

subsequent Federal changes to these manuals by letters dated August 26, 1981, February 9, 1984, and June 18, 1984. On July 30, 1984, the State submitted a completely revised Field Operations Manual reflecting changes to the Federal manual through June 1, 1984. In addition, by a letter dated June 5, 1984, the State indicated its intent to utilize and adopt the March 30, 1984 Federal Industrial Hygiene Technical Manual. These supplements were approved by the Assistant Secretary on August 15, 1984.

(o) In accordance with 29 CFR 1952.373(n), Virginia met its developmental commitment of developing and implementing an occupational safety and health program applicable to employees of the State and local governments. On March 31, 1977, the State submitted rules and regulations applying Virginia occupational safety and health law and standards to State, local and municipal governments. These regulations were subsequently revised and incorporated into the State's Administrative Regulations Manual as submitted on September 13, 1983. These supplements were approved by the Assistant Secretary on August 15, 1984.

(p) In accordance with part 1953 of this chapter, Virginia submitted legislative amendments to Title 40.1 of the Labor Laws of Virginia as enacted by the Virginia General Assembly of February 6, 1979. These legislative amendments, which dealt primarily with the Commissioner's delegation authority, procedures concerning Virginia's system of judicial review of contested cases, and penalty provisions, were approved by the Assistant Secretary on August 15, 1984.

(q) In accordance with § 1902.34 of this chapter, the Virginia occupational safety and health plan was certified effective August 15, 1984 as having completed all developmental steps specified in the plan as approved on September 23, 1976 on or before September 23, 1979. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[45 FR 77003, Nov. 21, 1980, as amended at 48 FR 48823, Oct. 21, 1983; 49 FR 33122 and 33126, Aug. 21, 1984. Redesignated at 51 FR 2489, Jan. 17, 1986; 67 FR 60129, Sept. 25, 2002]

§ 1952.373 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Virginia, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 38 safety and 21 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

[51 FR 2489, Jan. 17, 1986]

§ 1952.374 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO v. Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Virginia State plan for a period of at least one year following certification of completion of developmental steps (49 FR 33123). Based on the 18(e) Evaluation Report for the period of January 1, 1987 through March 31, 1988, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Virginia's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Virginia plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective November 30, 1988.

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(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Virginia. The plan does not cover private sector maritime employment; worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government; employment at the U.S. Department of Energy's Southeastern Power Administration Kerr-Philpott System; 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.

(c) Virginia 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.

[53 FR 48258, Nov. 30, 1988, as amended at 65 FR 36630, June 9, 2000; 71 FR 36991, June 29, 2006]

§ 1952.375 Level of Federal Enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Virginia plan under section 18(e) of the Act, effective November 30, 1988, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Virginia plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct

enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(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 Virginia 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 and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, and employment at worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government. Federal jurisdiction is also retained with respect to employment at the U.S. Department of Energy's Southeastern Power Administration Kerr-Philpott System; 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 plan which has received final approval, and