

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" enforcement 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 ap-

proved 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) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Tennessee. The plan does not cover private sector maritime employment; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; 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

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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, as amended at 65 FR 36624, June 9, 2000]

**§ 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)(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 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 and construction standards (29 CFR Parts 1910 and 1926) 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, 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 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