

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1952**

[Docket No. T-027A]

RIN 1218-AC13

**Oregon State Plan; Final Approval Determination**

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

**ACTION:** Final state plan approval.

**SUMMARY:** This document amends OSHA's regulations to reflect the Assistant Secretary's decision to grant final approval to the Oregon State Plan. As a result of this affirmative determination under Section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA's standards and enforcement authority no longer apply and Federal concurrent jurisdiction is relinquished with respect to occupational safety and health issues covered by the Oregon plan (with the exception of temporary labor camps). Federal enforcement jurisdiction is retained over private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

**EFFECTIVE DATE:** May 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** For general information and press inquiries, contact Kevin Ropp, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, Room N-3700, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2244. An electronic copy of this **Federal Register** notice is available on OSHA's Web site at <http://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:****Introduction**

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (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 1902.4 if it includes satisfactory assurances by the state that it will take the necessary "developmental steps" to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "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 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 applicable to those issues covered by the state plan if 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 1902.37 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 enforcement jurisdiction in the state with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for Section 18(e) determinations are found at 29 CFR part 1902, subpart D. In general, in order to be granted final approval, actual performance by the state must be "at least as effective" overall as the Federal OSHA program in all areas covered under the state plan.

An additional requirement for final approval consideration is that a state must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists 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 in *AFL-CIO v. Marshall*, C.A. No.74-406, 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.

Another requirement for final approval consideration is that a state must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data necessary to continually evaluate whether the state's performance meets the statutory and regulatory criteria for final and continuing approval.

**History of the Oregon Plan and of Its Compliance Staffing Benchmarks**

A history of the Oregon State Plan, a description of its provisions, and a discussion of the compliance staffing benchmarks established for Oregon are contained in the December 16, 2004 **Federal Register** notice (69 FR 75436) proposing that final approval under section 18(e) of the Act be granted. The Oregon State Plan was submitted on June 6, 1972, and initially approved on December 22, 1972 (37 FR 28628, Dec. 28, 1972). Concurrent Federal enforcement jurisdiction was suspended on January 23, 1975 (40 FR 18427, April 28, 1975). The Oregon State Plan was certified as having completed all developmental steps on September 15, 1982 (47 FR 42105, Sept. 24, 1982), and revised compliance staffing benchmarks for Oregon were approved on August 11, 1994 (59 FR 42493, Aug. 18, 1994).

**History of the Present Proceedings**

Procedures for final approval of State plans are set forth at 29 CFR part 1902, subpart D. On December 16, 2004, OSHA published notice (69 FR 75436) that the Oregon State Plan was eligible

for a determination as to whether final approval of the plan should be granted under Section 18(e) of the Act. The determination of eligibility was based on the monitoring of state operations for at least one year following certification, state participation in the Federal-state Integrated Management Information System, and staffing in accordance with the revised state compliance staffing benchmarks.

The December 16, 2004, **Federal Register** notice set forth a general description of the Oregon State Plan and summarized the results of Federal OSHA's monitoring of state operations during the period from October 1, 2002 through September 30, 2003. In addition to the information set forth in the notice itself, OSHA made available as part of the record extensive and detailed exhibits documenting the plan, including copies of the state legislation, administrative regulations, and procedural manuals under which Oregon operates its plan.

The most recent comprehensive evaluation report covering the period of October 1, 2002, through September 30, 2003, which was extensively summarized in the December 16, 2004, proposal and provided the principal factual basis for the proposed 18(e) determination, was included in the docket.

To assist and encourage public participation in the 18(e) determination, copies of all docket materials were available electronically at <http://dockets.osha.gov>, and were maintained in the OSHA Docket Office in Washington, DC, in the OSHA Regional Office in Seattle, and at the Oregon Occupational Safety and Health Division in Salem, Oregon. A summary of the December 16, 2004, notice, with an invitation for public comments, was published in Oregon on December 17, 2004, in *The Oregonian*.

The December 16, 2004, notice invited interested persons to submit, by January 18, 2005, written comments and views regarding the Oregon plan and whether final approval should be granted. An opportunity to request an informal public hearing also was provided. Seven comments were received in response to this proposal; none requested an informal hearing.

#### Summary and Evaluation of Comments

OSHA has encouraged interested members of the public to provide information and views regarding operations under the Oregon plan to supplement the information already gathered during OSHA's monitoring and evaluation of plan administration.

In response to the December 16, 2004, proposal, OSHA received comments from: John Kirkpatrick, Business Representative, International Union of Painters and Allied Trades, AFL-CIO [Ex. 5-1]; Jim Geisinger, Executive Vice President, Associated Oregon Loggers, Inc. [Ex. 5-2]; Brian Clarke, Corporate Safety Director, Hoffman Construction Companies [Ex.5-3]; Daniel J. Sabatino, Loss Control Consultant, Safety & Risk Management Consulting [Ex. 5-4]; Steven F. Ramsey, Loss Control Manager, Safeway, Inc.—Portland Division [Ex. 6-1]; Lynda Enos, Ergonomics Consultant, Human Fit [Ex. 6-2]; and Patrick M. Bridges, Oregon Home Builders Association [Ex. 6-3]. All seven comments expressed unqualified support for final approval. All of these comments indicated that Oregon has established and operates a safety and health program that effectively protects employees.

Specifically, the commenters commended the Oregon State Plan for, among other things: (1) Making significant progress in reducing work-related injuries; (2) having proactive and competent leadership; (3) maintaining a compliance, consultant and technical staff that is highly trained, very professional, accommodating, fair and technically accurate; (4) providing excellent web-based and classroom safety training (including for small businesses); (5) making extensive efforts to address ergonomics and safety issues in health care facilities; (6) developing partnerships with businesses and professional associations to provide high quality safety and health education and injury prevention activities and programs to employers, employees and safety and health professionals; (7) adopting an exemplary logging code which recognizes the unique and site-specific characteristics of the Pacific Northwest logging industry; and (8) creating innovative committees that provide grants to identify and create training programs for workplace safety and health, scholarships for dependents of workers killed or permanently disabled in workplace accidents, and funding to make workplace modifications to improve safety.

#### Findings and Conclusions

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 Oregon 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 October 1, 2002 through September 30, 2003, 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. *See also* 29 CFR 1902.3(c)(1) and 1902.4(b)(2)(i)-(ii). If the state adopts standards that are not identical to corresponding Federal standards, they must be promulgated through a procedure allowing for the consideration of all pertinent factual information and the participation of all interested persons (29 CFR 1902.4(b)(2)(iii)). Additionally, the state program must provide for prompt and effective standards setting actions when necessary to protect workers from new and unforeseen hazards, *e.g.*, via the authority to promulgate emergency temporary standards (29 CFR 1902.4(b)(2)(v)). State standards must protect employees from exposure to hazards, *e.g.*, by requiring the use of suitable protective equipment or technological controls (29 CFR 1902.4(b)(2)(vii)). Standards dealing with toxic materials or harmful physical agents must assure that each exposed employee will be protected throughout his or her working life (29 CFR 1902.4(b)(2)(i)). In addition, state standards generally must provide for furnishing employees with appropriate information regarding hazards in their workplaces, *e.g.*, through labels, postings, and medical examinations (29 CFR 1902.4(b)(2)(vi)). Where applicable to products distributed or used in interstate commerce, state standards that differ from Federal standards must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

In order to qualify for final state plan approval, a state program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)), to have timely adopted all Federal standards or standards that are at least as effective (29 CFR 1902.37(b)(3)), to have interpreted and applied its standards in a manner consistent with the Federal program (29 CFR 1902.37(b)(4)), and to have corrected any deficiencies resulting from administrative or judicial challenges to the state standards (29 CFR 1902.37(b)(5)).

Oregon's laws and regulations, previously approved by OSHA and made a part of the record in this proceeding, as written and applied, are in accord with all of the requirements

for state standards set out above and in 29 CFR part 1902. As documented in the approved Oregon State Plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the December 16, 2004, notice, the Oregon plan provides for the adoption of standards and amendments thereto which are either identical or equivalent to Federal standards. And as noted in the 18(e) Evaluation Report and summarized in the December 16, 2004 **Federal Register** notice, in actual operation Oregon has adopted standards in a timely manner which are either identical to or at least as effective as Federal standards.

Although Oregon does not automatically adopt standards which are identical to the Federal standards, it usually adopts Federal standards by reference and sometimes adds state-initiated provisions under its own regulatory numbering system. Oregon OSHA ("OR-OSHA") adopts standards through a promulgation process that provides notification to the public of its intent to adopt a standard. OR-OSHA publishes the proposed standard in the Secretary of State's Bulletin, asks for comments, and may hold hearings. After review of all comments, appropriate revisions are made and the standard is formally adopted and its effective date established. When OR-OSHA is considering substantive standard revisions, a committee of affected employers, employees, and other experts is convened to provide input and draft language before comments are requested from the public. Thus, OR-OSHA's standards development process is similar to Federal OSHA's and provides full opportunity for public input.

Some Oregon standards and related enforcement policies differ from their Federal counterparts, such as the state's enforcement policy requiring employers to pay for personal protective equipment, Oregon's additional rules for personal protective equipment and for explosives and blasting agents, and the state's different rules for air contaminants, bloodborne pathogens (needlestick devices), spray finishing, concrete and masonry construction, and fall protection in construction. Oregon has also adopted a number of standards which do not have Federal counterparts, including those relating to workplace safety committees, crane operator training, thiram, reinforced plastics manufacturing, ornamental tree and shrub services, and some forest activities (logging) requirements.

OSHA's monitoring has found that OR-OSHA has interpreted and applied

its standards in a manner comparable to the Federal program. There have been administrative and judicial challenges to the standards in Oregon, but they have all been satisfactorily resolved.

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 that the Oregon program, in actual operation, provides for standards adoption, correction (when found deficient), interpretation, and application at least as effective as the Federal program.

(2) **Variances.** A state plan is expected to have authority and procedures for granting variances comparable to the Federal program (29 CFR 1902.4(b)(2)(iv)). The Oregon State Plan contains such provisions in laws 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 (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the December 16, 2004 notice, Oregon granted three permanent variances during the 18(e) evaluation period, and all were processed in accordance with state procedures and the criteria in 29 CFR part 1902. During the Section 18(e) evaluation period, no temporary variances were granted.

Accordingly, OSHA finds that the Oregon program is able to effectively grant 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 state programs to enforce standards in a manner that is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. *See also* Section 18(c)(4) of the Act and 29 CFR 1902.3(g). 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 Oregon occupational safety and health statutes and implementing regulations, previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms at least as effective as those in the Federal Act. In order to be qualified for final approval, the state must have adhered to all approved procedures to ensure an at least as

effective compliance program (29 CFR 1902.37(b)(2)). The 18(e) Evaluation Report indicates no significant lack of adherence to such procedures.

(a) **Inspections.** 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)). *See also* 29 CFR 1902.4(c)(2)(i). Data contained in the 18(e) Evaluation Report noted that Oregon relies on injury and illness claims data from the state workers' compensation system as the primary means to identify employers for high-hazard, programmed safety and health inspections. This site-specific targeting is augmented by workers' compensation claim severity classifications, an employer's history, and other factors to arrive at a ranking on an inspection list. Separate lists are made for general industry, construction, logging, and health. Oregon's strategic plan is focused on reducing silica exposures, lead in construction exposures, and fall hazards. The state has targeted inspections in the following industries with high rates of injuries and illnesses: Agriculture, construction, lumber/wood, food/kindred products, and health care. During the period from October 2002 through September 2003, 76% of Oregon's safety inspections and 44% of health inspections were programmed. During this period, 40% of programmed safety inspections and 25% of programmed health inspections uncovered serious, willful, or repeat violations. This is less than the percentage of Federal programmed inspections with serious violations; however, state officials assert that fewer serious violations per inspection are expected in Oregon because of a higher frequency of inspections, workplace safety committee (and employer safety and health program) requirements, and a large consultation program. Therefore, OSHA has concluded that the state's inspection targeting system is satisfactory.

(b) **Employee Notice and Participation in Inspections.** State plans must provide for inspections in response to employee complaints and must provide an opportunity for employees and their representatives to point out possible violations through such means as employee participation during the inspection (29 CFR 1902.4(c)(2)(i)-(iii)).

Oregon has procedures similar to those used by Federal OSHA for processing and responding to complaints and providing for employee participation in inspections. The data indicate that during the evaluation

period the state was timely in responding to employee complaints, responding to 95% of serious safety and health complaints by inspection within the prescribed time frame of 5 working days. In addition, OR-OSHA provided complainants with timely response letters 94% of the time. During FY 2003, Oregon responded to 729 safety and health complaints.

Like Federal OSHA, the state has procedures which require that employees have an opportunity to participate in inspections, either through representation on the walkaround or through a reasonable number of employee interviews. No problems have been noted concerning employee participation in Oregon inspections.

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)). Also, the state plan must ensure that employees have access to information about their exposure to regulated agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Oregon requires that a poster approved by OSHA 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 at least as effective as Federal requirements. Information about employee exposure to regulated agents is provided through state standards which are identical to or at least as effective as the Federal. No problems have been noted regarding notice of these actions to employers and employees. Therefore, OSHA has concluded that the state's performance in this area is effective.

*(c) Nondiscrimination.* State plans are expected to protect employees against discharge or discrimination for exercising their rights under the state's program. The state program must include provisions providing for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). Section 654.062(5) of the Oregon Safe Employment Act and state regulations provide for discrimination protection equivalent to that provided by Federal OSHA. Under Oregon law, the Bureau of Labor and Industries (BOLI) has jurisdiction for discrimination cases. OR-OSHA contracts with BOLI for discrimination complaint processing. A total of 54 complaints alleging discrimination were investigated during the evaluation period, four of which

were found to be meritorious. Oregon met the 90-day time limit for completing discrimination investigations 67% of the time. The state's goal is to complete investigations within 90 days in 85% of cases. OR-OSHA is actively working with BOLI to improve case determination timeliness, to ensure that a review of the "prima facie" elements is conducted for every discrimination complaint, and to create case file documentation whenever a decision is made not to conduct an investigation. The administrator of the Civil Rights Division of BOLI has expressed BOLI's commitment to addressing OSHA's concerns. BOLI's investigations showed substantial improvement in FY 2004, when 21 of 23 cases reviewed contained "prima facie" analysis. BOLI takes appropriate action through administrative and court litigation on merit cases where the employer does not voluntarily comply with the state's proposed remedy. Therefore, OSHA concludes that Oregon's performance in this area is satisfactory.

*(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 operations manual which are at least as effective as the corresponding federal provisions. Oregon has authority to issue a red warning notice to prohibit the use of a machine, piece of equipment, or place of employment in imminent danger and other situations. Oregon responded to 59 imminent danger complaints during the evaluation period, 98% of the time within 24 hours. There were no Complaints About State Program Administration (CASPs) filed concerning the protection of trade secrets during the report period.

*(e) Right of Entry; Advance Notice.* A state program must have a right to enter and inspect all covered workplaces, and a compulsory process to enforce those rights, such that its inspection authority is equivalent to that of Federal OSHA (Section 18(c)(3) of the Act and 29 CFR 1902.3(e)). In addition, the state is expected to prohibit advance notice of inspection, allowing exceptions thereto no broader than those provided for under the Federal program (29 CFR 1902.3(f)). Section 654.067 of the Oregon Safe Employment Act provides for an inspector's right to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. The Oregon law also

prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal procedures.

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. During the evaluation period, there were 14 denials of entry. Entry was achieved in all cases, the same as for Federal OSHA during the period. During the evaluation period, no advance notice of inspections was given.

*(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 inspections, for issuing first-instance and other sanctions against employers found in violation of standards, and for promptly notifying employers of penalties (29 CFR 1902.4(c)(2)(x) and (xi)).

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)). The state must issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), propose penalties for first-instance and other violations in a manner that is at least as effective as the Federal program (29 CFR 1902.37(b)(12)), and ensure the abatement of hazards (including via the issuance of failure-to-abate notices and appropriate penalties) (29 CFR 1902.37(b)(13)).

The Oregon plan, through its law, regulations, and operations manual, has established a system, similar to the Federal program, that provides for the prompt issuance of citations delineating violations and establishing reasonable abatement periods, requires the posting of such citations for employee information, and allows for the proposal of appropriate penalties. In addition to issuing citations, the state issues "Orders to Correct." The Order to Correct carries no penalty but requires abatement and may serve as the basis for repeated and failure-to-abate violations. Its use is limited and occurs primarily when a small construction employer who has failed to establish a required safety committee agrees to implement an "innovative" safety committee. It is also used to require the correction of safety and health hazards in the rare situation when a citation cannot be issued within 180 days and when legal

estoppel issues interfere with issuing a citation. Procedures for the Oregon occupational safety and health compliance program are set out in the Oregon Field Inspection Reference Manual, which has been determined to contain policies and procedures at least as effective as those in the Federal compliance manual.

The 18(e) Evaluation Report notes overall adherence by Oregon to its inspection procedures. Oregon cited an average of 2.9 violations per inspection. 40% of safety and 25% of health violations were cited as serious, willful, or repeat. The percentages of serious safety and health violations were lower than the comparable Federal percentages, but state officials assert that fewer serious violations per inspection are expected in Oregon because of a higher frequency of inspections, workplace safety committee (and employer safety and health program) requirements, and a large consultation program. No systemic problems relating to violation classification have been found. The state continues to provide compliance officers with specific training and direction to ensure that violations are properly classified. Oregon's lapse time from the opening conference to issuance of a citation averaged 38 days for safety and 74 days for health. Though the state's health citations lapse time was greater than the national average of 63 days, it dropped to 69 days by the middle of FY 2004.

Oregon's procedures for calculating penalties are different than OSHA's. The state uses lower base penalty amounts to calculate the probability/severity-based (gravity-based) penalty, applies different calculations to combined or grouped violations, and applies different calculations for penalty adjustment factors. Although these differences result in lower average penalties in Oregon (\$365 for serious violations in FY 2003), no deficiencies in program operations attributable to these differences were noted.

Ninety-six percent (96%) of safety violations in Oregon had abatement periods of fewer than 30 days, and 97% of health violations had abatement periods of fewer than 60 days. This surpasses Federal performance.

Although an Oregon statute affords employers the right to withhold the results of voluntary safety and health self-audits conducted by private consultants, this self-audit privilege is very limited, has never been invoked by employers, and has had no negative impact on the state's ability to identify and cite violations. While OSHA and the U.S. Department of Labor believe

that a self-audit privilege is inappropriate and unnecessary, such a policy in Oregon, as limited, does not present a sufficient basis for finding the state plan deficient or for withholding final approval status. *See* 69 FR 75446 (Dec. 16, 2004).

(g) *Contested Cases.* A state plan must have procedures for employers to contest citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must have an opportunity to participate as parties in proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Oregon's contest procedures and procedures for ensuring employees' participation rights are contained in the law, regulations, and operations manual that have been made a part of the record in this proceeding. The Oregon plan provides for the review of contested cases by the Workers' Compensation Board, an independent administrative board. Decisions of the Board may be appealed to the Oregon Court of Appeals. OR-OSHA had fewer violations vacated, fewer serious violations reclassified, and smaller penalty reductions after appeal than Federal OSHA during the same period.

Whenever appropriate, the state must seek administrative and judicial review of adverse adjudications. Additionally, the state must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. *See* 29 CFR 1902.37(b)(14). There was no OR-OSHA appellate level contested case activity during the evaluation period. OR-OSHA has had a number of appellate challenges in prior years, and has been successful in upholding basic employee rights (e.g., complainant confidentiality and participation in inspections) as well as program authorities (e.g., inspection targeting and expansion of inspection scope).

(h) *Enforcement Conclusion.* In summary, OSHA finds that enforcement operations provided under the Oregon 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 with an approved plan maintain an effective and comprehensive safety and health program applicable to all employees of public agencies of the state and its political subdivisions. That program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a state's program for public employees be as effective as its program for private employees covered by the plan. The

Oregon plan provides a program in the public sector which is comparable to the private sector program, including with respect to the assessment of penalties for serious violations. In Oregon, injury and illness rates in the public sector are comparable to private sector rates.

During the 18(e) evaluation period, the state conducted 4.9% of its total inspections in the public sector, and results were comparable to the private sector. Because Oregon's performance in the public sector is comparable to that in the private sector, OSHA concludes that the Oregon program meets the criteria 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. *See also* 29 CFR 1902.3(h). 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.

The Oregon plan provides for 52 safety compliance officers and 28 industrial hygienists as set forth in the Oregon FY 2003 and FY 2004 grant applications. This staffing level exceeds the revised "fully effective" health and safety staffing benchmarks for Oregon of 47 safety compliance officers and meets the benchmark of 28 industrial hygienists approved by OSHA on August 11, 1994 (59 FR 42493, Aug. 18, 1994). At the close of the evaluation period, the state had 98% of safety and 96% of health compliance officer positions filled.

Oregon staff are trained by internally developed and conducted training sessions as well as by courses offered through the OSHA Training Institute. Development plans are created annually for each staff member to meet individual needs. In addition, the state develops a biennial training plan to provide a process through which major rule changes and shifts in technology can be addressed division-wide.

Because Oregon has allocated sufficient enforcement staff to meet the revised benchmarks, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1) and in the court order in *AFL-CIO v. Marshall* are being met by the Oregon plan.

Section 18(c)(5) of the Act requires that the state devote adequate funds to administration and enforcement of its standards. *See also* 29 CFR 1902.3(i). Oregon has consistently provided state matching funds well in excess of Federal funding. In the Fiscal Year 2005

initial grant award, the state has provided 72.6% of the total budget for its occupational safety and health program. Total initial funding for the state program in Fiscal Year 2005 is \$18,604,237. (\$5,105,000 Federal, \$13,499,237 state).

As noted in the 18(e) Evaluation Report, Oregon's funding exceeds Federal requirements in absolute terms; moreover, the state allocates its resources to the various aspects of the program in an effective manner. On this basis, OSHA finds that Oregon has provided sufficient funding and resources for the various activities carried out under the plan.

(6) Records and Reports. State plans must assure that employers 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 assurance that the designated agency will make reports to the Secretary in such form and containing such information as the Secretary may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.3(1)).

Oregon employer recordkeeping requirements are identical to those of Federal OSHA (including all recent Federal revisions) with regard to the recording and reporting of injuries, illnesses and fatalities, although they differ in other areas. The state participates in the BLS Annual Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational Injuries. Oregon OSHA has elected not to participate in the OSHA Data Initiative, but has access to workers' compensation claims rates for employer-specific injury/illness information. The state participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Oregon 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. A state plan is required to undertake programs to encourage voluntary compliance by employers and employees (29 CFR 1902.4(c)(2)(xiii)). Oregon operates an on-site consultation program funded under Section 21(d) of the Act which is separate from its OSHA-approved state plan. This program provides consultation services to private sector employers focusing on small, high hazard employers. Two safety and two health positions are allocated for Oregon under this contract. During the evaluation period, Oregon's 21(d)

consultants conducted 130 visits of which 93 were health consultations and 37 were safety consultations. These consultants played an important role in the implementation of a required employer recognition and exemption program by participating with state-funded consultants in 28 Safety and Health Achievement Recognition Program (SHARP) evaluation teams during the evaluation period.

Oregon provides additional consultative services to public and private employers with 19 safety and 13 health consultants that are 100% state-funded. (About 13% of OR-OSHA's annual consultations are conducted in the public sector.) This large state-funded consultation program does not make referrals to enforcement and does not require the posting of hazards and therefore the private sector aspect of this program is not considered part of the approved state plan. It is evaluated to assure that it does not have a negative impact on the mandated state program activities. The state believes that this program has added to the overall effectiveness of OR-OSHA and, to date, no negative impact on the Oregon State Plan has been identified.

OR-OSHA's Web site offers an extensive inventory of training opportunities: on-line registration for a large variety of workshop classes, on-line training modules for Hispanic workers and for loggers, classes jointly developed with labor and the construction industry, and on-line interactive courses. On-line compliance assistance resources include a Spanish-English Dictionary of Occupational Safety and Health Terms, technical publications in Spanish, training materials, and an ergonomics Web page. OR-OSHA also offers special assistance for small businesses, including "brown bag" safety and health program workshops and on-line resources. During FY 2003, 14,927 participants, including 6,286 from five targeted industries, attended OR-OSHA training sessions and conferences.

Oregon's employer recognition programs include Voluntary Protection Programs, with 7 certified sites, and its Safety and Health Achievement Recognition Program (SHARP), with 82 sites (and 84 additional employers working towards SHARP). OR-OSHA also has 20 partnerships, alliances and other cooperative agreements.

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

(8) Injury/Illness Rates. As a factor in its section 18(e) determination, OSHA must consider whether 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 indicate that trends in worker safety and health injury and illness rates under the state program compare favorably with those under the Federal program. See 29 CFR 1902.37(b)(15). Although Oregon's injury/illness rates are somewhat higher than the national rates, they have declined steadily during the past decade, at a rate greater than the national experience. Oregon's lost workday case incidence rate declined from 5.6 in 1988 to 3.2 in 2001, while the national rate declined from 4.0 in 1989 to 2.8 in 2001. Oregon's lost workday case rate has declined by 43% while the national rate has declined by 30%. Oregon's lost workday case rate for the private sector remained at 3.2 for 2001 and 2002, slightly higher than the national rate of 2.8 for both years. Oregon's total case rate was also slightly higher than the national rate in both 2001 (6.2 vs. 5.7 national) and 2002 (6.0 vs. 5.3 national), but in 2003 moved closer to the national rate when Oregon's rate declined 6.7% (5.6 vs. 5.0 national). (Injury-illness data for 2002 and 2003 are not directly comparable to 2001 or prior years due to a change in OSHA's recordkeeping requirements.)

In construction, Oregon's lost workday case rate dropped from 4.3 in 1999 and 2000 to 3.8 in 2001, remaining below the national rate for all three years, but was slightly higher than the national rate in 2002 (4.0 Oregon vs. 3.8 national). In manufacturing, Oregon's lost workday case rate was 4.3 in 2001, slightly higher than the 4.1 national rate, while in 2002 Oregon's rate of 4.1 was identical to the national. Oregon's lost workday case rate for public sector employment was 2.9 in 2001 and 3.1 in 2002, still comparing favorably to its 3.2 private sector rate. Oregon's number of accepted disabling workers' compensation claims has also declined steadily over the past decade, from 31,530 in 1994 to 23,482 in 2002, and the accepted disabling claims rate declined from 1.7 in 1998 to 1.5 in 2002.

OSHA finds that during the evaluation period trends in worker injury and illness in Oregon were comparable to 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, with the exception of the issue of temporary labor camps in agriculture, general industry, construction and logging, the Oregon State Plan for occupational safety and health, which has been monitored for at least one year subsequent to certification, is in actual operation 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. Accordingly, the Oregon State Plan, with the exception of temporary labor camps, is hereby granted final approval under Section 18(e) of the Act and implementing regulations at 29 CFR part 1902, effective May 12, 2005.

Under this 18(e) determination, Oregon will be expected to maintain a state program which will continue to be at least as effective as operations under the Federal program in protecting 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, Oregon must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for state compliance 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 Oregon plan terminates OSHA authority for federal enforcement of its standards in Oregon with respect to those issues covered under the state plan (with the exception of temporary labor camps in agriculture, general industry, construction and logging). 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 \* \* \* shall not apply with respect to any occupational safety and 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, with the exception of temporary labor camps, Federal authority over worksites covered by the Oregon State Plan is relinquished, as of

the effective date of this determination, with respect to the issuance of citations for violations of OSHA standards (Sections 5(a)(2) and 9); the conduct of 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); the conduct of enforcement proceedings in contested cases (Section 10); proceedings to correct imminent dangers (Section 13); and the proposal of civil penalties and the initiation of criminal proceedings for violations of the Act (Section 17). Because this 18(e) determination does not cover temporary labor camps, this action will not result in any change to present Federal enforcement authority at those sites.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. Thus, for example, the Assistant Secretary retains 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. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination remain under Federal jurisdiction. The Assistant Secretary also retains 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 with regard to occupational safety and health issues covered by the Oregon plan (except for temporary labor camps), but 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, as applicable to the safety or health of employees in private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal

agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals. These employers remain subject to Federal OSHA jurisdiction. 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 which OSHA determines are 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 evaluate 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 subsequently failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary may 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 the Assistant Secretary's 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. See 29 CFR 1902.43(a)(4).

#### 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 changes to subpart D of part 1952 to reflect the final approval of the Oregon plan.

The table of contents for part 1952, subpart D, has been revised to reflect the following changes:

A new Section 1952.104, Final approval determination, which formerly was reserved, has been added to reflect the determination granting final approval of the plan. This section contains a more accurate description of the current scope of the plan than the

one contained in the initial approval decision.

Section 1952.105, Level of Federal enforcement, has been revised to reflect the state's 18(e) status. This replaces the former description of the relationship of state and Federal enforcement under an Operational Status Agreement voluntarily suspending Federal enforcement authority, which was entered into on January 23, 1975. Section 1952.105 describes the issues over which Federal authority has been terminated, and the issues for which 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.

#### Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in Oregon 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.

#### Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), emphasizes consultation between Federal agencies and the states and establishes specific review procedures the Federal government must follow as it carries out policies which affect state or local governments. OSHA has included in the Supplementary Information section of today's final approval decision a detailed explanation of the relationship between Federal OSHA and the state plan states under the Occupational Safety and Health Act. Although it appears that the specific consultation procedures provided in section 6 of Executive Order 13132 are not mandatory for final approval decisions under the Act because they neither impose a burden upon the state nor involve preemption of any state law, OSHA has nonetheless consulted extensively with Oregon throughout the period of 18(e) evaluation. OSHA has reviewed the Oregon final approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

This document was prepared under the direction of Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the

Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; and Secretary of Labor's Order No. 5-2002 (67 FR 65008, Oct. 22, 2002).

#### List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 2nd day of May, 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary.*

■ Part 1952 of 29 CFR is hereby amended as follows:

#### PART 1952—[AMENDED]

■ 1. The authority citation of part 1952 is revised to read as follows:

**Authority:** Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

#### Subpart D—Oregon

■ 2. A new § 1952.104 is added to read as follows:

##### § 1952.104 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 1994 in response to a court order of the United States District Court for the District of Columbia in *AFL-CIO v. Marshall*, (C.A. No. 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-state Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Oregon State Plan for a period of at least one year following certification of completion of developmental steps. Based on an 18(e) Evaluation Report covering the period October 1, 2002 through September 30, 2003, and after opportunity for public comment, the Assistant Secretary determined that, in operation, Oregon's occupational safety and health program (with the exception of temporary labor camps in agriculture, general industry, construction and logging) 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, under Section 18(e) of the Act, the Oregon State Plan was granted final approval and concurrent

Federal enforcement authority was relinquished for all worksites covered by the plan (with the exception of temporary labor camps in agriculture, general industry, construction and logging), effective May 12, 2005.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Oregon. The plan does not cover private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

(c) Oregon 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.

■ 3. Section 1952.105 is revised to read as follows:

##### § 1952.105 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Oregon State Plan under Section 18(e) of the Act, effective May 12, 2005, occupational safety and health standards which have been promulgated under Section 6 of the Act (with the exception of those applicable to temporary labor camps in agriculture, general industry, construction and logging) do not apply with respect to issues covered under the Oregon 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 evaluate 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 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. The Operational Status Agreement, effective January 23, 1975, and as amended, effective December 12, 1983 and November 27, 1991, is superseded by this action, except that it will continue to apply to temporary labor camps in agriculture, general industry, construction and logging.

(b)(1) In accordance with Section 18(e), final approval relinquishes Federal OSHA authority with regard to occupational safety and health issues covered by the Oregon plan (with the exception of temporary labor camps in agriculture, general industry, construction and logging). OSHA retains full authority over issues which are not subject to state enforcement under the plan. Thus, Federal OSHA retains its authority relative to:

(i) Standards in the maritime issues covered by 29 CFR parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which have been specifically excluded from coverage under the plan. This includes: Employment on the navigable waters of the U.S.; shipyard and boatyard employment on or immediately adjacent to the navigable waters—including floating vessels, dry docks, graving docks and marine railways—from the front gate of the work site to the U.S. statutory limits; longshoring, marine terminal and marine grain terminal operations, except production or manufacturing areas and their storage facilities; construction activities emanating from or on floating vessels on the navigable waters of the U.S.; commercial diving originating from an object afloat a navigable waterway; and all other private sector places of employment on or adjacent to navigable waters whenever the activity occurs on or from the water;

(ii) Enforcement of occupational safety and health standards at all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundaries of all Indian reservations, including the Warm Springs and Umatilla reservations, and on lands outside these reservations that are held in trust by the Federal government for these tribes. (Businesses owned by Indians or Indian tribes that conduct work activities outside the

tribal reservation or trust lands are subject to the same jurisdiction as non-Indian owned businesses.);

(iii) Enforcement of occupational safety and health standards at worksites located within Federal military reservations, except private contractors working on U.S. Army Corps of Engineers dam construction projects, including reconstruction of docks or other appurtenances;

(iv) Enforcement of occupational safety and health standards with regard to all Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the state is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the state plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and state authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the state designated agency.

(c) Federal authority under provisions of the Act not listed in Section 18(e) is unaffected by final approval of the Oregon State Plan. Thus, for example, the Assistant Secretary retains 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 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 Oregon 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 suspension or revocation of the final approval determination under Section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[FR Doc. 05-9321 Filed 5-11-05; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD05-05-013]

RIN 1625-AA00

#### Safety Zones; Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard will establish 34 permanent safety zones for fireworks displays at various locations within the geographic boundary of the Fifth Coast Guard District. This action is necessary to protect the life and property of the maritime public from the hazards posed by fireworks displays. Entry into or movement within these zones during the enforcement periods is prohibited without approval of the appropriate Captain of the Port.

**DATES:** This rule is effective June 13, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-05-013 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, Room 119, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On March 31, 2005, we published a notice of proposed rulemaking (NPRM)