

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. 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.

(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 In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally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 Maryland 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 the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[50 FR 29220, July 18, 1985]

§ 1952.216 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 N3476, Washington, DC 20210;

Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Gateway Building—Suite 2100, and

Office of the Commissioner, Maryland Division of Labor and Industry, Department of Licensing and Regulation, 501 St. Paul Place, Baltimore, MD 21202.

[50 FR 29220, July 18, 1985]

§ 1952.217 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Maryland'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.

(2) [Reserved]

(b) [Reserved]

[59 FR 14556, Mar. 29, 1994]

Subpart P—Tennessee

§ 1952.220 Description of the plan as initially approved.

(a) The plan identifies the Department of Labor and the Department of Health as the agencies designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. All standards, except those found in 29

CFR parts 1915, 1916, 1917, and 1918 (ship repairing, ship building, ship breaking and longshoring) will be adopted and enforced immediately upon approval of the plan by the Assistant Secretary.

(b)(1) The plan includes legislation passed by the Tennessee Legislature during its 1972 session which became effective July 1, 1972. Under the law, the Department of Labor and the Department of Public Health will have full authority to enforce and administer laws respecting safety and health of employees in all workplaces of the State with the exception of employees of the United States or employees protected under other Federal occupational safety and health laws such as the Atomic Energy Act of 1959 (42 U.S.C. 2011 *et seq.*), The Federal Coal Mine Safety Act of 1969 (30 U.S.C. 801), the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721 *et seq.*) railroad employees covered by the Federal Safety Appliances Act (45 U.S.C. 1 *et seq.*) and the Federal Railroad Safety Act (45 U.S.C. 421 *et seq.*), the Longshoremens' and Harbor Workers' Compensation Act, as amended (33 U.S.C. 901 *et seq.*), domestic workers, and any employee engaged in agriculture who is employed on a family farm. The Act further provides for the protection of employees from hazards, procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; procedures for prompt restraint or elimination of imminent danger situations.

(2) The Act also insures inspections in response to complaints; employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representative when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; adequate safeguards to protect trade secrets; provisions for prompt notice to employers and employees of alleged violations of standards and abatement requirements; a system of sanctions against employers for violations of standards; employer right of review with employee participation in review proceedings, and coverage of

employees of political subdivisions. Legislation which became effective on April 5, 1973, providing for "stop orders" for cases of imminent danger situations is also included.

(c)(1) The plan further includes proposed amendments submitted by the State which will be presented to the 1974 session of the State legislature to bring its Occupational Safety and Health Act into conformity with the requirements of 29 CFR part 1902. These amendments pertain to such areas as permanent variances, employee protection against discharge or discrimination in terms and conditions of employment, imminent danger situations, sanctions, and walkaround. A statement of the Governor's support for the proposed amendments and a statement of legal opinion that they will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of the State are included in the plan.

(2) The plan provides a comprehensive description of personnel employed under the State's merit system and assurances of sufficient resources. The plan further sets out goals and provides a timetable to bring it into full conformity with the requirements of part 1902 of this chapter.

(d) The Tennessee plan includes the following documents as of the date of approval:

(1) The plan description documents including the Tennessee Occupational Safety and Health Act, the proposed amendments to the Act and appendices in three (3) volumes;

(2) Letter from Ben O. Gibbs, Commissioner of Labor to Henry J. Baker, Project Officer, Office of State and Federal Operations, February 14, 1973, submitting additions and deletions to the plan.

(3) Letter from Edward C. Nichols, Jr., Staff Attorney for the Department of Labor, to Henry Baker, May 30, 1973, submitting a "red tag" provision which was signed into law by the Governor of Tennessee on April 5, 1973.

(4) Letter from Ben O. Gibbs, Commissioner of Labor and Eugene W. Fowinkle, Commissioner of Public Health, to Thomas C. Brown, Director, Office of Federal and State Operations,

June 15, 1973, submitting proposed amendments and clarifications to the plan.

(e) The public comments will also be available for inspection and copying with the plan documents.

[38 FR 17840, July 5, 1973, as amended at 50 FR 29669, July 22, 1985]

§ 1952.221 Developmental schedule.

The Tennessee state plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Formal adoption of Federal standards immediately upon approval of State plan. (Existing State standards were repealed by the enabling legislation). Enforcement of standards commences immediately upon promulgation.

(b) Amendments to legislation to be submitted to 1974 State legislative session.

(c) Regulations for recordkeeping and reporting will be promulgated upon plan approval.

(d) Regulations for inspections, citations, and proposed penalties will be promulgated immediately upon plan approval.

(e) Variances regulations will be promulgated within 60 days of plan approval.

(f) Manual Management data system operational July 1, 1973. Automated Management data system operational January 1, 1974.

[38 FR 17840, July 5, 1973. Redesignated at 50 FR 29669, July 22, 1985]

§ 1952.222 Completed developmental steps.

(a) In accordance with § 1952.223(b), the Tennessee Occupational Safety and Health Act of 1972 was amended by Chapter 585, Public Acts of 1974, on March 20, 1974, with an effective date of July 1, 1974 and approved by the Secretary of Labor in August 15, 1975 (40 FR 36556). Further State-initiated amendments to the Act transferring all occupational safety and health responsibility to the Commissioner of Labor were promulgated effective July 1, 1977, and approved by the Assistant Secretary on May 3, 1978.

(b) In accordance with § 1952.223(d), regulations governing inspections, ci-

tations, and proposed penalties were originally promulgated by the Commissioner of Labor on July 2, 1973 (effective July 13, 1973) and approved by the Assistant Secretary on August 15, 1975 (40 FR 36556). These regulations were subsequently codified as Tennessee Department of Labor Chapter 0800-1-4 and reapproved by the Assistant Secretary, as amended, on May 3, 1978. The Tennessee Commissioner of Public Health promulgated parallel regulations on April 3, 1974 (effective May 3, 1974) which were also approved on August 15, 1975. These Department of Public Health regulations became inoperative on July 1, 1977.

(c) In accordance with § 1952.223(e), regulations governing temporary variances were promulgated by the Commissioner of Labor on July 2, 1973 (effective July 13, 1973) and approved by the Assistant Secretary on August 15, 1975, (40 FR 36566). These regulations, which were subsequently codified as Tennessee Department of Labor Chapter 0800-1-2, were expanded to include permanent variances, and amended in response to Federal comment, and reapproved by the Assistant Secretary on May 3, 1978. The Commissioner of Public Health promulgated regulations dealing with temporary variances on April 3, 1974, (effective May 3, 1974) which were also approved by the Secretary on August 15, 1975. These Department of Public Health regulations became inoperative on July 1, 1977.

(d) In accordance with the requirements of 29 CFR 1952.10, the Tennessee occupational safety and health poster for private employers and local government employers choosing to be treated as private employers was approved by the Assistant Secretary on August 15, 1975. In addition, a Tennessee occupational safety and health poster for public employees was approved by the Assistant Secretary on May 3, 1978.

(e) In accordance with § 1952.223(a) the Tennessee occupational safety and health standards identical to Federal standards (through December 26, 1974) have been promulgated and approved, as revised, by the Assistant Regional Director on March 31, 1975 (40 FR 14383).

(f) In accordance with § 1952.223(f) Tennessee implemented a manual management information system in July

1973, and converted to an automated system in July 1975.

(g) In accordance with plan commitments, regulations governing Occupational Safety and Health Record-keeping and Reporting (Chapter 0800-1-3) were promulgated by the Tennessee Department of Labor on June 10, 1974, and subsequently amended on April 15, 1976, July 14, 1977, August 15, 1977 and February 13, 1978. These regulations, which contain requirements essentially identical to the Federal 29 CFR part 1904, were approved by the Assistant Secretary on May 3, 1978.

(h) In accordance with plan commitments, the Tennessee Occupational Safety and Health Review Commission promulgated regulations governing its operation on May 5, 1974 (Chapters 1030-1 through 1030-7). These regulations were subsequently amended in response to Federal comment on February 13, 1978, and approved by the Assistant Secretary on May 3, 1978.

(i) In accordance with plan commitments, Tennessee revised its original Compliance Operations Manual on May 19, 1975. The manual which was subsequently amended in response to Federal comment and to reflect all Federal procedures in effect as of December 1, 1976, was approved by the Assistant Secretary on May 3, 1978.

(j) In accordance with State plan commitments, a Tennessee Public Employee plan and implementing regulations (Tennessee Department of Labor Chapter 0800-1-5) have been adopted and were approved by the Assistant Secretary on May 3, 1978.

(k) In accordance with § 1902.34 of this chapter, the Tennessee occupational safety and health plan received certification, effective May 3, 1978, as having completed all developmental steps specified in its plan as approved on June 28, 1973, on or before July 1, 1976.

[40 FR 36567, Aug. 21, 1975, as amended at 42 FR 58747, Nov. 11, 1977; 43 FR 20982-20986, May 16, 1978. Redesignated at 50 FR 29669, July 22, 1985]

§ 1952.223 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" enforce-

ment program were required to be established for each State operating an approved State plan. In September 1984 Tennessee, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 22 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on July 22, 1985.

[50 FR 29669, July 22, 1985]

§ 1952.224 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 Unified Management Information System, the Assistant Secretary evaluated actual operations under the Tennessee State plan for a period of at least one year following certification of completion of developmental steps (43 FR 20980). Based on the 18(e) Evaluation Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Tennessee's occupational safety 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 Tennessee plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective July 22, 1985.

(b) The plan which has received final approval covers all activities of employers and all places of employment in Tennessee except for private sector maritime, railroad employment, employment at Tennessee Valley Authority facilities and on military bases, as

well as any other properties ceded to the United States Government.

(c) Tennessee 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.

[50 FR 29669, July 22, 1985]

§ 1952.225 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Tennessee plan under section 18(e) of the Act, effective July 22, 1985, 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 Tennessee 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 conduct evaluation of the plan under section 18(b) 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) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Tennessee 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), railroad employment, not otherwise regulated by another Federal agency, employment at Tennessee Valley Authority facilities and on military bases. 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.

(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 Tennessee 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 the final determination under section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

[50 FR 29670, July 22, 1985]

§ 1952.226 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 N3476, Washington, DC 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, NE., Suite 587, Atlanta, GA 30309; and

Office of the Commissioner, Tennessee Department of Labor, 501 Union Building, Suite "A"—2nd Floor, Nashville, TN 37219.

[50 FR 29670, July 22, 1985]

§ 1952.227 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Tennessee'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.

(2) [Reserved]

(b) *The Voluntary Protection Program.* On October 24, 1996, the Assistant Secretary approved Tennessee's plan sup-

plement, which is generally identical to the Federal Voluntary Protection Program, with the exception that the State's VPP is limited to the "Star" level participation for general industry firms.

[59 FR 14556, Mar. 29, 1994, as amended at 61 FR 55099, Oct. 24, 1996]

Subpart Q—Kentucky

SOURCE: 50 FR 24896, June 13, 1985, unless otherwise noted.

§ 1952.230 Description of the plan as initially approved.

(a) The plan designates the Department of Labor as the agency responsible for administering the Plan throughout the State. It proposes to define the occupational safety and health issue covered by it as defined by the Secretary of Labor in § 1902.2(c)(1) of this chapter. All occupational safety and health standards promulgated by the United States Secretary of Labor have been adopted under the Plan as well as a certain standard deemed to be "as effective as" the Federal standard, except those found in parts 1915, 1916, 1917 and 1918 of this chapter (ship repairing, ship building, ship breaking and longshoring). All Federal standards adopted by the State became effective on December 29, 1972.

(b) Within the plan there is enabling legislation revising chapter 338 of the Kentucky Revised Statutes which became law on March 27, 1972; as well as legislation enacted and approved in a Special Session of the Legislature in 1972 amending the enabling legislation. The law as enacted and modified gives the Department of Labor, Division of Occupational Safety and Health, the statutory authority to implement an occupational safety and health plan modeled after the Federal Act. There are provisions within it granting the Commissioner of Labor the authority to inspect workplaces and to issue citations for the abatement of violations and there is also included a prohibition