an assurance that the missed step will not affect the effectiveness of State enforcement in any issues for which the State program has been deemed to be operational.

(5) If the State fails to submit the required documentation or supplement, as provided in § 1953.4(a)(2), (3) or (4), when the developmental step is scheduled for completion, OSHA shall

notify the State that documentation or a supplement is required and set a timetable for submission of any required documentation or supplement, generally not to exceed 60 days.

(b) *Federal Program changes.*

(1) When a significant change in the Federal program would have an adverse impact on the ''at least as effective'' status of the State program if a parallel State program modification were not made, State adoption of a change in response to the Federal program change shall be required. A Federal program change that would not result in any diminution of the effectiveness of a State plan compared to Federal OSHA generally would not require adoption by the State.

(2) Examples of significant changes to the Federal program that would normally require a State response would include a change in the Act, promulgation or revision of OSHA standards or regulations, or changes in policy or procedure of national importance. A Federal program change that only establishes procedures necessary to implement a new or established policy, standard or regulation does not require a State response, although the State would be expected to establish policies and procedures which are ''at least as effective,'' which must be available for review on request.

(3) When there is a change in the Federal program which requires State action, OSHA shall advise the States. This notification shall also contain a date by which States must adopt a corresponding change or submit a statement why a program change is not necessary. This date will generally be six months from the date of notification, except where the Assistant Secretary determines that the nature or scope of the change requires a different time frame, for example, a change requiring legislative action where a State has a biennial legislature or a policy of major national implications requiring a shorter implementing time frame. State notification of intent may be required prior to adoption.

(4) If the State change is different from the Federal program change, the State shall submit one copy of the required supplement within 60 days of State adoption. The supplement shall contain a copy of the relevant legislation, regulation, policy or procedure and documentation on how the change maintains the ''at least as effective as'' status of the plan.

(5) If the State adopts a change identical to the Federal program change, the State is not required to submit a supplement. However, the State shall provide documentation that it has adopted the change, such as the cover page of an implementing directive or a notice of promulgation, within 60 days of State adoption.

(6) The State may demonstrate why a program change is not necessary because the State program is already the same as or at least as effective as the Federal program change. Such submissions will require review and approval as set forth in § 1953.6.

(7) Where there is a change in the Federal program which does not require State action but is of sufficient national interest to warrant indication of State intent, the State may be required to provide such notification within a specified time frame.

(c) *Evaluation changes.*

(1) Special and periodic evaluations of a State program by OSHA in cooperation with the State may show that some portion of a State plan has an adverse impact on the effectiveness of the State program and accordingly requires modification to the State's underlying legislation, regulations, policy or procedures as an evaluation change. For example, OSHA could find that additional legislative or regulatory authority may be necessary to effectively pursue the State's right of entry into workplaces, or to assure various employer rights.

(2) OSHA shall advise the State of any evaluation findings that require a change to the State plan and the reasons supporting this decision. This notification shall also contain a date by which the State must accomplish this change and submit either the change supplement or a timetable for its accomplishment and interim steps to assure continued program effectiveness, documentation of adoption of a program component identical to the Federal program component, or, as explained in paragraph (c)(5) of this section, a statement demonstrating why a program change is not necessary.

(3) If the State adopts a program component which differs from a corresponding Federal program component, the State shall submit one copy of a required supplement within 60 days of adoption of the change. The supplement shall contain a copy of the relevant legislation, regulation, policy or procedure and documentation on how the change maintains the ''at least as effective as'' status of the plan.

(4) If the State adopts a program component identical to a Federal program component, submission of a supplement is not required. However, the State shall provide documentation that it has adopted the change, such as the cover page of an implementing directive or a notice of promulgation, within 60 days of adoption of the change and shall retain all other documentation within the State available for review upon request.

(5) The State may demonstrate why a program change is not necessary because the State program is meeting the requirements for an ''at least as effective'' program. Such submission will require review and approval as set forth in § 1953.6.

(d) *State-initiated changes.*

(1) A State-initiated change is any change to the State plan which is undertaken at a State's option and is not necessitated by Federal requirements. State-initiated changes may include legislative, regulatory, administrative, policy or procedural changes which impact on the effectiveness of the State program.

(2) A State-initiated change supplement is required whenever the State takes an action not otherwise covered by this part that would impact on the effectiveness of the State program. The State shall notify OSHA as soon as it becomes aware of any change which could affect the State's ability to meet the approval criteria in parts 1902 and 1956 of this chapter, *e.g.*, changes to the State's legislation, and submit a supplement within 60 days. Other State initiated supplements must be submitted within 60 days after the change occurred. The State supplement shall contain a copy of the relevant legislation, regulation, policy or procedure and documentation on how the change maintains the ''at least as effective as'' status of the plan. If the State fails to notify OSHA of the change or fails to submit the required supplement within the specified time period, OSHA shall notify the State that a supplement is required and set a time period for submission of the supplement, generally not to exceed 30 days.

§ 1953.5. Special provisions for standards changes.

(a) *Permanent standards.*

(1) Where a Federal program change is a new permanent standard, or a more stringent amendment to an existing permanent standard, the State shall promulgate a State standard adopting such new Federal standard, or more stringent amendment to an existing Federal standard, or an at least as effective equivalent thereof, within six months of the date of promulgation of the new Federal standard or more stringent amendment. The State may demonstrate that a standard change is not necessary because the State standard is already the same as or at least as

effective as the Federal standard change. In order to avoid delays in worker protection, the effective date of the State standard and any of its delayed provisions must be the date of State promulgation or the Federal effective date whichever is later. The Assistant Secretary may permit a longer time period if the State makes a timely demonstration that good cause exists for extending the time limitation. State permanent standards adopted in response to a new or revised Federal standard shall be submitted as a State plan supplement within 60 days of State promulgation in accordance with § 1953.4(b), Federal Program changes.

(2) Because a State may include standards and standards provisions in addition to Federal standards within an issue covered by an approved plan, it would generally be unnecessary for a State to revoke a standard when the comparable Federal standard is revoked or made less stringent. If the State does not adopt the Federal action, it need only provide notification of its intent to retain the existing State standard to OSHA within 6 months of the Federal promulgation date. If the State adopts a change to its standard parallel to the Federal action, it shall submit the appropriate documentation as provided in §§ 1953.4(b)(3) or (4)—Federal program changes. However, in the case of standards applicable to products used or distributed in interstate commerce where section 18(c)(2) of the Act imposes certain restrictions on State plan authority, the modification, revision, or revocation of the Federal standard may necessitate the modification, revision, or revocation of the comparable State standard unless the State standard is required by compelling local conditions and does not unduly burden interstate commerce.

(3) Where a State on its own initiative adopts a permanent State standard for which there is no Federal parallel, the State shall submit it within 60 days of State promulgation in accordance with § 1953.4(d)—State-initiated changes,

(b) *Emergency temporary standards.*

(1) Immediately upon publication of an emergency temporary standard in the **Federal Register**, OSHA shall advise the States of the standard and that a Federal program change supplement shall be required. This notification must also provide that the State has 30 days after the date of promulgation of the Federal standard to adopt a State emergency temporary standard if the State plan covers that issue. The State may demonstrate that promulgation of an emergency temporary standard is not necessary because the State standard is already the same as or at least as effective as the Federal standard change. The State standard must remain in effect for the duration of the Federal emergency temporary standard which may not exceed six (6) months.

(2) Within 15 days after receipt of the notice of a Federal emergency temporary standard, the State shall advise OSHA of the action it will take. State standards shall be submitted in accordance with the applicable procedures in § 1953.4(b)—Federal Program Changes, except that the required documentation or plan supplement must be submitted within 5 days of State promulgation.

(3) If for any reason, a State on its own initiative adopts a State emergency temporary standard, it shall be submitted as a plan supplement in accordance with § 1953.4(c), but within 10 days of promulgation.

§ 1953.6 Review and approval of plan supplements.

(a) OSHA shall review a supplement to determine whether it is at least as effective as the Federal program and meets the criteria in the Act and implementing regulations and the assurances in the State plan. If the review reveals any defect in the supplement, or if more information is needed, OSHA shall offer assistance to the State and shall provide the State an opportunity to clarify or correct the change.

(b) If upon review, OSHA determines that the differences from a corresponding Federal component are purely editorial and do not change the substance of the policy or requirements on employers, it shall deem the change identical. This includes ''plain language'' rewrites of new Federal standards or previously approved State standards which do not change the meaning or requirements of the standard. OSHA will inform the State of this determination. No further review or **Federal Register** publication is required.

(c) Federal OSHA may seek public comment during its review of plan supplements. Generally, OSHA will seek public comment if a State program component differs significantly from the comparable Federal program component and OSHA needs additional information on its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program and in the case of a standard applicable to products used or distributed in interstate commerce, whether it is required by compelling local conditions or unduly burdens interstate commerce under section 18(c)(2) of the Act.

(d) If the plan change meets the approval criteria, OSHA shall approve it and shall thereafter publish a **Federal Register** notice announcing the approval. OSHA reserves the right to reconsider its decision should subsequent information be brought to its attention.

(e) If a State fails to submit a required supplement or if examination discloses cause for rejecting a submitted supplement, OSHA shall provide the State a reasonable time, generally not to exceed 30 days, to submit a revised supplement or to show cause why a proceeding should not be commenced either for rejection of the supplement or for failure to adopt the change in accordance with the procedures in § 1902.17 or Part 1955 of this chapter.

PART 1902—[AMENDED]

2. The authority citation for part 1902 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

3. In § 1902.31, in the definition of ''developmental step,'' the last sentence is revised to read as follows:

§ 1902.31 Definitions.

* * * * *

Developmental step * * * (*See* 29 CFR 1953.4(a).)

4. Section 1902.33 is revised to read as follows:

§ 1902.33 Developmental period.

Upon the commencement of plan operations after the initial approval of a State's plan by the Assistant Secretary, a State has three years in which to complete all of the developmental steps specified in the plan as approved. Section 1953.4 of this chapter sets forth the procedures for the submission and consideration of developmental changes by OSHA. Generally, whenever a State completes a developmental step, it must submit the resulting plan change as a supplement to its plan to OSHA for approval. OSHA's approval of such changes is then published in the **Federal Register** and the pertinent subparts of part 1952 of this chapter are amended to reflect the completion of a developmental step.

PART 1952—[AMENDED]

5. The authority citation for part 1952 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

Subpart F—Washington

6. Section 1952.125(a) is amended by revising paragraph (a) to read as follows:

§ 1952.125 Changes to approved plans.

(a) In accordance with part 1953 of this chapter, the following Washington plan changes were approved by the Assistant Secretary on August 4, 1980.

* * * * *

Subpart K—California

7. Section 1952.175 is amended by revising paragraphs (a), (c), (d), (e), (f), (g), and (h) to read as follows:

§ 1952.175 Changes to approved plans.

(a) In accordance with part 1953 of this chapter, the California carcinogen program implemented on January 1, 1977, was approved by the Assistant Secretary on March 6, 1978.

* * * * *

(c) In accordance with part 1953 of this chapter, California amended its employer recordkeeping and reporting requirements effective November 4, 1978, so as to provide employee access to the employer's log and summary of occupational injuries and illnesses.

(d) In accordance with part 1953 of this chapter, California's liaison with the Occupational Health Centers, implemented on April 25, 1979, was approved by the Assistant Secretary on July 25, 1980.

(e) In accordance with part 1953 of this chapter, the California Hazard Alert System, implemented in July 1979, was approved by the Assistant Secretary on July 25, 1980.

(f) In accordance with part 1953 of this chapter, the revised stratification of the Safety Engineer Series, adopted by California on July 1, 1979, was approved by the Assistant Secretary on January 12, 1981.

(g) In accordance with part 1953 of this chapter, California's Small Employer Voluntary Compliance Program, implemented on March 1, 1981, was approved by the Assistant Secretary on August 2, 1983.

(h) In accordance with part 1953 of this chapter, the California Cooperative Self-Inspection Program was approved by the Assistant Secretary on August 1, 1986.

* * * * *

Subpart O—Maryland

8. Section 1952.212(a) is amended by revising paragraph (a) to read as follows:

§ 1952.212 Completion of developmental steps and certification.

(a) In accordance with part 1953 of this chapter, the Maryland occupational safety and health standards were approved by OSHA on October 3, 1974.

* * * * *

Subpart DD—New Mexico

9. Section 1952.367 is amended by revising paragraph (b) to read as follows:

§ 1952.367 Changes to approved plans.

* * * * *

(b) In accordance with part 1953 of this chapter, New Mexico's State plan amendment, dated January 3, 1997, excluding coverage of all private sector employment on Federal military facilities and bases (*see* § 1952.365), and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government, from its State plan was approved by the Acting Assistant Secretary on September 24, 1997.

Subpart EE—Virginia

10. Section 1952.372 is amended by revising paragraph (p) to read as follows:

§ 1952.372 Completion of developmental steps and certification.

* * * * *

(p) In accordance with part 1953 of this chapter, Virginia submitted legislative amendments to Title 40.1 of the Labor Laws of Virginia as enacted by the Virginia General Assembly of February 6, 1979. These legislative amendments, which dealt primarily with the Commissioner's delegation authority, procedures concerning Virginia's system of judicial review of contested cases, and penalty provisions, were approved by the Assistant Secretary on August 15, 1984.

* * * * *

PART 1954—[AMENDED]

11. The authority citation for part 1954 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

12. Section 1954.3 is amended by revising paragraphs (b)(2), (d)(1)(ii) and (d)(1)(iii) to read as follows:

§ 1954.3 Exercise of Federal discretionary authority.

* * * * *

(b) * * *

(2) Approved State standards. The State must have standards promulgated under State law which are identical to Federal standards; or have been found to be at least as effective as the comparable Federal standards; or have been reviewed by OSHA and found to provide overall protection equal to comparable Federal standards. Review of the effectiveness of State standards and their enforcement will be a continuing function of the evaluation process. Where State standards in an issue have not been promulgated by the State or have been promulgated and found not to provide overall protection equal to comparable Federal standards, the State will not be considered operational as to those issues.

* * * * *

(d)(1) * * *

(ii) Subject to pertinent findings of effectiveness under this part, and approval under Part 1953 of this chapter, Federal enforcement proceedings will not be initiated where an employer has posted the approved State poster in accordance with the applicable provisions of an approved State plan and § 1952.10.

(iii) Subject to pertinent findings of effectiveness under this part, and approval under part 1953 of this chapter, Federal enforcement proceedings will not be initiated where an employer is in compliance with the recordkeeping and reporting requirements of an approved State plan as provided in § 1952.4.

* * * * *

PART 1955—[AMENDED]

13. The authority citation for part 1955 is revised to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); Secretary of Labor's Order No. 3–2000 (65 FR 50017, August 16, 2000).

14. Section 1955.2 is amended by revising paragraph (a)(4) to read as follows:

§ 1955.2 Definitions.

(a) * * *

(4) *Developmental step* includes, but is not limited to, those items listed in the published developmental schedule, or any revisions thereto, for each plan contained in 29 CFR part 1952. A developmental step also includes those items in the plan as approved under section 18(c) of the Act, as well as those items in the approval decision which are subject to evaluations (*see e.g.*, approval of Michigan plan), which were deemed necessary to make the State program at least as effective as the Federal program within the 3 year developmental period. (*See* part 1953 of this chapter.

* * * * *

15. Section 1955.3 is amended by revising the introductory text of

paragraphs (a)(1) and (a)(2) to read as follows:

§ 1955.3 General policy.

(a) * * *

(1) Whenever the Assistant Secretary determines that under § 1902.2(b) of this chapter a State has not substantially completed the developmental steps of its plan at the end of three years from the date of commencement of operations, a withdrawal proceeding shall be instituted. Examples of a lack of substantial completion of developmental steps include but are not limited to the following:

* * * * *

(2) Whenever the Assistant Secretary determines that there is no longer a reasonable expectation that a State plan will meet the criteria of § 1902.3 of this chapter involving the completion of developmental steps within the three year period immediately following commencement of operations, a withdrawal proceeding shall be instituted. Examples of a lack of reasonable expectation include but are not limited to the following:

* * * * *

[FR Doc. 02–24284 Filed 9–24–02; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0216; FRL–7200–5]

Tolylfluanid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an import tolerance for residues of tolylfluanid in or on imported apple, grape, hop, and tomato. Bayer Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective September 25, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0216, must be received on or before November 25, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0216 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet home page at *http://www.epa.gov/*. To access this document, on the home page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0216. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of August 11, 1997 (62 FR 42980) (FRL–5736–1), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 7E4825) by Bayer Corporation, 8400 Hawthorn Rd., Kansas City, MO 64120. This notice included a summary of the petition prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.584 be amended by establishing an import tolerance for residues of the fungicide tolylfluanid, (1,1-dichloro-N-[(dimethylamino)-sulfonyl]-1-fluoro-N-(4-methylphenyl) methanesulfenamide), in or on apple at 5.0 parts per million (ppm), grape at 5.0 ppm, hop at 30 ppm, and tomato at 1.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including