consent upon the agreement of the candidate for Congress to insure compliance with the preceding sentence.

PART 602—[AMENDED]

Par. 6. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.527–9 . . . . 1545–0129".

Approved: June 17, 1985.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85-17834 Filed 7-29-85; 8:45 am]
BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-211; Notice No. 560]

North Yuba Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is establishing in Yuba County, California, an American viticultural area known by the appellation "North Yuba." This final rule results from a petition filed by Karl Werner and James R. Bryant, officers of Renaissance Vineyard and Winery, Inc., located near Oregon House, California.

The establishment of this viticultural area and the use of the name as an appellation of origin in the labeling and advertising of wine allows the proprietor of a winery to designate the area as the locale in which grapes used in the production of a wine are grown and enables the consumer to identify and to differentiate between that wine and other wines offered at retail.

EFFECTIVE DATE: This final rule is effective August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Room 6237, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

Petition

On November 13, 1984, ATF received the petition for the establishment of the "North Yuba" viticultural area in the middle and upper foothills in north-central Yuba County, California. Upon completing a review of the data furnished with the petition, ATF consulted with the petitioner regarding expansion of the petitioned boundary to include areas of land of the same soil associations as are common to the area covered by the petition. ATF published the proposed boundary in Notice No. 560 (50 FR 12038) dated March 27, 1985.

Comments

ATF received one comment in response to the proposal to establish the "North Yuba" viticultural area. The commenter, the executive officer of the Board of Forestry for the State of California, favors the establishment of the viticultural area as proposed.

Name

The name "North Yuba" is well documented in the petition. Yuba County is named after the Yuba River which took its name from the Indian tribe which populated the area. "North Yuba" is the name used locally to designate the area in north central Yuba County in which are located the towns of Dobbins and Oregon House. This is the name used by Pacific Bell Telephone to designate the area. Included with the petition are letters from the county sheriff and the local chamber of commerce attesting to local usage and acceptance of the name "North Yuba" to designate the area.

Historically, viticulture came to Yuba County in the 1950's. Documents show the planting of wine grapes and the establishment of a winery in 1855. By 1860, Yuba County had five wineries and 800 acres were devoted to wine grape cultivation. By 1930, there were 1,000 acres devoted to wine grape cultivation. However, as a consequence of National Prohibition, the vineyards were replaced by orchards of peaches and prunes and the wineries closed.

Today, however, there are 360 acres of vineyards and one winery operating in the "North Yuba" viticultural area.

Geography

The North Yuba viticultural area consists of the middle and upper foothills in Yuba County immediately west of the Sierra Nevadas and north of the Yuba River. The 2,000-foot contour line of the Sierra Nevada Mountains forms the eastern and northern portions of the boundary of the proposed viticultural area and the 1,000-foot contour line north of the Yuba River canyon forms the southern portion of the boundary. The eastern bank of Woods Creek forms part of the western portion of the boundary. The area is approximately 7 miles in length from north to south and 3 to 6 miles in width from west to east.

The principal streams which drain the area are Dobbins Creek and the upper portions of Dry Creek. Both streams flow into the Yuba River. The land drained by these streams shares similar geological history, topographical features, soils, and climatic conditions. The portions of the area which are currently devoted to viticulture consist of foothill slopes between 1,000 and 2,000 feet above sea level.

Distinguishing Characteristics

The viticultural area is not only distinguished historically from surrounding areas but geographically by its topography, elevation, geology, soils, temperature, and rainfall.

Topography and Elevation

The topography of the viticultural area ranges from gently rolling hills to steeper slopes at the base of the Sierra Nevadas and generally ranges in elevation from 1,000 feet to 2,000 feet above sea level. Lying between the high Sierras to the east and the lowlands of the Sacramento Valley to the west, the boundary of the viticultural area defines a region well suited for viticulture. The topography of the area ensures adequate ventilation for viticulture. The area escapes both the early frosts and snow of higher elevations in the Sierra Nevadas and the heat, humidity and fog common to the lowlands in the Sacramento Valley.

Geology

The area is an example of a middle foothill to lower mountain landscape that has been formed during a long period of geologic time. The area is underlain by igneous rocks and granitic rocks that extend along the base of the Sierra Nevadas. It is geologically well defined by the Sierra Nevadas to the north and east, by greenstone rock to the west, and by the Yuba River canyon to the south.

Soil Characteristics

The three major physiographic units in Yuba County are the valley lands of the Sacramento Valley, the Sierra Nevadas to the east of the valley, and the foothills region which lies between the valley and the mountains. There are nine soil associations common to the valley lands, three common to the foothills region, and six common to the mountainous terrain. Of the 18 soil associations found in Yuba County, basically three distinguish the soils of the viticultural area from the soils in surrounding areas of the county and the adjoining counties of Butte and Nevada in California.

The soil associations common to the proposed area are Sierra-Auberry, Englebright-Rescue, and Dobbins. These soils are typical of those developed from granitic and igneous rocks. The soils are shallow to very deep, rocky, cobbly and rocky, or noncobbly and rocky and are generally well drained.

"Soils of the Yuba County, California", a 1969 soil survey published jointly by the Department of Soils and Plant Nutrition of the University of California at Davis and by the County of Yuba, California, contains a color coded general soil map which clearly shows a pattern of these three soil associations in the middle and upper foothills region of Yuba County between the predominant soil association of the lower foothills, Auburn-Sobrante-Las Posas, and the predominant soil association of the mountains, Challenge-Tish Tang. The boundary includes small areas of Auburn-Sobrante-Las Posas, Challenge-Tish Tang and Rackerby-Dobbins, a mountain soil association.

Data from the soil survey of Yuba County and the 1975 soil survey of Nevada County, which lies south of Yuba County, strongly support the boundary established in this final rule.

Climatological Characteristics

Generally, Yuba County has an interior "Mediterranean" type climate. However, the location of the "North Yuba" viticultural area in the middle to upper foothills region approaching the mountainous terrain of the Sierra Nevadas allows a subtle distinction in climatological characteristics from the rest of the county in that the area escapes both the heat and fog common to the lowlands of the Sacramento Valley and the early frosts and snow of the higher elevations of the Sierra Nevadas.

The lands of the Sacramento Valley in Yuba County range from 30 to 250 feet above sea level and the mean average rainfall is 20 to 25 inches. The valley lands are an extensive area of floodplains, terraces, alluvial fans and basins.

The mountains of Yuba County are part of the western slope of the Sierra Nevadas. This is a region of gently rounded ridges, moderately steep rolling hillsides, and rugged, steep canyon slopes, that is deeply entrenched by the Yuba River and its tributaries. Basic metavolcanic rocks are dominant in this area. Elevations range from 1,600 feet to more than 4,800 feet above sea level. Rain increases with elevation and ranges from 45 inches to more than 80 inches, much of which falls as snow at higher elevations.

The middle to upper foothills in which the viticultural area lies occupy the lower western slope of the Sierra Nevadas between the valley lands and the mountainous uplands of the county. This is an area of rolling to steep hills with conspicuous ridges and peaks. Rock outcroppings are common. The central foothills region ranges in elevation from 250 feet to 2,700 feet above sea level. However, the viticultural area generally ranges in elevation from 1,000 to 2,000 feet above sea level and can be distinguished from surrounding areas by rainfall. The rainfall within the area increases gradually with elevation from 25 to 50 inches. For example, the mean annual precipitation at the Dobbins-Colgate weather station is 40.4 inches compared to 61.9 inches at the Camptonville station to the east of the area and 20.7 inches at Marysville to the west of the area.

Such statistics are corroborated by a map adapted from the State of California Department of Water Resources Seasonal Isohyetal Map (1905 to 1955) to show mean annual precipitation for Yuba County. The map distinguishes by rainfall the central foothills region from the areas to the west and to the east.

The growing season of the viticultural area is distinctly cooler than the neighboring Sacramento Valley to the west and warmer than the mountainous area to the east. The climate of the area is characterized by cool summer night temperatures, often dropping to 30 degrees below daytime highs and allowing the grapes to retain sufficient acidity to balance the high sugar levels induced by daytime sunshine.

Foothill winds are an additional cooling factor in summer, contributing further to the development of proper acidity in the area's grapes. These cooling winds are distinguished from those of the valley. At the higher foothill elevations, the winds conform more closely with the free-flowing westerly winds over northern California rather than the southwesterly winds which come up from the Straits of Carquinez into the lowland area of Yuba County.

Climatological data from three weather stations of the U.S. Department of Commerce National Oceanographic and Atmospheric Administration document the climatological differences between "North Yuba" and adjoining areas. The data from these stations when compared with data compiled over the 10-year period 1975 to 1984 from vineyards in the vicinity of Oregon House show the following differences in climate between "North Yuba" and surrounding areas:

Location	Elevation (feet)	Mean annual	Rainfall (inches)	Growing season (days)
Marysville	60	62.9 °F	20.7	273.
Dobbins-Colgate	600	62.6 °F	40.4	267.

Location	Elevation (feet)	Mean annual	Rainfall (inches)	Growing season (days)
Oregon House	1,500	59.0 °F	35 to 40	215 to 225.
Camptonville	2,755	57.5 °F	61.9	185.

Boundary

The boundary of the North Yuba viticultural area is found on four United States Geological Survey maps of the 7.5 minute series, scale 1:24,000. The boundary is described in § 9.106.

The boundary of the proposed viticultural area encompasses approximately 35 square miles or 22,400 acres. Within the area there are approximately 360 acres devoted to the cultivation of wine grapes and one bonded winery.

Compliance with Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Par. 1. The authority citation for 27 CFR Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. The Table of Sections in 27 CFR Part 9 is amended by adding § 9.106 to Subpart C to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.106 North Yuba.

* * * * *

Par. 3. Subpart C is amended by adding § 9.106 which reads as follows:

§ 9.106 North Yuba.

(a) *Name.* The name of the viticultural area described in this section is "North Yuba."

(b) *Approved maps.* The appropriate maps for determining the boundary of North Yuba viticultural area are the following four U.S.G.S. topographical maps of the 7.5 minute series:

(1) "Oregon House Quadrangle," edition of 1948, photo-revised 1969.

(2) "Rackerby Quadrangle," edition of 1948, photo-revised 1969.

(3) "Challenge Quadrangle," edition of 1948 photo-revised 1969.

(4) "French Corral Quadrangle," edition of 1948, photo-revised 1969.

(c) *Boundary.* The North Yuba viticultural area is located in Yuba County in the State of California. The boundary is as follows:

(1) Beginning on the "Oregon House Quadrangle" map at the point where the Browns Valley Ditch crosses Woods Creek in the southwest corner of section 25, T. 17 N., R. 6 E., the boundary proceeds northeasterly in a meandering line approximately 1.5 miles along the east bank of Woods Creek to the point near Richards Ranch where the paved light duty road crosses said creek;

(2) Then west and north, approximately 0.33 mile to the point where the paved light duty road meets the unimproved dirt road accessing Dixon Hill and Texas Hill;

(3) Then northwest continuing along the paved light duty road approximately 2.75 miles to the intersection at Oregon House of said light duty road with the medium duty road which travels east and west between Virginia Ranch Reservoir of Dry Creek and the Yuba County Forestry Headquarters near Dobbins;

(4) Then northeasterly, 0.7 mile, along same light duty road to its intersection with the unimproved dirt road to Lake Mildred, located in the northwest corner of section 2, T. 17 N., R. 6 E.;

(5) Then northwesterly, 1.0 miles, along the unimproved dirt road to the end of said road at the shoreline of Lake Mildred;

(6) Then southwest along the shoreline of Lake Mildred to the Los Verjeles Dam at the westernmost end of said lake;

(7) Then across the face of said dam and continuing northeast along the shoreline of Lake Mildred to the point where the stream running through Smokey Ravine flows into Lake Mildred;

(8) Then north and west along said stream to the point where the stream crosses the 1,900-foot contour line in the northeast corner of section 27, T. 18 N., R. 6 E.;

(9) Then southwest in a meandering line along the 1,900-foot contour line of Lamb Hill;

(10) Then northwest along the 1,900-foot contour line of High Spring Ridge to the point where the medium duty paved road running north and south along Willow Glen Creek crosses the 1,900-foot contour line, approximately 0.75 mile north of Finley Ranch;

(11) Then north along said road, approximately 1 mile, to its intersection at Willow Glen Ranch near the west boundary line of section 15, T. 18 N., R. 6 E., with the light duty road which crosses Critterden Ridge;

(12) Then in a generally easterly direction along said road, approximately 2.0 miles, to its point of intersection with the light duty paved road named Frenchtown Road which runs north and south between Brownsville and Frenchtown;

(13) Then south along the Frenchtown Road to the point where the road

crosses the 1,600-foot contour line in the northwest corner of section 24, T. 18 N., R. 6 E.;

(14) Then east along the 1,600-foot contour line to the point where Dry Creek crosses the 1,600-foot contour line near the south boundary line of section 13, T. 18 N., R. 6 E.;

(15) Then south along Dry Creek, approximately 0.16 mile, to the confluence of Indiana Creek with Dry Creek;

(16) Then in a generally easterly direction, approximately 1 mile, along Indiana Creek to the confluence of Keystone Creek with Indiana Creek;

(17) Then north along indiana Creek, approximately 0.87 mile, to the point where Indiana Creek meets the 2,000-foot contour line of Oregon Hills;

(18) Then in a generally southeasterly direction along the 2,000-foot contour line of Oregon Hills, approximately 6 miles, to the point near the east boundary line of section 9, T. 17 N., R. 7 E., where the power transmission line on Red Bluff crosses the 2,000-foot contour line;

(19) Then southwest along the right of way of said power transmission line to the point near the south boundary of section 9, T. 17 N., R. 7 E., where it meets the power transmission line running northwest and southeast between Dobbins and the Colgate Power House;

(20) Then southeast along the power transmission line between Dobbins and Colgate Power House to the Colgate Power House;

(21) Then in a generally westerly direction from the Colgate Power House along the power transmission line which crosses over Dobbins Creek to the point west of Dobbins Creek where the power transmission line intersects the 1,000-foot contour line;

(22) Then in a generally southwesterly direction along the 1,000-foot contour line above the north bank of the Yuba River and Harry L. Englebright lake of the Yuba River to the intersection of the 1,000-foot contour line with Woods Creek in the northeast corner of section 36, T. 17 N., R. 6 E.;

(23) Then east and north along the east bank of Woods Creek, approximately 0.5 miles, to the point of beginning.

Signed: June 28, 1985

Stephen E. Higgins,

Director.

Approved: July 15, 1985.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 85-17985 Filed 7-29-85; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 170

[T.D. ATF-207; Correction]

Stills; Miscellaneous Provisions; Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision); correction.

SUMMARY: This document corrects an error made in FR Doc. 85-16774, which contained miscellaneous provisions regarding stills. FR Doc. 85-16774 was published in the **Federal Register** on July 15, 1985 at 50 FR 28572.

FOR FURTHER INFORMATION CONTACT: J.R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7531.

SUPPLEMENTARY INFORMATION:

Par. 1. In the middle column of page 28572, in § 170.55, remove the words "Reporting and Recordkeeping requirements in paragraph (a)" from the beginning of the parenthetical paragraph containing the OMB control number. As corrected the parenthetical paragraph should read as follows:

(Approved by the Office of Management and Budget under control number 1512-0341)

Signed: July 22, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85-17971 Filed 7-29-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-011]

Minnesota State Plan; Approval of Revised Compliance Staffing Benchmarks and Final Approval Determination

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

ACTION: Approval of Revised Compliance Staffing Benchmarks and Final State Plan Approval.

SUMMARY: This document amends Subpart N of 29 CFR Part 1952 to reflect the Assistant Secretary's decision approving revised compliance staffing requirements and granting final approval to the Minnesota State Plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA standards and enforcement authority no longer apply to occupational safety and health issues covered by the Minnesota plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over offshore maritime employment in the private sector. Federal jurisdiction remains in effect with respect to Federal government employers and employees and employment at the Twin Cities Army Ammunition Plant.

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue NW., Washington, D.C. 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970 (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 1902.4, 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 29 CFR 1902.3 and .4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a 3-year period. 29 CFR 1902.2(b). The Assistant Secretary publishes a notice of "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 1902.3, 1902.4 and 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 jurisdiction in the State with respect to occupational safety and health issues covered by the plan. 29 U.S.C. 667(e).

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety and health compliance officers 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.

History of the Minnesota Plan and Its Compliance Staffing Benchmarks

Minnesota Plan

On August 22, 1972, Minnesota 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 November 25, 1972, a notice was published in the **Federal Register** (37 FR 25083) concerning submission of the plan, announcing that initial Federal approval was at issue and offering interested persons an opportunity to submit data, views and arguments concerning the plan. Comments were received from: The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); United States Steel Corporation; Porter Inc.; Honeywell, Inc.; Abrams and Spector, P.A.; Northwestern Bell Co.; Naegele Outdoor Advertising Co.; Inc.; International Brotherhood of Electrical Workers; United Auto Workers; Minnesota Association of Commerce and Industry; Winona Area Chamber of Commerce; and Patrick Lee Reagan. The Winona Area Chamber of Commerce and Patrick Lee Reagan requested a hearing. In response to these comments, as well as to OSHA's review of the plan submission, the State made changes in its plan which were discussed in the notice of initial approval. Because the comments did not indicate that the plan failed in any material way to meet the criteria for acceptability as set forth in section 18(c) of the Act and 29 CFR Part 1902, no hearing was held.

On June 8, 1973, the Assistant Secretary published a notice granting initial approval of the Minnesota plan as a developmental plan under section 18(b) of the act (38 FR 15076). The State's program began operating on August 1, 1973. The plan provides for a program patterned in most respects after that of the Federal Occupational Safety and Health Administration.

The Minnesota Department of Labor and Industry is designated as having responsibility for administering the plan throughout the State. The day-to-day administration of the plan is directed by the Assistant Commissioner of Labor and Industry and the Director of the Minnesota Occupational Safety and Health Division. Health inspections are conducted by the Minnesota Department of Health, Division of Environmental Health, under contract. Health inspection findings are forwarded to the Department of Labor and Industry for action. The Department of Health also provides laboratory services in support of the plan.

The plan provides for the adoption by Minnesota of standards which are at least as effective as Federal occupational safety and health standards, including emergency temporary standards.

The plan requires employers to furnish employment and a place of employment which are 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 agency. Employees are likewise required to comply with standards applicable to their conduct. The plan contains provisions similar to Federal procedures for, among others, imminent danger proceedings, variances, safeguards to protect trade secrets, and employer and employee rights to participate in inspection and review proceedings. Appeals of citations, penalties and abatement periods are heard by the Minnesota Occupational Safety and Health Review Board. Decisions of the Review Board may be appealed to the appropriate State District Court.

The notice of initial approval noted a few distinctions between the Federal and Minnesota programs. In addition to adopting all Federal occupational safety and health standards, the State promulgates standards for which there are no corresponding Federal standards. The plan includes prohibition of denial of pay to an employee for participating in an inspection as part of its provision prohibiting discrimination against employees for exercising their rights under the law. State law also provides that standards requiring personal protective equipment mandate that such equipment be made available by or at the cost of the employer. In addition, in 1983 Minnesota enacted its Employee Right-to-Know Law which requires employers to provide information and training to employees concerning hazardous substances in their workplaces. (This law was subsequently amended in 1985 to conform with the provisions of the OSHA Hazard Communication Standard.)

The Assistant Secretary's initial approval of the Minnesota 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 N; 38 FR 15076 (June 8, 1973)).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and appropriate documentation submitted for OSHA approval during the three-year period ending June 30, 1976. These "developmental steps" included: amendments to the Minnesota Occupational Safety and Health Act; promulgation of State Occupational Safety and Health Act; promulgation of State occupational safety and health standards and program regulations, and revision of the State's Field Compliance Manual. In completing these developmental steps, the State developed and submitted for Federal approval all components of its enforcement program including, among other things, a merit staffing and a safety and health poster for private and public employees.

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 Subpart of 29 CFR Part 1952 designated as relating to Minnesota was amended to reflect each of these approval determinations (see 29 CFR 1952.204).

On September 28, 1976, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Minnesota had satisfactorily completed all developmental steps (41 FR 42659). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the plan—to be at least as effective as corresponding Federal provisions. Certification does not 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 and regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

Although Minnesota had not sought previously to enter into an operational status agreement, in 1981 OSHA determined that such agreements should be concluded with all qualified States. Thus, a **Federal Register** notice was published on June 11, 1982 (47 FR 25325), announcing that an operational status agreement had been signed on October 9, 1981, for Minnesota. Under the terms of that agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Minnesota plan.

Minnesota Benchmarks

In 1978, the Assistant Secretary was directed 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, to calculate for each State plan state the number of enforcement personnel (compliance staffing benchmarks) needed to assure a "fully effective" enforcement program. In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Minnesota to allocate 56 safety compliance officers and 74 industrial hygienists to conduct inspections under the plan.

In September 1984 the Minnesota State designee in conjunction with OSHA completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for Minnesota. Pursuant to an initiative begun in August 1983 by the State plan designees as a group with OSHA and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, Minnesota reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. This reassessment resulted in a proposal to OSHA contained in comprehensive documents of revised compliance staffing benchmarks of 31 safety and 12 health compliance officers.

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR Part 1902, Subpart D. On January 16, 1985, the Occupational Safety and Health Administration published notice of its proposal to approve revised compliance staffing benchmarks for Minnesota and the resultant eligibility of the Minnesota State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted (50 FR 2467). The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Unified Management Information System, and staffing which meets the proposed revised State staffing benchmarks.

The January 16 **Federal Register** notice set forth a general description of the Minnesota plan and summarized the results of Federal OSHA monitoring of State operations during the period from October 1982 through March 1984. In addition to the information set forth in the notice itself, OSHA submitted, as part of the record in this rulemaking proceeding, extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Minnesota operates its plan, and copies of all previous **Federal Register** notices regarding the plan.

A copy of the October 1982–March 1984 Evaluation Report of the Minnesota plan ("18(e) Evaluation Report"), which was extensively summarized in the January 16 proposal and which provided the principal factual basis for the proposed 18(e) determination, was included in the Record (Ex. 3-13). Copies of all OSHA evaluation reports on the plan since its certification as having completed all development steps were made part of the record.

The January 16 **Federal Register** also contained notice of the Occupational Safety and Health Administration's proposed approval of revised compliance staffing benchmarks for Minnesota. A detailed description of the methodology and State-specific information used to develop the revised compliance staffing benchmarks for Minnesota was included in the notice. In addition, OSHA submitted, as a part of the record (Docket No. T-011), Minnesota's detailed submission containing both a narrative explanation and supporting data (Ex. 2-10). A summary of the benchmark revision process was likewise set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (No. T-018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process and 18(e) determination, copies of the complete record were maintained in the OSHA Docket Office in Washington, D.C., in the OSHA Region V Office in Chicago, Illinois, and the office of the Minnesota Department of Labor and Industry in St. Paul, Minnesota. A summary of the January 16 proposal, with an invitation for public comments, was published in Minnesota on January 28, 1985 (Ex. 5).

The January 16 proposal invited interested persons to submit, by February 20 (subsequently extended to March 22, 1985, 50 FR 6956, in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL-CIO), written comments and views regarding the Minnesota plan, whether the proposed revised compliance staffing benchmarks should be approved, and whether final approval should be granted. Opportunity to request an informal public hearing on the issue of final approval was likewise provided. Twelve letters of comment were received in response to these notices:

four from local, State and national labor organizations; one from an employer; four from non-governmental organizations, other than management or labor groups, concerned with occupational safety and health issues; one from a firm of attorneys; one from a group of physicians; and one from a 12-member body within the State government, composed of representatives of labor, management, the occupational safety and health professions, and the general public, appointed to provide advice on occupational safety and health matters. No requests for an informal hearing were received.

Summary and Evaluation of Comments Received

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information and views regarding operations under the Minnesota plan, to supplement the information already gathered during OSHA monitoring and evaluation of plan administration, and regarding the proposed revised compliance staffing benchmarks for Minnesota.

In response to the January 16 **Federal Register** notice, OSHA received comments from: Minnesota Safety Council, Inc., Robert L. Anderson, President (Ex. 4–2); Apprenticeship Coordinators Association of Minnesota, James H. Gustafson, President (Ex. 4–3); Northern States Power Company, E.I. Malone, General Manager, Industrial Relations, Safety and Workers' Compensation, and J.J. Pineault, Manager, Occupational Safety and Health (Ex. 4–4); State of Minnesota Occupational Safety and Health Advisory Council, Edwin Conrad, Chairman (Ex. 4–5); Minnesota State Building and Construction Trades Council, William R. Peterson, President (Ex. 4–6); Koll and McCoy, Attorneys at Law, Laurence F. Koll, Attorney at Law (Ex. 4–7); Midwest Center for Occupational Health and Safety, Ruth K. McIntyre, Director, Continuing Education (Ex. 4–8); Occupational Health Services, Paul B. Johnson, M.D. *et al.* (Ex. 4–9); International Brotherhood of Electrical Workers, Local Union No. 160, Robert M. Sable, Safety Chairman, and David C. Ring, Business Manager (Ex. 4–10); American Industrial Hygiene Association (AIHA), James R. Thill, President, Midwest Section (Ex. 4–11); American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), Margaret Seminario, Association Director, Department of Occupational Safety, Health and Social Security (Ex. 4–12); United Steelworkers of America, Mary Win O'Brien, Assistant General Counsel (Ex. 4–13). Ivan Russell, Director, Occupational Safety and Health Division, Minnesota Department of Labor and Industry, responded to the public comments (Ex. 4–14).

The Minnesota Safety Council's response was supportive of the Minnesota plan (Ex. 4–2). The Council has been associated with the program since its inception, having participated in the drafting of the plan, and has closely observed State activities since the program became operational. Thus, Council President Robert L. Anderson felt that there was a firm basis for its favorable appraisal of the State's enforcement effort and the level of compliance obtained.

A similarly supportive position was taken by the Apprenticeship Coordinators Association of Minnesota (Ex. 4–3). The Association's President, James H. Gustafson, expressed the view that the State's performance had been skilled and professional.

Messrs. Malone and Pineault, representing the Northen States Power Company, had both been administrators of the State plan (Ex. 4–4). On the basis of this dual perspective as employers and former program officials, they asserted that the State was protective of employees' rights to a safe and healthful workplace and employers' rights to an equitable review of disputed State actions. It was felt that the final approval of the Minnesota plan would be a significant advance for the employees of Minnesota.

Edwin Conrad, Chairman of the State of Minnesota's Occupational Safety and Health Advisory Council, noted a decline in the total injury and illness incidence rate and the reduction in the total number of work-related fatalities as ultimate evidence of the Minnesota program's effectiveness (Ex. 4–5). The 12 members of the Council, representing management, labor, the occupational safety and health professions and the general public, have observed the development of a working relationship between the State and employers and employees which has contributed to this achievement.

The competence of State personnel was commended by Lawrence F. Koll of Koll and McCoy, Attorneys at Law (Ex. 4–7). Mr. Koll had been a former Minnesota Workers' Compensation Commissioner and is currently a member of the Workers Compensation Advisory Council, and thus has had an opportunity to examine accident investigation reports of Division of Occupational Safety and Health field investigators. These reviews have shown the reports to present a complete and cogent analysis of the accidents in question.

The Midwest Center for Occupational Health and Safety has gone on record as affirming its support of the Minnesota program (Ex. 4–8). Ruth K. McIntyre, Director of Continuing Education for the Center, noted the strong administration and management of the program, resulting in a stringent enforcement of standards and, consequently, greater protection for employees. She also views the revised staffing benchmarks favorably.

On the basis of their experiences with the State plan, Paul B. Johnson, M.D., and four other physicians associated with Occupational Health Services, a program of St. Paul-Ramsey Medical Center, have asserted their belief in the plan's value (Ex. 4–9). They claim that the knowledge and effectiveness of State personnel have been frequently demonstrated and advocate final approval.

James R. Thill, President, Midwest Section of the American Industrial Hygiene Association, wrote on behalf of the board and officers of the Association to urge final approval of the Minnesota plan and approval of the State's revised staffing benchmarks (Ex. 4–11). Speaking from personal experience gained in assisting the State in its development of the Minnesota Employee Right-to-Know Law, serving as an expert witness in workers' compensation cases, and advising cited employers, Mr. Thill gave a positive appraisal of the State's program. He had been favorably impressed with the technical competence of the staff, their cooperative attitude, and their practical and realistic approach to solving problems affecting the health of workers.

Two State affiliates of the AFL–CIO expressed their support of the Minnesota program and its proposed final approval. William R. Peterson of the Minnesota State Building and Construction Trades Council (AFL–CIO) noted, as an indication of the State's effectiveness, that compliance with the State's housekeeping standards has resulted in a 50% reduction in minor injuries at one construction site in Becker, Minnesota (Ex. 4–6).

Presenting the position of the International Brotherhood of Electrical Workers, Local Union No. 160 (AFL–CIO), Robert M. Sable, Safety Chairman and David C. Ring, Business Manager, have endorsed a determination in favor of Minnesota's final approval (Ex. 4–10). They maintain that by working vigorously for employees' safety and health and by maintaining good relations with both labor and management, the State has established and continues to operate a program which exceeds the requirement that it be "at least as effective" as OSHA.

The March 22 comments submitted by Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security of the AFL-CIO, contained a number of criticisms, which fall into three broad categories relating to State plans and the evaluation thereof: OSHA's data-based State monitoring system; Minnesota plan performance discussed in the 18(e) Evaluation Report for the period October 1, 1982 through March 31, 1984; and OSHA's revised compliance staffing benchmarks both in general terms and as they relate specifically to Minnesota (Ex. 4-12). Regarding the first area of concern, a brief description of OSHA's State plan monitoring and evaluation system is appropriate.

The evaluation of the Minnesota plan was conducted in accordance with OSHA's new State plan monitoring and evaluation system. This system uses statistical data to compare Federal and State performance on a number of criteria, or measures. Significant differences between the two are evaluated to determine whether these differences, viewed within the framework of overall State plan administration, detract from the State's effectiveness and potentially render it less effective than the Federal program.

The AFL-CIO expressed concern that Federal OSHA's monitoring system with its reliance on statistical indicators fails to accurately reflect the overall conduct of the State program and tries to limit those areas of State performance which exceed OSHA's enforcement efforts in several areas. However, OSHA never intended that superior performance would result in any negative conclusion. Statistical outliers display differences, not necessarily deficiencies. If further review related to an outlier determines stronger State performance, clearly no negative determination will be made.

The AFL-CIO's comments on specific State performance issues are addressed in the appropriate sections of the Findings and Conclusions portion of this notice. Ivan Russell, the Director of the Minnesota Occupational Safety and Health Division, responded in detail to the issues raised by the AFL-CIO on both the benchmarks and State-specific issues (Ex. 4-14).

Comments by both the AFL-CIO and the United States Steelworkers of America addressing the proposed revised benchmarks for Minnesota reflected, for the most part, the commenters' concerns regarding the benchmark revision process generally. Thus, the comments question whether the benchmark's formula as applied in Minnesota should have assumed a need for routine, general schedule inspections at all covered workplaces; question whether the proposed staffing levels will be sufficient to respond to new hazards or future standards; and question the appropriateness of the inclusion or exclusion of various industry groups in Minnesota's general inspection universe unless corresponding industries are treated identically in other States. As was specifically discussed in the **Federal Register** notice of June 13, 1985, dealing with approval of revised benchmarks for the Kentucky State plan (50 FR 24884), the concept of universal general schedule coverage has been replaced by more sophisticated targeting systems which deploy enforcement resources where they are most needed, and universal coverage is as inappropriate a concept for benchmarks formulation as it is for inspection scheduling. The possible effect of new hazards or future standards cannot be ascertained with any precision, and in any case both OSHA and the States have generally been able to effectively enforce new standards with no additions to staff for that purpose. As to the need for "uniformity," OSHA believes the greatest strength of the current formula is that it takes into account actual State program needs as shown by State data and experience. OSHA has found that the formula used to derive benchmarks for Minnesota and other States involved in the 1984 revision process employs the best information and techniques currently available; properly takes into account each of the factors set forth in the District Court Order in *AFL-CIO* v. *Marshall* and is an appropriate means of establishing fully effective benchmarks which provide proper program coverage in the context of each State's specific program needs. A more detailed discussion of the general concerns raised by the AFL-CIO and the Steelworkers can be found in the June 13, 1985, **Federal Register** notice on Kentucky (50 FR 24884).

The comments filed by the AFL-CIO also addressed several specific issues relating to calculation of the benchmarks for Minnesota. The union indicated that although Minnesota had added many industries and establishments to its general schedule safety inspection universe, no workplaces with ten or fewer employees in high hazard industries were added. This comment is in error. Minnesota added 530 small establishments with an experience of above-average Workers' Compensation Insurance premiums in industries with high injury rates to its safety universe. Moreover, in all industry groups and workplaces covered by the Minnesota plan, the State provides coverage by responding to employee complaints of unsafe or unhealthful conditions and to accidents.

The AFL-CIO also commented that although Minnesota added some high hazard non-manufacturing establishments to its initial health inspection universe, the State did not allocate general schedule resources to certain industries with serious health hazards, including bottled and canned soft drinks, wood products, auto repair shops, and hospitals. Minnesota responded that many of the industries about which the AFL-CIO expressed concern are already included in the State's safety inspection universe and would receive inspection coverage by safety compliance personnel cross-trained in the recognition of health hazards. In many instances the safety personnel make referrals to the Minnesota Department of Health for referral inspections to be conducted by industrial hygienists. Of course, these industries would also be subject to inspections under the State's employee complaint and accident investigation provisions. OSHA concurs that inclusion of these industries in the initial health universe is not required for proper program coverage. (It should also be remembered that assumptions made in determining a State's theoretical workload for benchmark purposes are not binding upon the State in determining specific employers for general schedule enforcement visits. The initial universe is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards.)

The AFL-CIO asserted that Minnesota's allocation of enforcement resources to health inspections in the public sector and the construction industry, which the State based on past experience, is inadequate. Minnesota responded that 17% of its covered workforce is in the public sector, with only a very small percentage of those employees engaged in "high-risk" occupations. The State also noted that health hazards in the construction industry are most often cited by cross-trained safety compliance officers, or as the result of referral or health complaint inspections. Minnesota further responded that health hazards warranting special State attention, either in construction or the public sector, will be addressed through special emphasis programs without any negative impact upon the State's overall enforcement program.

Finally, both the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Minnesota and other States is lower than the staffing levels allocated by the States in 1980 or projected in the benchmarks issued by OSHA during its first effort to implement the *AFL–CIO* v. *Marshall* Court Order in 1980. However, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels. Such direct numerical comparison of staffing levels is no more valid than was direct comparison of State to Federal staffing levels under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the Court of Appeals decision and District Court Order was, in sum, to measure the workload assumed by each State under its plan and to determine, using the best available information and techniques, but avoiding direct numerical comparisons, the staffing levels needed for fully effective coverage. This is precisely what has been done in the present revision process. The review of each State's illness and injury data, industrial mix, demographics and enforcement history has been far more detailed than was the case when benchmarks were first issued in 1980. As discussed above, the concept of universal routine inspection has been replaced by far more sophisticated targeting, devoting resources to the relative minority of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Minnesota.

For these reasons, and in light of other comments by groups and individuals directly affected and knowledgeable about safety and health enforcement needs in Minnesota, OSHA believes application of the current benchmark formula for Minnesota has resulted in staffing levels which result in fully effective enforcement in the State of Minnesota.

Findings and Conclusions

Minnesota Benchmarks

As provided in the 1978 Court Order in *AFL–CIO* v. *Marshall*, Minnesota, in conjunction with OSHA, has undertaken to revise the compliance staffing benchmarks originally established in 1980 for Minnesota. OSHA has reviewed the State's proposed revised benchmarks and supporting documentation and has carefully considered the public comments received with regard to this proposal, and has determined that compliance staffing levels of 31 safety and 12 health compliance officers meet the requirements of the Court and provide staff sufficient to ensure a fully effective enforcement program.

Minnesota Final Approval

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Minnesota State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period of October 1982 through March 1984 and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

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

As documented in the approved Minnesota State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the January 16 notice, the Minnesota plan provides for the adoption of standards and amendments thereto which are identical to, or at least as effective as, Federal standards. The State's law and regulations, previously approved by OSHA and made a part of the record in this proceeding (Exs. 2–2 and 2–3), include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

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

During the evaluation period, the State experienced some difficulty in complying with the six-month time frame for adopting Federal standards changes. The average lapse time for adoption of standards was 6.9 months. This appears to be due to the State's past practice of publishing notices of adoption of standards semi-annually. A recent change in State procedures now provides for quarterly adoption of standards (18(e) Evaluation Report, p. 14).

When a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. The State has generally adopted standards interpretations, which are at least as effective as the Federal, in a timely fashion. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to standards have occurred in Minnesota.

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

(2) *Variances.* A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal

program (29 CFR 1902.4(b)(2)(iv)). The Minnesota State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to qualify for final State plan approval permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). The twelve permanent variances granted during the evaluation period were granted in a timely manner in accordance with approved State procedures and were deemed to provide equivalent protection (18(e) Evaluation Report, p. 17). The three temporary variances granted by Minnesota during the period met the established criteria (18(e) Evaluation Report, p. 18).

Accordingly, OSHA finds that the Minnesota program effectively grants variances from its occupational safety and health standards.

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

The Minnesota Occupational Safety and Health Act of 1973, as amended, and implementing regulations previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effectivce compliance program (29 CFR 1902.37(b)(2)). The 18(e) Evaluation Report data show no lack of adherence to such procedures.

(a) *Inspections.* A plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1902.4(c)(2)(i)). As noted in the January 16, 1985 Federal Register notice, Minnesota attempts to formalize all complaints submitted and responds to all written employee complaints by inspection. The State has a procedure similar to OSHA's for handling nonformal complaints by a letter to the employer. During the evaluation period, however, this procedure was not in effect, and 81.4% of complaints received by the State were responded to by inspection. Complaint response was timely (18(e) Evaluation Report, pp. 40–42).

In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Minnesota's safety targeting plan is based upon the Federal system, supplemented by a special emphasis program which targets inspections in individual facilities in relation to their safety performance and history. The State's health inspection targeting system is comparable to the Federal system. Data contained in the 18(e) evaluation indicate that 95.4% of State programmed safety inspections and 91.0% of State programmed health inspections were conducted in high-hazard industries, which are comparable to the Federal data (18(e) Evaluation Report, p. 37).

The AFL–CIO criticized the State's adoption of the Federal system of recognizing records reviews as inspections (Ex. 4–12). Under State procedures, similar to those used Federally, employers eligible for a general schedule safety inspection may qualify for a "records review" inspection if their lost workday injury (LWDI) rate is less than the national average for all industries. OSHA believes that this is an efficient use of resources. In addition, the State points out in its response that a partial walk-through inspection is attempted or conducted if the investigator observes a serious hazard or imminent danger during the opening conference, if a safety complaint is filed during the opening conference, or if the review of injury and illness records reveals an unusual number or type of injury occurring in a particular area of the facility. Employers who qualify for a "records review" inspection must still post a notice to employees notifying them that such an inspection has occurred and providing the name, address and phone number of the nearest Minnesota Area Office (Ex. 4–14).

(b) *Employee Notice and Participation in Inspections.* In conducting inspections the State plan must provide an opportunity for employees and their respresentatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(2)(ii)). The State's procedures require compliance officers to provide this opportunity. During the evaluation period employees elected to exercise their right to accompany the inspector on the walkaround in 13.3% of initial inspections (18(e) Evaluation Report, p. 50). Minnesota's statutory requirement that employers pay employees for the time spent participating in inspections was praised by the AFL–CIO in its comments (Ex. 4–12).

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

To inform employees and employers of their protections and obligations, Minnesota requires that a poster, which was previously approved by OSHA (40 FR 13211), be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variance applications, are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards, including the Access to Employee Exposure and Medical Records standard. Federal OSHA's evaluation concludes that the State performance is satisfactory.

(c) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). The Minnesota Act and regulations provide for discrimination protection which is at least as effective as the Federal. The State investigated 15 complaints out of 16 complaints received. The State settled administratively all three complaints initially found meritorious. Average lapse time between receipt of a complaint and the notification to the complainant of the investigation results for the State is 44 days, which compares favorably to the Federal lapse time (18(e) Evaluation Report, p. 68).

(d) *Restraint of Imminent Danger; Protection of Trade Secrets.* A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1902.4(c)(2)(vii) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and Field Compliance Manual which are similar to the Federal. The 18(e) Evaluation Report indicates that there were no imminent danger situations identified during the period. In the 10-year history of the Minnesota program, there have been no instances of complaints about the protection of trade secrets (18(e) Evaluation Report, p. 50).

(e) *Right of Entry; Advance Notice.* A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1902.3(f)). Section 182.659 of the Minnesota Occupational Safety and Health Act authorizes the Commissioner to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. State law allows the Attorney General to obtain a warrant from the State District Court if gaining entry is impeded by the employer. State procedures differ from the Federal in that, at several stages, attempts are made to persuade the employer to permit entry. The Minnesota law likewise prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. Of the 42 denials of entry during the evaluation period, the State was able to gain warrantless entry, or otherwise resolve the issue, in 19 cases and successfully obtained warrants in 15 cases (18(e) Evaluation Report, p. 48). The evaluation report did not note any improper use of advance notice.

The AFL-CIO alleged that the State's practice of negotiating with employers who had denied entry violated the prohibition against advance notice (Ex. 4-12). OSHA's monitoring of this aspect of the State's program has shown that Minnesota does not negotiate with employers in lieu of seeking a warrant, but performs both operations concurrently. Upon denial of entry, the legal process for obtaining a warrant is initiated while, simultaneously, dialogue with the employer continues as repeated attempts are made to obtain entry. The State believes that this procedure has been proven more effective in expediting entry, a conclusion supported by OSHA's monitoring which has revealed that an average of 27.3 days elapsed from the date of the warrant application to the date of entry, while normally negotiation required no more than a few days. As the State notes in its response to the AFL-CIO's comments, the time needed for negotiating with an employer is minimal when compared with the time needed to seek and obtain a warrant through the Court system. Whether entry is negotiated or obtained through a warrant, the employer is not notified of the date on which the inspection will be conducted (Ex. 4-14).

(f) *Citations, Penalties, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Minnesota plan through its law, regulations and Field Compliance Manual, which have all been previously approved by OSHA, has established a system similar to the Federal for prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information and proposing penalties.

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

The Minnesota Field Compliance Manual has been updated through the issuance of Division Policies (internal memoranda to State staff), and thus the State follows inspection procedures, including documentation procedures, which are similar to the Federal.

Minnesota's provisions governing classification of violations differ in some respects from the Federal. However, both the number of violations cited per initial inspection (2.2) and the percentage of violations which are considered serious (21.5%) are comparable to Federal statistics. In addition, the State percentage of programmed inspections found not-in-compliance (safety—60.7%; health—39.8%) is comparable to the Federal percentage.

Minnesota's lapse time from inspection to issuance of citation is comparable to the Federal for safety (10 days) but longer for health (30 days). The AFL-CIO in its comments criticized the health citation lapse time and suggested that it is related to an insufficient number of health inspectors (Ex. 4-12). However, as the State points out in its response, it appears that this discrepancy is due to the larger percentage of apparent violations requiring analysis of samples found on State health inspections, Minnesota's former policy of delaying issuance of citations for all violations found on inspections until laboratory analysis is completed, and clerical staffing shortages in the Minnesota Health Department (Ex. 4-14). As noted in the 18(e) Evaluation Report, a recently instituted State policy of issuing citations for which laboratory analysis is not needed without awaiting sampling results for other potential violations, as well as decreased clerical time since implementation of the new Integrated Management Information System, should reduce the health citation lapse time (18(e) Evaluation Report, pp. 72-73). The size of the State's health compliance staff is totally unrelated to this issue.

Neither the data nor any comments suggest that the State has a problem in adequately documenting inspections to support citations. Further, Lawrence Koll, of the law firm of Koll and McCoy, commented that he has found the investigative files of accidents which he has reviewed to be thorough and conclusive (Ex. 4-7).

The 18(e) Evaluation Report indicates that the State of Minnesota's average proposed penalty for serious violations was somewhat lower than the Federal ($150 for safety and $198 for health) (18(e) Evaluation Report, p. 59). Analysis has shown the State's penalty average to have been acceptable.

Minnesota conducts follow-up inspections on all serious, willful and repeat violations, and therefore the

State conducts a proportionately greater number of follow-up inspections (16.4% of not-in-compliance inspections) than does Federal OSHA (18(e) Evaluation Report, p. 55).

During the report period the State conducted 21 follow-up inspections that resulted in failure-to-correct citations out of 242 follow-up inspections (18(e) Evaluation Report, p. 56).

State abatement periods are somewhat longer than those set Federally (12.6 days for safety and 37 days for health). The State grants Petitions for the Modification of Abatement (PMA's) only when appropriate and reasonable. (PMA's were granted in 1.6% of total violations cited (18(e) Evaluation Report, pp. 56–57)).

(g) *Contested Cases.* In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportuntity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Minnesota's procedures for employer contest of citations, penalties and abatement requirements and for ensuring employee rights are contained in the law, regulations and Field Compliance Manual made a part of the record in this proceeding and are substantially identical to the Federal procedures. Appeals of citations, penalties and abatement periods are heard by the Occupational Safety and Health Review Board and may be further appealed to the appropriate State District Court.

During the 18(e) evaluation period, 125 cases, representing 8.4% of inspections with citation, resulted in contests. Although this percentage is higher than the percentage of formal contests Federally, most contested cases in Minnesota are settled without a hearing. The report concludes that the State's contest results are generally the same as those in the Federal program, with no additional resources used and the rights of all parties respected (18(e) Evaluation Report, p. 65).

To qualify for final approval, the State must seek review of any adverse adjudications and take action to correct any enforcement program deficiencies resulting from adverse administrative or judicial determinations (29 CFR 1902.37(b)(14)). The State had no adverse decisions which would require review or corrective action. Accordingly, OHSA finds that the Minnesota plan effectively reviews contested cases.

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

(4) *Public Employee Program.* Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's progam for public employees be as effective as the State's program for private employees covered by the plan.

Minnesota's plan provides a program in the public sector which is identical to that in the private sector, including the proposal of penalties. During the evaluation period, the State conducted 337 inspections in the public sector and cited 1064 violations. Penalties proposed for safety violations (serious—$172; other than serious—$83) were similar to those in the private sector. No health violations were penalized in the public sector. Injury and illness rates for State and local government employment for 1982 (all case rate 7.0; lost workday case rate 2.9) are somewhat lower than those for the private sector (18(e) Evaluation Report, pp. 28–29).

Because the State treats the public sector in the same manner as the private sector, as evidenced by its written procedures, which are applicable to all covered employees, public or private, and since monitoring indicates similar performance in the public and private sectors, OSHA concludes that the Minnesota program meets the criterion in 29 CFR 1902.3(j).

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

Minnesota has committed itself to funding the State share of salaries for 31 safety inspectors and 12 health enforcement officers as evidenced by the FY 1984 Application for Federal Assistance (Ex. 2–6) as well as its subsequent FY 1985 application. These compliance staffing levels meet the revised benchmarks proposed for Minnesota.

As noted in the Federal Register notice announcing certification of the completion of developmental steps for Minnesota (41 FR 42659) all personnel under the plan meet civil service requirements under the State merit system, which was found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Civil Service Commission.

The State provides continuing training for its staff. During the evaluation period, compliance officers received an average of 89 hours of formal training (18(e) Evaluation Report, p. 25). The comments from the Midwest Section of the American Industrial Hygiene Association and from Occupational Health Services, a group of physicians, both praised the training and competence of State personnel (Exs. 4–9, 4–11).

Because Minnesota has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the 1978 Court Order in *AFL–CIO* v. *Marshall, supra,* are being met by the Minnesota plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Minnesota plan was funded at $3,262,488 in FY 1984. (50% of the funds were provided by Federal OSHA and 50% were provided by the State.)

As noted in the Evaluation Report, Minnesota's funding appears sufficient in absolute terms; moreover, the State manages its resources in a cost effective manner (18(e) Evaluation Report, pp. 79–81). On this basis, OSHA finds that Minnesota has provided sufficient funding for the various activities carried out under the plan.

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

Minnesota's employer recordkeeping requirements are substantially identical to those of Federal OSHA, except that Minnesota has elected not to adopt the Federal recordkeeping exemption for certain low-hazard industry groups, and the State participates in the BLS Annual Survey of Occupational Illnesses and Injuries. As noted in the January 16 proposal, the State participates and has assured its continuing participation with OSHA in the Federal-State Unified Management Information System as a means of providing reports on its activities to OSHA.

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

(7) *Voluntary Compliance Program.* A State plan is required to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1902.4(c)(2)(xiii)).

The State conducts a training and education program covering the private and public sectors. During the 18(e) evaluation period, Minnesota provided training to 2,587 employers and supervisors and 659 employees (18(e) Evaluation Report, p. 22).

In the private sector, Minnesota provides on-site consultative services to employers under a cooperative agreement with OSHA made pursuant to section 7(c)(1) of the Act and 29 CFR Part 1908.

In addition, as discussed in the 18(e) Evaluation Report (p. 19), Minnesota has indicated its intention to establish a public sector on-site consultation program in FY 1985. (That program has now been initiated.)

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

(8) *Injury and Illness Statistics.* As a factor in its 18(e) determination, OSHA must consider 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 (29 CFR 1902.37(b)(15)).

The 1981 and 1982 Bureau of Labor Statistics injury and illness rates for Minnesota (private sector all case rate for 1981, 8.2; 1982, 7.7; lost workday case rate for 1981, 3.7; 1982, 3.4) were similar to rates in States where Federal OSHA provides enforcement coverage. In 1982, the lost workday case rates for the private sector, manufacturing and construction, experienced a greater decline in Minnesota than in States with Federal enforcement jurisdiction (18(e) Evaluation Report, pp. 82–83). Comments from the Minnesota Occupational Safety and Health Advisory Council noted that the injury and illness all case rate for Minnesota workers was reduced from 11.0 in 1973 to 7.3 in 1983 (Ex. 4–5). This is comparable to the reduction in the Federal rate. In addition, comments from both the Advisory Council and the Occupational Safety and Health Division pointed out that work-related fatalities in Minnesota declined from 85 in 1973 to 25 in 1984 (Exs. 4–5, 4–14).

Comments from the AFL–CIO expressed concern that Minnesota's all case rates for the private sector, manufacturing and construction, and the lost workday case rate for construction for 1982 exceeded the Federal rates (Ex. 4–12). However, the State rates were only slightly higher than the Federal rates and were within the prescribed limits. OSHA does not view these differences as significant, especially when considered within the context of changes in the rates.

Therefore, OSHA finds that the trends in injury and illness statistics in Minnesota compare favorably with those in States with Federal enforcement.

Decision

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

In light of all the facts presented on the record, the Assistant Secretary has determined that (1) the revised compliance staffing levels proposed for Minnesota meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers necessary for a "fully effective" enforcement program, and (2) the Minnesota State plan for occupational safety and health in actual operation, which has been monitored for at least one year subsequent to certification, is at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Therefore, the revised compliance staffing benchmarks of 31 safety and 12 health are approved, and the Minnesota State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective July 30, 1985.

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

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Minnesota plan terminates OSHA authority for Federal enforcement of its standards in Minnesota, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a) (2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act (section 17) is relinquished as of the effective date of this determination. (Because of the effectiveness of the Minnesota plan, there has been no exercise of concurrent Federal enforcement authority in issues covered by the plan since the signing of the Operational Status Agreement in October 1981.)

Federal authority under provisions of the Act not listed in section 18(e) are unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Jurisdiction over any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remains a Federal responsibility. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health in offshore private sector maritime employment and at the Twin Cities Army Ammunition Plant. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons not related to the required performance or structure of the State plan.

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

Explanation of Changes to 29 CFR Part 1952

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

A new § 1952.203, Compliance staffing benchmarks, has been added to reflect the approval of the 1984 revised benchmarks for Minnesota.

A new § 1952.204, Final approval determination, has been added to reflect the determination granting final approval of the plan. The new paragraph contains a more accurate description of the scope of the plan than the one contained in the initial approval decision.

Newly redesignated § 1952.205, Level of Federal Enforcement, has been added to reflect the State's 18(e) status. The new paragraph replaces former § 1952.202, which described the relationship of State and Federal enforcement under an Operational Status Agreement which was entered into on October 9, 1981. Federal concurrent enforcement authority has been relinquished as part of the present 18(e) determination for Minnesota, and the Operational Status Agreement is no longer in effect. § 1952.205 describes the issues where Federal authority has been terminated and the issues where it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

While most of the existing Subpart N has been retained, paragraphs within the subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps, certification of completion of developmental steps and final plan approval) are set forth in chronological order. Related editorial changes to the subpart include modification of the heading of § 1952.200, to clearly identify the 1973 initial plan approval decision to which it relates. The addresses of locations where State plan documents may be inspected have been updated and are found in § 1952.206.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have a significant economic impact on a substantial number of small entities. Final approval will not place small employers in Minnesota 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. Certification to this effect was previously forwarded to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736))

Signed at Washington, D.C., this 30 day of July 1985.

Patrick R. Tyson,

Acting Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subpart N of 29 CFR Part 1952 is hereby amended as follows:

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (48 FR 35736).

2. Section 1952.200 is amended by revising the heading to read: *§ 1952.200 Description of the plan as initially approved.*

§ 1952.201, 1952.202, and 1952.203, and 1952.204 [Redesignated as 1952.206, 1952.205, 1952.201, and 1952.202 respectively]

3. Section 1952.201 Redesignated as § 1952.206.

4. Section 1952.202 Redesignated as § 1952.205.

5. Section 1952.203 Redesignated as § 1952.201.

6. Section 1952.204 Redesignated as § 1952.202.

7. The Table of Contents for Part 1952, Subpart N is revised to read as follows:

Subpart N—Minnesota

Sec.
1952.200 Description of the plan as initially approved.
1952.201 Developmental schedule.
1952.202 Completion of developmental steps and certification.
1952.203 Compliance staffing benchmarks.
1952.204 Final approval determination.
1952.205 Level of Federal enforcement.
1952.206 Where the plan may be inspected.

8. New §§ 1952.203 and 1952.204 are added to read as follows:

§ 1952.203 Compliance Staffing Benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Minnesota, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 31 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on July 30, 1985.

§ 1952.204 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 in response to a Court Order in *AFL–CIO* v. *Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Minnesota State plan for a period of at least one year following certification of completion of developmental steps (41 FR 42659). Based on the 18(e) Evaluation Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Minnesota'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 Minnesota plan was granted final approval, and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective July 30, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Minnesota except for private sector offshore maritime employment and employment at the Twin Cities Army Ammunition Plant.

(c) Minnesota 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.

9. Newly designated §§ 1952.205 and 1952.206 are revised to read as follows:

§ 1952.205 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Minnesota plan under section 18(e) of the Act, effective July 30, 1985, 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 Minnesota plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Minnesota 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 offshore maritime activities and will continue to enforce offshore all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments. Federal jurisdiction is also retained at the Twin Cities Army Ammunition Plant, and with respect to Federal government employers and employees.

In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the plan which has received final approval and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest or administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal OSHA and 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 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 Minnesota 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 determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.206 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, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 230 S. Dearborn, 32nd Floor, Chicago, Illinois 60604; and the Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

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POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for Issue 19 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations, 39 CFR 111.1.

Most of the revisions are minor, editorial or clarifying. Substantive changes, such as the revised regulations on merchandise return service and the payment of the annual fee by bulk third-class mailers, have previously been published in the **Federal Register**.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 245-4638.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1) has been amended by the publication of a transmittal letter for issue 19, dated June 7, 1985. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 19 covers the minor changes not previously described in interim or final rules published in the **Federal Register**.

Note.—Issue 19 contains all DMM revisions published between February 28, 1985, and June 6, 1985 (Postal Bulletins 21503 through 21517).

Summary of Changes

Major Revisions

* * * * *

Other Revisions

1. Exhibit 122.63e is revised to reflect changes in the Optional Area Distribution Center (ADC) labeling list (PB 21516, 5-30-85).

2. Section 123.44b is revised to make mail of foreign origin containing matter determined by a court of competent jurisdiction or by the International Trade Commission to violate a mask work owner's exclusive statutory right is nonmailable matter (PB 21505, 3-14-85).

3. Exhibit 125.2 is revised to update the conditions applicable to mail addressed to military post offices overseas (PB 21506, 3-21-85).

4. Section 137.252 is revised to update agency names, sampling numbers and permit imprint numbers (PB 21514, 5-16-85).

5. Sections 153, 159, 224 and 291 are revised to (1) establish policy on redelivery of Express Mail Next Day Service items undeliverable on the first attempt; and (2) clarify procedures on holding Express Mail; and (3) emphasize the necessity of providing directory service for Express Mail (PB 21503, 2-28-85).

6. Section 159.225 is revised to reflect changes in the forwarding of second-class publications for servicemen. The Department of Defense now pays for the fowarding of second-class publications for a period not to exceed sixty days when a serviceman moves due to permanent change of station orders (PB 21511, 4-25-85).

7. Section 159.334b is amended to enhance Postal Service response to customer inquiries regarding the delivery of Express Mail (PB 21510, 4-18-85).

8. Sections 159.42, 159.43, 159.45, 159.52 through 159.54 are revised to: (1) establish $5 or more as the cutoff for filing of dead letters; (2) eliminate the registry fee for reforwarding of registered dead letters; and (3) provide for the deduction of the money order fee from cash amounts of $10 or more returned by money orders and miscellaneous editorial changes (PB 21514, 5-16-85).

9. * * *

10. Section 369.3 is revised to reflect the correct optional endorsement lines and formats that First-Class Presort mailers may use (PB 21510, 4-18-85).

11. Sections 452.41, 661.331 and 664.23 are amended to permit mailers of detached labels used with second- and third-class mail to include on the face of the labels pictures and information on missing children provided by the National Center for Missing and Exploited Children (PB 21514, 5-16-85).

12. Sections 467.222, 667.622 and 767.521 are revised to reduce the minimum weight requirements of packages prepared for palletized mailings (PB 21516, 5-30-85).

13. Section 622.12a is amended to include a provision that 50 pieces or 10 pounds of mail for a 5-digit destination will qualify for the bulk third-class, 5-digit presort level rate when prepared in packages and bundles presented on pallets in accordance with section 667.6 (PB 21509, 4-11-85).

14. * * *

15. Section 767.411 is revised to require the owner or the mailing agent to submit the application to the Regional Postmaster General of the region when the mailing is to be made. Section 767.423 is revised to require mailers to use a nonstandard facing slip to label bedloaded carrier route and carrier route bundles (PB 21505, 3-14-85).

16. Section 917.343 is revised to reflect the current rates for Business Reply Mail returned through a postage due account or through a business reply account (PB 21508, 4-4-85).

17. Section 917.352 is amended to clarify refund procedures for business reply mail bearing stamps (PB 21507, 3-28-85).

18. Minor editorial and typographical changes have been made in 132, Exhibit 137.275d(1), Exhibit 137.275d(2), 143.421b, 143.422b, 144.13, 146.122, 148.2, 149.251e(4), 159.42, 367.221, 367.313b(5), 421.3, 422.3, 423.132b(1), 423.14b, 425.3c, 482.1, 667.3b(5), 667.92, Exhibit 667b, Exhibit 722.1, 724.1a, 767.811, 767.812, 767.82, 767.822, 911.521b(3), 932.1, 932.32, 932.34, 933.1, 933.42, 942.241, 944.3, Exhibit 945.32g.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621, 42 U.S.C. 1973cc-13, 1973cc-14.

2. In consideration of the foregoing 39 CFR 111.3 is amended by adding at the end thereof the following: