

§ 1952.356

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 In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be federally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 Arizona 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 25571, June 20, 1985, as amended at 63 FR 53281, Oct. 5, 1998; 65 FR 36629, June 9, 2000]

§ 1952.356 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, 71 Stevenson Street, 4th Floor, San Francisco, California 94105; and

29 CFR Ch. XVII (7-1-13 Edition)

Office of the Director, Industrial Commission of Arizona, 800 W. Washington, Phoenix, Arizona 85007.

[65 FR 36629, June 9, 2000]

§ 1952.357 Changes to approved plans.

(a) *The Voluntary Protection Program.* On December 30, 1993, the Assistant Secretary approved Arizona's plan supplement, which is generally identical to the Federal Voluntary Protection Programs with the exception that the State's VPP is limited to the Star Program in general industry, excludes the Merit and Demonstration Programs and excludes the construction industry.

(b) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved Arizona'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]

[59 FR 2295, Jan. 14, 1994, as amended at 59 FR 14556, Mar. 29, 1994]

Subpart DD—New Mexico

§ 1952.360 Description of the plan as initially approved.

(a)(1) The plan identifies the New Mexico Environmental Improvement Agency, with its subordinate organization, the Occupational and Radiation Protection Division, as the State agency designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1909.2(c)(1) of this chapter. The State has adopted the Federal Field Operations Manual and all the Federal standards except those found in 29 CFR parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking, and longshoring). In addition, the Occupational and Radiation Protection Division will be enforcing State standards under the Radiation Protection Act (chapter 284, Laws of 1971, 12-9-1 through 12-9-11, New Mexico Statutes Annotated). However, since this Act provides protection to the general public, in the event of conflict between Radiation Protection Act standards and

occupational safety and health standards, employees will receive the protection provided under the more stringent regulation.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions; procedures for the development and promulgation of standards, including standards for the protection of employees against new and unforeseen hazards; and procedures for the prompt restraint of imminent danger situations.

(b)(1) The plan includes legislation enacted by the New Mexico Legislature during its 1975 legislative session amending chapter 63, Laws of 1972, 59-14-1 through 59-14-23 of the New Mexico Statutes Annotated to bring them into conformity with the requirements of part 1902 of this chapter. Under the legislation, the Environmental Improvement Agency will have full authority to enforce and administer laws respecting the safety and health of employees in all workplaces of the State.

(2) The legislation is intended, among other things, to assure inspections in response to employee complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notify employees of their protections and obligations; protect employees against discharge or discrimination in terms and conditions of employment; provide adequate safeguards to protect trade secrets; impose sanctions against employers for violations of standards and orders; insure employer right of review to an Occupational Health and Safety Review Commission and then the courts, and employee participation in the review proceedings. The plan also proposes a program of voluntary compliance by employers and employees, including a provision for on-site consultation. The State's consultation program will not detract from its enforcement program and the State's consultation program will meet the conditions set forth in the Washington Decision (38 FR 2421, January 26, 1973).

(c) The New Mexico Plan includes the following documents as of the date of approval:

(1) The plan description documents, in one volume.

(2) A copy of the enabling legislation as amended by the State legislature in its 1975 session.

(3) A letter from Aaron Bond, Director of the New Mexico Environmental Improvement Agency, to Barry J. White, Associate Assistant Secretary for Regional Programs, dated November 4, 1975, submitting information, clarification, and revisions on several issues raised during the review process, including proposals to be submitted to the New Mexico Legislature prior to the close of its 1977 legislative session.

[40 FR 57456, Dec. 10, 1975, as amended at 59 FR 42496, Aug. 18, 1994]

§ 1952.361 Developmental schedule.

The New Mexico State Plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Development of a complete and operating management information and control system by January 1, 1976.

(b) Submission of the State's occupational safety and health poster for approval by January 31, 1976.

(c) Promulgation of Rules of Procedures for administrative review by the New Mexico Occupational Health and Safety Review Commission by January 31, 1976.

(d) Enforcement program to achieve operational status by December 1, 1976.

(e) Amendments to basic legislation to become effective by July 1, 1977.

(f) Public employee program to become operational by July 1, 1977.

[40 FR 57456, Dec. 10, 1975. Redesignated at 59 FR 42496, Aug. 18, 1994]

§ 1952.362 Completion of developmental steps and certification.

(a) In accordance with the requirements of §1952.10, the New Mexico State poster was approved by the Assistant Secretary on July 2, 1976. A revised State poster reflecting legislative amendments and procedural changes was submitted on May 10, 1983, and approved by the Assistant Secretary on October 30, 1984.

(b) In accordance with the intent of 29 CFR 1952.363(e), on December 20, 1977, and June 3, 1983, New Mexico submitted procedural guidelines for its two-tier contested case procedures in lieu of

legislative amendments. The procedures establish maximum timeframes for completion of the first level, informal administrative review of contested cases, and immediate docketing of cases with the New Mexico Occupational Health and Safety Review Commission. A second 15 day contest period is provided for employer/employee appeal directly to the Review Commission. The New Mexico Occupational Health and Safety Act (section 50-9-1 *et seq.*, NMSA 1978) was amended in 1978, 1983 and 1984. These amendments deal with the imposition of penalties for serious violations by governmental entities; the private questioning of employees and employers by the Environmental Improvement Division officials at the worksite; the jurisdiction of the Environmental Improvement Division over working conditions in copper smelters; the use of interview statements as evidence in a civil or enforcement action; and the State's adoption of emergency temporary standards. These clarifications and legislative amendments were approved by the Assistant Secretary on October 30, 1984.

(c) In accordance with 29 CFR 1952.363(a), New Mexico submitted documentation on establishment of its Management Information System on August 18, 1976, and June 3, 1983. The June 3, 1983, amendment specifies New Mexico's participation in OSHA's Unified Management Information System. These supplements were approved by the Assistant Secretary on October 30, 1984.

(d) In accordance with 29 CFR 1952.363(c), New Mexico promulgated Review Commission Rules of Procedures on October 1, 1976. On January 11, 1984, New Mexico submitted revised Review Commission Rules of Procedures which parallel 29 CFR part 2200. The revised rules were approved by the Assistant Secretary on October 30, 1984.

(e) In accordance with 29 CFR 1952.363(d), New Mexico submitted documentation on December 20, 1977, showing that its enforcement program was operational effective June, 1976. The supplement was approved by the Assistant Secretary on October 30, 1984.

(f) In accordance with 29 CFR 1952.363(f), New Mexico by letter dated December 20, 1977, submitted a plan

supplement regarding its development of an occupational health and safety program for public employees in June, 1976. A revision thereto was submitted on February 28, 1980. These supplements were approved by the Assistant Secretary on October 30, 1984.

(g) New Mexico regulations for recording and reporting occupational injuries and illnesses parallel to 29 CFR part 1904 which were originally promulgated on August 8, 1975, were revised on February 19, 1979, June 1, 1981, and October 26, 1983. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(h) New Mexico regulations for inspections, citations and proposed penalties parallel to 29 CFR part 1903 originally promulgated on August 8, 1975, were revised on April 14, 1981; May 10, 1981; May 27, 1981; June 1, 1981; April 6, 1982; May 11, 1983; June 8, 1983; June 14, 1983; and April 4, 1984. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(i) New Mexico rules of practice for variances, limitations, variations, tolerances and exemptions parallel to 29 CFR part 1905 which were originally promulgated on August 8, 1975, were revised on April 14, 1981. Subsequently, on June 18, 1981, and May 11, 1983, the State submitted amendments and assurances to its Field Operations Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(j) New Mexico promulgated regulations for on-site consultation on March 7, 1979 and June 1, 1981 with an amendment dated October 17, 1983 and assurances dated April 4, 1984 and July 10, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(k) New Mexico adopted discrimination provisions parallel to 29 CFR part 1977 on March 29, 1982, with an amendment dated June 15, 1983. These supplements were approved by the Assistant Secretary on October 30, 1984.

(l) New Mexico submitted its field operations manual on May 16, 1980, with subsequent amendments dated March 4, 1983; May 11, 1983; May 23, 1983; June 8, 1983; June 16, 1983; June 17, 1983; and June 27, 1983. The manual reflects changes in the Federal program

through March 1983. On July 25, 1980, with a subsequent amendment dated July 24, 1984, the State adopted Federal OSHA's Industrial Hygiene Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(m) New Mexico on February 28, 1980, submitted a supplement containing a revised plan narrative with further revisions dated June 16, 1983; June 21, 1983; June 27, 1983, April 4, 1984, and July 24, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(n) In accordance with §1902.34 of this chapter, the New Mexico Occupational Health and Safety plan was certified effective December 4, 1984, as having completed all developmental steps specified in the plan as approved on December 4, 1975, on or before December 4, 1978. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[49 FR 44205, Nov. 5, 1984, as amended at 49 FR 48918, Dec. 17, 1984. Redesignated at 59 FR 42497, Aug. 18, 1994]

§ 1952.363 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 for each State operating an approved State plan. In May 1992, New Mexico completed, in conjunction with OSHA, a reassessment of the staffing levels initially established in 1980 and proposed revised benchmarks of 7 safety and 3 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

[59 FR 42497, Aug. 18, 1994]

§ 1952.364 [Reserved]

§ 1952.365 Level of Federal enforcement.

(a) Pursuant to §§1902.20(b)(1)(iii) and 1954.3 of this chapter, under which an operational status agreement has been entered into between OSHA and New Mexico, effective October 5, 1981, and based on a determination that New

Mexico is operational in issues covered by the New Mexico occupational health and safety plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR parts 1910, 1926 and 1928 except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c));

(2) Enforcement with respect to private sector maritime employment including 29 CFR parts 1915, 1917, 1918, 1919 (shipyard employment; marine terminals; longshoring and gear certification), and general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which issues have been specifically excluded from coverage under the State plan;

(3) Enforcement in situations where the State is refused and is unable to obtain a warrant or enforce its right of entry;

(4) Enforcement of new Federal standards until the State adopts a comparable standard;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;

(6) Enforcement in situations when the State is temporarily unable to exercise its enforcement authority fully or effectively;

(7) Enforcement of occupational safety and health standards at all Federal and private sector establishments on military facilities and bases, including but not limited to Kirkland Air Force Base, Fort Bliss Military Reservation, White Sands Missile Range Military Reservation, Holloman Air Force Base, Cannon Air Force Base, Fort Wingate Military Reservation, Fort Bayard Veterans' Hospital, Albuquerque Veterans' Hospital, Santa Fe National Cemetery;

(8) Enforcement of occupational safety and health standards, to the extent permitted by applicable law, over tribal or private sector employment within

§ 1952.366

any Indian reservation and lands under the control of a tribal government;

(9) Enforcement of occupational safety and health standards with regard to employment at the U.S. Department of Energy's Western Area Power Administration site at Elephant Butte; 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; and

(10) Investigations and inspections for the purpose of the evaluation of the New Mexico plan under sections 18(e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

(b) The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in New Mexico.

[62 FR 49911, Sept. 24, 1997, as amended at 65 FR 36629, June 9, 2000; 71 FR 36991, June 29, 2006]

§ 1952.366 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, N.W., Room N3700, Washington, D.C. 20210;

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room 602, 525 Griffin Street, Dallas, Texas 75202; and New Mexico Environment Department, Occupational Safety and Health Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

[59 FR 42497, Aug. 18, 1994]

§ 1952.367 Changes to approved plans.

(a) *Legislation.* (1) On March 29, 1994, the Assistant Secretary approved New Mexico's revised statutory penalty levels which are the same as the revised Federal penalty levels contained in

29 CFR Ch. XVII (7-1-13 Edition)

section 17 of the Act as amended on November 5, 1990.

(2) [Reserved]

(b) In accordance with part 1953 of this chapter, New Mexico's State plan amendment, dated January 3, 1997, excluding coverage of all private sector employment on Federal military facilities and bases (*see* § 1952.365), and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government, from its State plan was approved by the Acting Assistant Secretary on September 24, 1997.

[59 FR 14556, Mar. 29, 1994. Redesignated at 59 FR 42496, Aug. 18, 1994, as amended at 62 FR 49911, Sept. 24, 1997; 67 FR 60129, Sept. 25, 2002]

Subpart EE—Virginia

§ 1952.370 Description of the plan as initially approved.

(a) The Virginia Department of Labor and Industry is the agency responsible for administering the plan and the Virginia Department of Health is designated as responsible for occupational health matters. The plan defines the covered occupational safety and health issues as defined by the Secretary of Labor in 29 CFR 1902.2(c)(1) and all safety and health standards adopted by the Secretary of Labor, except those found in 29 CFR parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking and longshoring), will be enforced by the State upon approval of the plan by the Assistant Secretary. The State will retain its existing standard applicable to ionizing radiation. New Federal standards will be adopted by the Safety and Health Codes Commission within 6 months after Federal promulgation.

(b)(1) The plan includes enabling legislation passed by the Virginia legislature in February 1973, and amendments thereto enacted in 1975 and 1976. The Commissioner of the Department of Labor and Industry will have authority to enforce and administer laws regarding the safety and health of employees. Safety inspections will be conducted by the Department of Labor and Industry whereas health inspections will be conducted by the Department of Health.