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 contemplate subsequent revisions to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA, together with State plan representatives, initiated a comprehensive review and revision of the 1980 benchmarks. The State of Michigan participated in this benchmark revision process, which resulted in a methodology whereby a State could submit data that would justify revision of its 1980 benchmarks. In 1992, Michigan proposed to the Assistant Secretary revised compliance staffing levels for a "fully effective" program responsive to the occupational safety and health needs of the State. (A complete discussion of both the 1980 benchmarks and the present revision system process is set forth in the January 16, 1985 Federal Register (50 FR 2491) regarding the Wyoming occupational safety and health plan.)

## **Proposed Revision of Benchmarks**

In 1980, OSHA submitted a report to the Court containing the benchmarks and requiring Michigan to allocate 141 safety compliance officers and 225 industrial hygienists. Pursuant to the initiative begun in August 1983 by the State plan designees as a group, and in accord with the formula and general principles established by that group for individual State revision of benchmarks, Michigan reassessed the compliance staffing necessary for a "fully effective" occupational safety and health program in the State.

In 1992, the Michigan Department of Labor (the designated agency or "designee" for safety enforcement in the State) and the Michigan Department of Public Health (the designated agency or "designee" for health enforcement in the State) completed, in conjunction with OSHA, a review of the compliance staffing benchmarks approved for Michigan in 1980. This reassessment resulted in a proposal to OSHA of revised compliance staffing benchmarks of 56 safety and 45 health compliance officers for the State of Michigan.

### **History of the Present Proceedings**

On March 29, 1994, the Occupational Safety and Health Administration published notice in the **Federal Register** of its proposal to approve revised compliance staffing benchmarks for Michigan (59 FR 14586). A detailed description of the methodology and State-specific information used to

develop the revised compliance staffing levels for Michigan was included in the notice. In addition, OSHA submitted, as a part of the record, detailed submissions containing both narrative explanation and supporting data for Michigan's proposed revised benchmarks (Docket No. T–026). An informational record was established in a separate docket (Docket No. T–018) and contains background information relevant to the benchmark issue and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process, a copy of Michigan's complete record was maintained in the OSHA Docket Office in Washington, DC. Copies of Michigan's record were also maintained in the OSHA Region V Office in Chicago, Illinois, and in the offices of the Michigan Department of Labor and the Michigan Department of Public Health in Lansing, Michigan.

The March 29 proposal invited interested parties to submit, by May 3, 1994, written comments and views regarding whether Michigan's proposed revised compliance staffing benchmark levels should be approved. One comment was received regarding Michigan's proposed benchmarks.

# **Summary and Evaluation of Comments Received**

In response to the March 29 **Federal Register** notice for Michigan, OSHA received one comment from Paul M. Schubert of Akron, Ohio (Exhibit 4–1). Douglas J. Kalinowski, Chief of the Michigan Division of Occupational Health, responded to the public comment (Exhibit 4–2).

Mr. Schubert commented that he had been a health compliance officer with the Michigan Department of Public Health from 1975 through 1981, and that it was his opinion, based on his experience as a compliance officer, that the complexity of many of the health compliance inspections would require more than the State's historical average of 27.8 hours per health compliance inspection. Mr. Schubert also noted that during one of his years as a compliance officer his inspections had averaged 210 hours per inspection.

In his response, Mr. Kalinowski noted that the annual number of hours available for compliance activity per Michigan health compliance officer is 1,462 hours. If each health inspection required an average of 210 hours, fewer than seven inspections would be conducted per compliance officer. According to Mr. Kalinowski, 31.5 health inspectors conducted a total of 1,766 health inspections in 1980, with an average of 56 inspections per health

inspector and an average of 26 hours per inspection. In its 1992 submission proposing revised compliance staffing benchmarks, Michigan utilized actual inspection activity data for Fiscal Years 1990 and 1991 to determine that the average health inspection required approximately 27.8 hours. Michigan's data was comparable to the national average number of hours per health inspection for all 18(b) State plans of 24 in Fiscal Year 1990 and 25 in Fiscal Year 1991. It is OSHA's determination that the State's use of the average of 27.8 hours per health inspection is reasonable and acceptable.

#### Decision

OSHA has carefully reviewed the record developed during the above described proceedings. In light of all the facts presented on the record, including all comments received thereon, the Assistant Secretary has determined that the revised compliance staffing levels proposed for Michigan meet the requirements of the 1978 Court Order in AFL-CIO v. Marshall in providing the number of safety and health compliance officers for a "fully effective" enforcement program. Therefore, the revised compliance staffing levels of 56 safety and 45 health for Michigan are approved.

### **Effect of Decision**

The approval of the revised staffing levels for Michigan, set forth elsewhere in this notice, establishes the requirement for a sufficient number of adequately trained and qualified compliance personnel as set forth in Section 18(c) of the Act and 29 CFR 1902.37(b)(1). These benchmarks are established pursuant to the 1978 Court Order in AFL-CIO v. Marshall and define the compliance staffing levels necessary for a "fully effective" program in Michigan. The allocation of sufficient staffing to meet the benchmarks is one of the conditions necessary for States to receive an 18(e) determination (final State plan approval) with its resultant relinquishment of concurrent Federal enforcement jurisdiction.

# Explanation of Changes to 29 CFR Part 1952

29 CFR 1952 contains, for each State having an approved occupational safety and health plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. This notice makes several changes to Subpart T to reflect the approval of Michigan's revised compliance staffing benchmarks, as well as to reflect minor editorial modifications to the structure of the Subpart.