

§ 1952.371 Developmental schedule.

The Virginia plan is developmental. Following is a schedule of major developmental steps:

(a) Standards identical to the Federal standards will be completely adopted by January 1, 1978.

(b) A plan for delegation of authority to the State Fire Marshal for fire standards development and enforcement will be completed by December 31, 1976, with necessary legislative action and program implementation by July 1, 1978.

(c) State poster(s) informing public and private employees of their rights and responsibilities will be developed and distributed within 6 months of plan approval.

(d) A voluntary compliance program (including on-site consultation services) will be initiated within 6 months of plan approval.

(e) Both safety and health compliance programs will be fully staffed by FY 1979.

(f) Both safety and health consultation programs will be fully staffed by FY 1979.

(g) An automated Management Information System, including a court reporting system, will be developed within 6 months of plan approval.

(h) An Administrative Procedures Manual which will contain State regulations on standards promulgation, inspections, citations, proposal of penalties, review procedures, variances, etc., will be developed within 6 months of plan approval.

(i) A Compliance Manual establishing procedures to be used by safety and health inspectors and voluntary compliance personnel will be developed within 6 months of plan approval.

(j) The State is now responsible for enforcement of the State explosive code. That code will be amended within 6 months of plan approval to contain only standards identical to OSHA's standards.

(k) Job descriptions for both safety and health personnel will be reviewed and revised to accurately reflect job functions within 12 months of plan approval.

(l) The Directors of the Industry and Construction Safety Divisions in the Department of Labor and Industry will

be brought under State merit system coverage by January 1, 1977.

(m) An inspection scheduling system will be developed for the health program within 6 months of plan approval and for the safety program within 8 months of plan approval.

(n) A public employee program will be developed and implemented within 6 months of plan approval.

[41 FR 42658, Sept. 28, 1976, as amended at 42 FR 10989, Feb. 25, 1977. Redesignated at 51 FR 2489, Jan. 17, 1986]

§ 1952.372 Completion of developmental steps and certification.

(a) In accordance with 29 CFR 1952.373(b), Virginia was to develop a plan for delegation of authority to the State Fire Marshal for fire standards enforcement. The State has since announced that the authority for fire standards enforcement will rest with the Department of Labor and Industry, which has been enforcing fire standards since plan approval. This action is judged to have sufficiently fulfilled the commitments of this step.

(b) In accordance with 29 CFR 1952.373(c) and 1952.10, Virginia's safety and health posters for public and private employers were approved by the Assistant Secretary on November 13, 1980.

(c) In accordance with 29 CFR 1952.373(d), Virginia initiated a voluntary compliance program which includes on-site consultation services on March 15, 1977. (The State subsequently arranged for on-site consultation activities for the private sector to be covered by an agreement with the U.S. Department of Labor under section 7(c)(1) of the Act).

(d) In accordance with 29 CFR 1952.373(f), the State had met its developmental commitment for the staffing of its on-site consultation program in the public sector by fiscal year 1979. On-site consultation in the private sector is covered by a section 7(c)(1) agreement with the U.S. Department of Labor.

(e) In accordance with the relevant part of 29 CFR 1952.373(g), Virginia met its developmental commitment of developing and implementing an automated Management Information System on July 1, 1977.

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(f) In accordance with 29 CFR 1952.373(l), the Directors of the Industry and the Construction Safety Divisions have been placed under the State merit system as of September 1, 1976.

(g) In accordance with 29 CFR 1952.373(a), Virginia was to completely adopt standards identical to the Federal standards by January 1, 1978. State standards identical to the Federal standards of 29 CFR part 1910 (General Industry) and part 1926 (Construction) and as effective as the Federal standards for ionizing radiation exposure became effective on April 15, 1977, and were approved by the Regional Administrator in the FEDERAL REGISTER of March 17, 1978 (43 FR 11274). State standards identical to the Federal standards in 29 CFR part 1928 (Agriculture) became effective on April 1, 1978, and were approved by the Regional Administrator in the FEDERAL REGISTER of June 12, 1979 (44 FR 3375). The State's subsequent adoption of standards identical to the Federal standards for ionizing radiation exposure was approved on August 20, 1982 (47 FR 36485). The State has continued to adopt standards, amendments and corrections identical to the Federal, as noted in separate standards approval notices.

(h) In accordance with 29 CFR 1952.373(e), the State met its developmental commitment for the staffing of its compliance program by Fiscal Year 1979 with the submission of its Fiscal Year 1979 grant application on August 11, 1978, which allocated 38 safety and 18 health compliance officer positions. This supplement was approved by the Assistant Secretary on October 14, 1983.

(i) In accordance with 29 CFR 1952.373(g), Virginia met its developmental commitment for the development and implementation of a system for the reporting of court decisions resulting from the State's system for the judicial review of contested cases with the submission of a publication on May 27, 1981, which compiled final orders and decisions regarding cases contested to the Virginia General District and Circuit Courts. The State has subsequently submitted other compilations which are to be published annually. This amendment was approved by the Assistant Secretary on October 14, 1983.

(j) In accordance with 29 CFR 1952.373(j), Virginia submitted revised standards for explosives and blasting agents on March 23, 1977, which were found to be identical to the Federal standards and were approved by the Regional Administrator in the FEDERAL REGISTER of March 17, 1978 (43 FR 11274).

(k) In accordance with 29 CFR 1952.373(k), the State met its developmental commitment of reviewing and revising job descriptions for both safety and health personnel with the submission of revised job specifications on October 5, 1977. This supplement was approved by the Assistant Secretary on October 14, 1983.

(l) In accordance with 29 CFR 1952.373(m), Virginia submitted inspection scheduling systems for its health and safety programs on September 7 and November 2, 1977, and a revised health scheduling system on May 9, 1979. The State has subsequently adopted revisions identical to revisions to the Federal scheduling system for safety as well as health inspections with submissions dated December 11, 1980, October 30, 1981, and May 28, 1982. These amendments were approved by the Assistant Secretary on October 14, 1983.

(m) In accordance with 29 CFR 1952.373(h), Virginia submitted an administrative procedures manual containing State rules and regulations on standards promulgation, inspections, recordkeeping and reporting of occupational injuries and illnesses, non-discrimination, citations, proposal of penalties, review procedures, variances, etc., on March 31, 1977. The State has subsequently submitted revised versions of and clarifications to the manual by letters dated September 8, 1978, May 26, 1981, November 12, 1982, January 20, 1983, March 16, 1983 and September 13, 1983 in response to OSHA comments, and these actions are adjudged to have sufficiently fulfilled the commitments of this step. The Virginia Occupational Safety and Health Administrative Regulations Manual (which became effective on October 31, 1983 and was clarified by a letter dated June 13, 1984) was approved by the Assistant Secretary on August 15, 1984.

(n) In accordance with 29 CFR 1952.373(i), the State was to develop a compliance manual establishing procedures to be used by safety and health compliance officers and voluntary compliance personnel. A voluntary compliance and training manual was initially submitted by the State on March 31, 1977 and a completely revised version was submitted by a letter dated March 21, 1984. The State submitted a compliance manual for safety and health compliance officers on August 2, 1977. By letters dated November 20, 1978 and August 2, 1979, Virginia informed OSHA that it would adopt and implement Federal OSHA's Field Operations Manual and Industrial Hygiene Field Operations Manual. The State has adopted 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