

§ 5.82 Issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and their supplements.

(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER), are authorized to issue notices of an opportunity for a hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto on drugs for human use, except for those drugs listed in § 314.440(b) of this chapter, that have been submitted under section 505 of the Federal Food, Drug, and Cosmetic Act and subpart B of part 314 of this chapter and to issue notices refusing approval or withdrawing approval when opportunity for hearing has been waived.

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29. Section 5.93 is amended by revising paragraphs (a) and (b) to read as follows:

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

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(a) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(b) The Director and Deputy Director, Division of Bioequivalence, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

30. Section 5.94 is amended by revising paragraphs (b)(1) through (b)(3) and by removing paragraph (b)(4) to read as follows:

§ 5.94 Extensions or stays of effective dates for compliance with certain labeling requirements for human prescription drugs.

* * * * *

(b) * * *

(1) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER).

(2) The Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

(3) The Directors and Deputy Directors of the divisions in the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

Dated: December 16, 1996.
William K. Hubbard,
*Associate Commissioner for Policy
Coordination.*
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BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Changes in Level of Federal Enforcement

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

ACTION: Final rule.

SUMMARY: This document amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies in agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities) from their State Plans. The States of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States and to notify affected employers and employees of this action. In fourteen (14) other States operating OSHA-approved State plans, enforcement of the field sanitation and temporary labor camp standards in agriculture will not transfer to ESA and will continue as a State responsibility. (These States are: Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia and Washington). In all other States under

Federal OSHA jurisdiction, ESA will now exercise responsibility for enforcement in agriculture of the OSHA field sanitation and temporary labor camp standards, except as noted.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219-8148.

SUPPLEMENTARY INFORMATION:

A. Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining Federal approval of a State plan. State plan approval occurs in stages which include initial approval under section 18(b) of the Act and, ultimately, final approval under section 18(e). Pursuant to section 18(e) OSHA previously announced in the Federal Register final state plan approval and relinquishment of concurrent Federal jurisdiction for each of the following nine States: Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming. Through amendments to their State plans, these nine States have excluded coverage of the field sanitation (29 CFR 1928.110) and temporary labor camp (29 CFR 1910.142) standards in agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities) from their State plans. As provided in Secretary of Labor's Orders 5-96 and 6-96, effective February 3, 1997, (62 FR 107-113, January 2, 1997) this authority has been subsequently transferred from the Occupational Safety and Health Administration (OSHA) to the Employment Standards Administration (ESA). Therefore, the applicable subparts of 29 CFR Part 1952 are being revised to effect this change in coverage and enforcement jurisdiction.

B. Background

Following a one year pilot project and pursuant to Secretary's Orders 5-96 and 6-96 (62 FR 107-113), an exchange of specific authorities and responsibilities has been effected between the Assistant Secretary for Occupational Safety and Health and Assistant Secretary for

Employment Standards, as of February 3, 1997. This is the result of a determination that the respective agencies' program expertise would be better utilized, and, therefore, that the Department of Labor's resources would be more effectively and efficiently utilized, by a permanent transfer of particular enforcement activities between the Assistant Secretaries for OSHA and ESA. Secretary's Order 5-96 delegates to the Assistant Secretary for ESA the Secretary's authority under sections 8, 9, and 10 of the Occupational Safety and Health Act to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the OSHA standards on:

(1) Field sanitation, 29 CFR 1928.110; and

(2) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for OSHA retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Assistant Secretary for ESA under the OSH Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for OSHA.

Similarly, the Secretary's Order 6-96 delegates to the Assistant Secretary for OSHA the authority for investigating and resolving allegations of discriminatory actions taken by employers against employees in violation of the requirements of the following environmental and public health statutes (so called "whistleblower" protection): the Safe Drinking Water Act, the Energy Reorganization Act of 1974, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Federal Water Pollution

Control Act, the Toxic Substances Control Act, the Solid Waste Disposal Act, and the Clean Air Act) which had been previously delegated to the Assistant Secretary for Employment Standards.

State Plan States

Because OSHA standards under section 6 of the Act are in effect with regard to the issues of field sanitation and temporary labor camp safety and health, the principles of preemption under section 18 of the Act continue to apply and are unaffected by the transfer of responsibility for enforcement of these standards from OSHA to ESA. States may adopt and enforce requirements relating to these occupational issues only through the vehicle of an OSHA-approved State plan.

The 23 States who had assumed responsibility for field sanitation and temporary labor camp enforcement in the private sector under their OSHA-approved State plans were given two options with regard to this Federal transfer of responsibility: (1) They could follow OSHA's example by excluding field sanitation and certain temporary labor camp enforcement in agriculture from coverage under their State plan. OSHA would then modify the "Final Approval Determination," "Level of Federal Enforcement" and the "Changes to Approved Plans" sections in 29 CFR Part 1952 for those State programs to note the exclusion. Nine States [Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming] have chosen to relinquish their authority by submitting appropriate plan change supplements; or, (2) States could choose to retain their OSHA enforcement responsibility for the two standards under their State plan. In this case, ESA would not exercise its delegated authority and would look to the State plan State to continue to enforce the State's analogues of the temporary labor camp and field sanitation standards. Fourteen States [Arizona, California, Hawaii, Maryland, Michigan, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, Tennessee, Vermont, Virginia and Washington] have chosen to retain their OSHA enforcement responsibility for these two standards. Under the terms of the Secretary's Orders, the Assistant Secretary for OSHA retains the authority to monitor the activity of State plan States with respect to field sanitation and temporary labor camps.

Thus, the delegation of OSHA enforcement authority to ESA with regard to standards on field sanitation and temporary labor camps will apply

in all States under Federal OSHA enforcement jurisdiction and in those nine (9) State plan States which choose to exclude these standards from their State Plan. OSHA (and the States) will continue to enforce other standards that are applicable to the agriculture industry, including the temporary labor camp standard as it applies to employees engaged in egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities. The whistleblower authority transferred from ESA to OSHA will be retained Federally as it is not delegable to the State plans States.

C. Decision

29 CFR Part 1953 sets forth the procedures by which the Assistant Secretary will review changes to State plans approved in accordance with section 18(c) of the Act and Part 1902. Having reviewed the nine States' plan change supplements in accordance with these procedures, OSHA is hereby amending 29 CFR Part 1952 to reflect approval of these amendments and other related changes with regard to enforcement responsibility.

D. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. As these State changes are identical to the Federal action and impose no new responsibilities or requirements on employers, employees or the State, no opportunity for further public comment is required.

E. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this action will not have a significant economic impact on a substantial number of small entities. Transfer of enforcement responsibility in these nine States will not place small employers in these States under any new or different requirements, nor will any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved State plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health. It is

issued under Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, D.C. this 9th day of January 1997.

Joseph A. Dear, Assistant Secretary.

For the reasons set out in the preamble, 29 CFR part 1952, subparts C (South Carolina), E (Utah), J (Iowa), N (Minnesota), Q (Kentucky), R (Alaska), S (Virgin Islands), Z (Indiana) and BB (Wyoming) are hereby amended as set forth below:

PART 1952—[AMENDED]

1. The authority citation of Part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

Subpart C—South Carolina

2. Section 1952.94 is amended by revising paragraph (b) to read as follows:

§ 1952.94 Final approval determination.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in South Carolina. The plan does not cover private sector maritime employment; military bases; Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas); the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that South Carolina retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

3. Section 1952.95 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.95 Level of Federal enforcement.

(b) (1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the South Carolina 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 maritime activities, and will continue to enforce 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, and employment on military bases and at Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas). Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.94(b). Federal jurisdiction is also retained with respect to Federal government employers and employees.

4. Section 1952.97 is amended by adding paragraph (c) to read as follows:

§ 1952.97 Changes to approved plan.

(c) Temporary Labor Camps/Field Sanitation. Effective February 3, 1997, the Assistant Secretary approved South Carolina's plan amendment, dated August 1, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in South Carolina pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

Subpart E—Utah

5. Section 1952.114 is amended by revising paragraph (b) to read as follows:

§ 1952.114 Final approval determination.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Utah. The plan does not cover private sector maritime employment; employment on Hill Air Force Base; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142 with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Utah retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

6. Section 1952.115 is amended by revising paragraph (b) to read as follows:

§ 1952.115 Level of Federal enforcement.

(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 Utah 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 enforcement in private sector maritime activities and will continue to enforce 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 retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor

camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.114(b). Federal jurisdiction is also retained on the Hill Air Force Base, and with respect to all 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 finally approved plan, 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 either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

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7. Section 1952.117 is amended by adding paragraph (c) to read as follows:

§1952.117 Changes to approved plans.

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(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Utah's plan amendment, dated July 31, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Utah pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

Subpart J—Iowa

8. Section 1952.164 is amended by revising paragraph (b) to read as follows:

§1952.164 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Iowa. The plan does not cover private sector maritime employment; Federal government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other

States; private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Iowa retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

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9. Section 1952.165 is amended by revising paragraph (b) to read as follows:

§1952.165 Level of Federal enforcement.

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(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 Iowa 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 maritime activities and will continue to enforce 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 government-owned, contractor-operated military/munitions facilities; bridge construction projects spanning the Mississippi and Missouri Rivers between Iowa and other States; private sector hazardous waste disposal facilities designated as Superfund sites. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.164(b). 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 finally approved plan, 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 either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

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10. Section 1952.167 is amended by adding paragraph (b) to read as follows:

§1952.167 Changes to approved plans.

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(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Iowa's plan amendment, dated August 2, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Iowa pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

Subpart N—Minnesota

11. Section 1952.204 is amended by revising paragraph (b) to read as follows:

§1952.204 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Minnesota. The plan does not cover private sector offshore maritime employment; employment at the Twin Cities Army Ammunition Plant; Federal government employers and employees; any tribal or private sector employment within any Indian reservation in the State; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in

“agricultural employment” within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Minnesota retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

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12. Section 1952.205 is amended by revising paragraph (b) to read as follows:

§1952.205 Level of Federal enforcement.

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(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 retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary’s Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.204(b). Federal jurisdiction is also retained over the Twin Cities Army Ammunition Plant, over Federal government employers and employees, and over any tribal or private sector employment within any Indian reservation in the State. 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 finally approved plan, 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 either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

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13. Section 1952.207 is amended by adding paragraph (b) to read as follows:

§1952.207 Changes to approved plans.

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(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Minnesota’s plan amendment, dated July 24, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities). The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Minnesota pursuant to Secretary of Labor’s Order 5–96, dated December 27, 1996.

Subpart Q—Kentucky

14. Section 1952.234 is amended by revising paragraph (b) to read as follows:

§1952.234 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Kentucky. The plan does not cover private sector maritime employment; employment at Tennessee Valley Authority facilities, and on all military bases as well as any other properties ceded to the U.S. Government; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in “agricultural employment” within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that

Kentucky retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

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15. Section 1952.235 is amended by revising paragraph (b) to read as follows:

§1952.235 Level of Federal enforcement.

* * * * *

(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 Kentucky 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 maritime activities and will continue to enforce 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); employment at Tennessee Valley Authority facilities and on all military bases as well as any other properties ceded to the U.S. Government. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary’s Order 5–96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in §1952.234(b). Federal jurisdiction is also retained 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 finally approved plan, 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 either of the two aforementioned circumstances, Federal enforcement may be exercised

immediately upon agreement between Federal and State OSHA.

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16. Section 1952.237 is amended by adding paragraph (c) to read as follows:

§1952.237 Changes to approved plans.

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(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997 the Assistant Secretary approved Kentucky's plan amendment, dated July 29, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Kentucky pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

Subpart R—Alaska

17. Section 1952.243 is amended by revising paragraph (b) to read as follows:

§1952.243 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Alaska. The plan does not cover private sector maritime employment; operations of private sector employers within the Metlakatla Indian Community on the Annette Islands; operations of private sector employers within Denali (Mount McKinley) National Park; worksites located on the navigable waters, including artificial islands; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Alaska retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest

processing of agricultural or horticultural commodities.

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18. Section 1952.244 is amended by revising paragraph (b) to read as follows:

§1952.244 Level of Federal enforcement.

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(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 Alaska 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 maritime activities and will continue to enforce 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 and exercised by the Employment Standards Administration, U.S. Department of Labor (Secretary's Order 5-96, December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.243(b). Federal jurisdiction will also be retained over marine-related private sector employment at worksites on the navigable waters, such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act. Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National Park, and for Federal government employers and employees.

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19. Section 1952.246 is amended by adding paragraph (c) to read as follows:

§ 1952.246 Changes to approved plans.

* * * * *

(c) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Alaska's plan amendment, dated October 1, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps

(29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Alaska pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

Subpart S—The Virgin Islands

20. Section 1952.253 is amended by revising paragraph (b) to read as follows:

§ 1952.253 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in the Virgin Islands. The plan does not cover occupational health and the issues of maritime safety and health in the private sector; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Virgin Islands retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities. *Note:* The Virgin Islands final approval status under Section 18(c) of the Act was suspended and Federal concurrent enforcement authority reinstated on November 13, 1995.

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21. Section 1952.254 is amended by revising paragraph (b) to read as follows:

§ 1952.254 Level of Federal enforcement.

* * * * *

(b) Federal OSHA also continues to retain full authority over issues which have not been subject to State enforcement under the Virgin Islands plan. Thus, OSHA retains authority to enforce all provisions of the Act, Federal standards, rules, or orders,

which relate to occupational health in private sector employment in the Virgin Islands. OSHA also retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules, or order and all Federal standards, current or future, specifically directed to maritime employment (e.g., 29 CFR Part 1915, shipyard employment; 29 CFR Part 1917, marine terminals; 29 CFR Part 1918, longshoring; 29 CFR Part 1919, gear certification), as well as provisions of general industry (29 CFR Part 1910) standards appropriate to hazards found in these employments. Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.253(b). Federal jurisdiction also remains in effect with respect to Federal government employers and employees.

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22. Section 1952.256 is amended by adding paragraph (b) to read as follows:

§ 1952.256 Changes to approved plans.

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(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved the Virgin Island's plan amendment, dated July 31, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in the Virgin Islands pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

Subpart Z—Indiana

23. Section 1952.324 is amended by revising paragraph (b) to read as follows:

§ 1952.324 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Indiana. The plan does not cover maritime

employment in the private sector; private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Indiana retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

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24. Section 1952.325 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.325 Level of Federal enforcement.

* * * * *

(b) (1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Indiana 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 maritime activities and will continue to enforce 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 retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.324(b). Federal jurisdiction is also retained at private-sector hazardous-waste disposal facilities designated as Superfund sites, and with

respect to Federal government employers and employees.

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25. Section 1952.327 is amended by adding paragraph (b) to read as follows:

§ 1952.327 Changes to approved plans.

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(b) *Temporary Labor Camps/Field Sanitation.* Effective February 3, 1997, the Assistant Secretary approved Indiana's plan amendment, dated July 9, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Indiana pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

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Subpart BB—Wyoming

26. Section 1952.344 is amended by revising paragraph (b) to read as follows:

§ 1952.344 Final approval determination.

* * * * *

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Wyoming. The plan does not cover private sector maritime employment; employment on the Warren Air Force Base employment; employment at private sector hazardous waste disposal facilities designated as Superfund sites; the enforcement of the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Wyoming retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest

processing of agricultural or horticultural commodities.

* * * * *

27. Section 1952.345 is amended by revising paragraph (b) to read as follows:

§ 1952.345 Level of Federal enforcement.

* * * * *

(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 Wyoming 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 maritime activities and will continue to enforce all provisions of the Act, Federal standards, 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 retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110; and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.344(b). Federal jurisdiction is also retained for employment at Warren Air Force Base and at private-sector hazardous-waste disposal facilities designated as Superfund sites as well as 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 finally approved plan, 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 either of the two aforementioned circumstances, Federal enforcement may be exercised immediately upon agreement between Federal and State OSHA.

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28. Section 1952.347 is amended by adding paragraph (d) to read as follows:

§ 1952.347 Changes to approved plans.

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(d) Temporary Labor Camps/Field Sanitation. Effective February 3, 1997, the Assistant Secretary approved Wyoming's plan amendment, dated July 19, 1996, relinquishing coverage for the issues of field sanitation (29 CFR 1928.110) and temporary labor camps (29 CFR 1910.142) in agriculture (except for agricultural temporary labor camps associated with egg, poultry or red meat production, or the post-harvest processing of agricultural or horticultural commodities.) The Employment Standards Administration, U.S. Department of Labor, has assumed responsibility for enforcement of these Federal OSHA standards in agriculture in Wyoming pursuant to Secretary of Labor's Order 5-96, dated December 27, 1996.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 57

[DoD Instruction 1342.12]

Provision of Early Intervention and Special Education Services to Eligible DOD Dependents in Overseas Areas

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: Prior to 1991, the Department of Defense Dependents Schools (DoDDS) was required by the "Defense Dependent's Education Act of 1978," as amended, to adhere to the provisions of the "Education of All Handicapped Children Act." With the enactment of "Individuals with Disabilities Education Act Amendments of 1991," the Department of Defense was required to modify its existing special education program for children with disabilities, ages 3 through 21, and to provide early intervention services to children birth through 2 years. This final rule assigns responsibility for the implementation of the Act to the Under Secretary of Defense for Personnel and Readiness, reflecting a reorganization of the Department of Defense; assigns responsibilities for duties previously assigned to Regional Directors to Area Superintendents, reflecting a reorganization of the DoDDS; requires DoD to provide early intervention services to children with disabilities

from birth through 2 years of age, requires DoDDS to extend special education services to students from 3 through 21 years of age rather than from 5 through 21; expands the categories of disability to include both autism and traumatic brain injury; expands special education services to include both assistive technology and transition; expands the role of the DoD Coordinating Committee to include early intervention as well as special education and related services; establishes a DoD Inter-Component Coordinating Council on Early Intervention; expands the definition section to include terminology not contained in the previous part; and transfers the administrative responsibility for conducting hearings pursuant to this rule to the Defense Office of Hearings and Appeals.

EFFECTIVE DATE: March 12, 1996.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, DOD, Office of Family Policy, 4015 Wilson Blvd, BCT #3, Arlington, VA 22203-5190, 703-696-5734.

SUPPLEMENTARY INFORMATION: On May 31, 1995 (60 FR 28362), the Department of Defense published a proposed rule. Written comments were invited and due by July 31, 1995. In response to this invitation, six individuals and organizations submitted comments. In addition, pursuant to a notice appearing in the Federal Register on July 13, 1995 (60 FR 36081), DoD conducted a public hearing concerning the proposed rule on August 4, 1995. All written comments and the transcript of the public hearing are available for public inspection in the DoD Office of Family Policy at the above address.

The Office of the Secretary of Defense has carefully considered the views of the public as reflected in the written comments and testimony at the public hearing. A description of these views and a discussion of the Department's response to them follow.

General. One commenter noted that the proposed rule did not contain a reference to 29 U.S.C. 794, Section 504 of the Rehabilitation Act of 1973, as amended. This section does not apply to persons outside of the United States. Therefore, the final rule will not include a reference to it.

The same commenter noted that reference should be made to the Architectural Barriers Act of 1968. This act is implemented in other regulatory guidance, and therefore does not require reference in this final rule.

One commenter recommended that consideration be given to consolidating the DoD Instructions that pertain to the