Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T-015A]

North Carolina State Plan: Proposed Revision to State Staffing Benchmarks; Request for Comments

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA). ACTION: Proposed revision to State compliance staffing benchmarks; request for written comments.

SUMMARY: This document gives notice of the proposed revision of compliance staffing benchmarks (i.e., the number of compliance personnel necessary to assure a "fully effective" enforcement effort) applicable to the North Carolina State plan. North Carolina's benchmarks of 83 safety inspectors and 119 industrial hygienists were originally established in April 1980 in response to the U.S. Court of Appeals decision in AFL-CIO v. Marshall, 570 F. 2d 1030 (D.C. Cir. 1978), and revised on January 17, 1986 (51 FR 2481) to 50 safety inspectors and 27 industrial hygienists. The North Carolina State plan has reconsidered the information utilized in its initial revision of the State's 1980 benchmarks and determined that changes in local conditions and improved inspection data warrant further revision of its benchmarks to 64 safety inspectors and 50 industrial hygienists. OSHA is soliciting written public comments to afford interested persons an opportunity to present their views regarding whether or not the proposed revised benchmarks for North Carolina will provide the State with sufficient compliance personnel necessary to assure a "fully effective" enforcement effort and, consequently, should be approved.

DATES: Written comments must be received by April 11, 1995.

ADDRESSES: Written comments should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–015A, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. FOR FURTHER INFORMATION CONTACT: Richard Liblong, Director, Office of Information and Consumer Affairs, Occupational Safety and Health

Administration, U.Š. Department of Labor, Room N–3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 ("the Act," 29 U.S.C. 651 *et seq.*) provides that States which desire to assume responsibility for developing and enforcing occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) and among these criteria is the requirement that the State's plan provide satisfactory assurances that the State agency or agencies responsible for implementing the plan have "* * the qualified personnel necessary for the enforcement of * * * standards," 29 U.S.C. 667(c)(4). A 1978 decision of the U.S. Court of

Appeals and the ensuing implementing order issued by the U.S. District Court for the District of Columbia (AFL-CIO v. Marshall, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel (safety inspectors and industrial hygienists) necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) was directed to establish "fully effective" compliance staffing levels, or benchmarks, for each State plan.

In 1980 OSHA submitted a Report to the Court containing these benchmarks and requiring North Carolina to allocate 83 safety and 119 health compliance personnel to conduct inspections under the plan. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under section 18(e) of the Act.

Both the 1978 Court Order and the 1980 Report to the Court explicitly

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contemplates subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983, OSHA and the State plan representatives initiated a comprehensive review of the 1980 benchmark and developed a formula that each State could use to revise its benchmarks when circumstances warranted such revision. (A complete discussion of both the 1980 benchmarks and the benchmark revision process is set forth in the January 16. 1985 Federal Register (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

The State of North Carolina participated in this benchmark revision process and, in September 1984, requested that the Assistant Secretary approve revised compliance staffing levels of 50 safety and 27 health compliance officers for a "fully effective" program responsive to the occupational safety and health needs and circumstances in the State. These revised benchmarks were approved by the Assistant Secretary on January 17, 1986 (51 FR 2481). In March 1989 the North Carolina House Appropriations Committee of the North Carolina General Assembly passed a resolution instructing the Commissioner of Labor to renegotiate the appropriate number of occupational safety and health compliance officers with OSHA. In June 1990 the State of North Carolina requested that the Assistant Secretary approve revisions to its 1984 compliance staffing benchmark levels which the State found to be more reflective of current occupational safety and health needs and circumstances within the State.

In September 1991, a catastrophic fire occurred at a poultry processing plant in North Carolina, resulting in the reinstitution of limited Federal concurrent jurisdiction and a special Federal evaluation of the State's occupational safety and health operations. The revision of North Carolina's benchmarks was suspended during this time. Significant legislative and budgetary changes were made in the North Carolina State program and, for Fiscal Year 1995, the State authorized compliance staffing of 64 safety and 51 health inspectors. The North Carolina Department of Labor has requested that the Assistant Secretary