

**§ 1952.375**

**29 CFR Ch. XVII (7-1-10 Edition)**

(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

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 plan. Thus, for example, the Assistant Secretary retains his 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 his 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 Virginia 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 revocation of Federal enforcement, and/or proceedings for withdrawal of plan approval.

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

**§ 1952.376 Where the plan may be inspected.**

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3700, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, The Curtis Center, 170 South Independence Mall West—Suite 740 West, Philadelphia, Pennsylvania

Office of the Commissioner, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219.

[65 FR 36630, June 9, 2000]

**§ 1952.377 Changes to approved plans.**

In accordance with part 1953 of this chapter, the following Virginia plan changes were approved by the Assistant Secretary:

(a) The State submitted legislative amendments related to the issuance and judicial review of administrative search warrants which became effective on July 1, 1987. The Assistant Secretary approved these amendments on 14 September, 1987.

(b) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Virginia's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in section 17 of the Act as amended on November 5, 1990.

[52 FR 35070, Sept. 17, 1987, as amended at 59 FR 14556, Mar. 29, 1994]

**Subpart FF—Puerto Rico**

**§ 1952.380 Description of the plan.**

(a) The plan designates the Puerto Rico Department of Labor and Human Resources as the agency responsible for the administration and enforcement of the plan throughout the Commonwealth. This includes the responsibility for administration of a public employee program for which the same enforcement provisions and procedures used for the private sector will apply,