



OSHA REGIONAL INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CSP 01-03-001	EFFECTIVE DATE: March 9, 2009
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SUBJECT: Level of Federal Enforcement in New Mexico

REGIONAL IDENTIFIER: Dallas Regional Office

ABSTRACT

Purpose: This Instruction provides guidance on State and Federal jurisdiction within the State of New Mexico.

References: OSHA Instruction CSP 01-00-002 (STP 2-0.22B), March 21, 2001, State Plan Policies and Procedures Manual and OSHA Regulation 29 CFR 1952.365.

Cancellations: This directive cancels Dallas Regional Instruction STP 2-0.1, July 1, 2003, Level of Federal Enforcement in New Mexico.

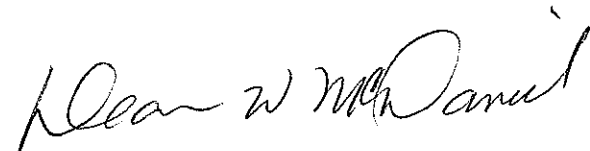
State Impact: State of New Mexico

Action Offices: Dallas Regional Office and Lubbock Area Office.

Originating Office: Dallas Regional Office.

Contact: Ann M. Fink 972-850-4182
State Plans Program Manager
525 S. Griffin St., Room 602
Dallas, TX 75202

By and Under the Authority of



Dean W. McDaniel
Regional Administrator

1. Purpose. This instruction provides updated guidance on jurisdictional boundaries between the State of New Mexico Occupational Health and Safety Bureau and Federal OSHA.
2. Scope. The instruction applies to all Federal OSHA Offices in Region VI and to the State of New Mexico Occupational Health and Safety Bureau.
3. References.
 - a. OSHA Instruction CSP 01-00-002 (STP 2-0.22B), March 21, 2001, State Plan Policies and Procedures Manual.
 - b. OSHA Regulation 29 CFR 1952.365.
4. Action. OSHA Region VI Area Directors are to ensure that these revised guidelines regarding Federal jurisdiction in New Mexico are followed. These guidelines are in effect until superseded or amended.
5. Background. On September 24, 1997, a Federal Register notice was published, which made substantive changes to the level of Federal enforcement in New Mexico. These changes to 29 CFR 1952.365, were precipitated by a challenge to New Mexico Occupational Health and Safety Bureau (OHSB) jurisdiction at a site located on property owned by the Federal government, but not deeded as an area of exclusive Federal jurisdiction. The State District Court and Court of Appeals upheld OHSB jurisdiction on the site, and clarified several related issues. Additional jurisdictional issues were addressed in the proposed change to the level of Federal enforcement transmitted to the Regional Administrator by the New Mexico OHS Bureau Chief on January 3, 1997. Federal Register notices were also published on June 9, 2000, and June 29, 2006, regarding additional jurisdiction issues, including Department of Energy (DOE) sites not subject to the Atomic Energy Act and the U.S. Postal Service.

Changes to OSHA Regulation 29 CFR 1952.365 necessitate written guidance on the level [of Federal enforcement jurisdiction within New Mexico, as well as a procedure for addressing questions on these changes.

6. Key Terms. Definitions pertinent to this directive are the following:

“LEVEL OF FEDERAL ENFORCEMENT” is 29 CFR 1926.365, in which jurisdictional boundaries for Federal OSHA and the State of New Mexico are clearly delineated.

“JURISDICTION” is the compliance inspection authority provided for in enabling legislation, regulations, and other governing documents.

“AREA OF EXCLUSIVE FEDERAL JURISDICTION” is land where the deed specifies that only Federal law applies and that State law does not.

7. General Jurisdiction Guidelines.

New Mexico OHSB retains jurisdiction for private sector and public sector (State and local government) employers and employees on all lands within the State, with the exceptions noted below.

A. The September 24, 1997, Federal Register notice on the changes to the level of Federal enforcement jurisdiction in New Mexico, is included in this directive as Attachment A. In brief, Federal OSHA will retain jurisdiction in almost all cases for employment on Federal military installations and American Indian Reservations within the State.

1. Identified Areas of Exclusive Federal Jurisdiction and Military Installations in New Mexico

All military bases and identified areas of exclusive Federal jurisdiction in New Mexico are under Federal jurisdiction with the one exception noted below. Should any State or Federal staff member encounter a situation where a claim of exclusive Federal jurisdiction is made, and the site is not listed below, coordination between OHSB Management Officials and the Regional Office Assistant Regional Administrators for Enforcement (ARA-EP) and Cooperative and State Programs (ARA-CSP) will occur prior to the commencement of any inspection/investigation activity at the site.

Albuquerque Veterans Hospital
Cannon Air Force Base
Fort Bayard Veterans Administration Facility*
Fort Bliss Military Reservation
Fort Bliss Target Range
Fort Wingate Military Reservation
Holloman Air Force Base
Kirtland Air Force Base
Santa Fe National Cemetery
White Sands Missile range Military Reservation

*The Fort Bayard Military Reservation (except for the VA facility) is under State jurisdiction.

2. American Indian Reservation Lands

All American Indian reservation lands within the State of New Mexico are under Federal jurisdiction with the following exception. Employment on highway right of way lands is under State jurisdiction.

B. The June 9, 2000, Federal Register notice which reflects declination of jurisdiction over the U.S. Postal Service and its facilities by all State Plan States, is included as Appendix B.

- C. The June 29, 2006, Federal Register notice which clarifies jurisdiction at Department of Energy (DOE) sites which are not subject to the Atomic Energy Act, is included as Appendix C. New Mexico intends to assert jurisdiction for private contractors performing work at these sites with the exception of the Western Area Power Administration Elephant Butte location, which is under Federal jurisdiction.

Department of Energy sites subject to the Atomic Energy Act, such as the Los Alamos National Laboratory, are under the exclusive jurisdiction of the Federal Department of Energy. Neither Federal OSHA nor New Mexico OHSB will assert jurisdiction at these sites.

8. Questionable Jurisdiction. Should any State or Federal staff member encounter a situation where jurisdiction is unclear, coordination between OHSB Management Officials and the Regional Office Assistant Regional Administrators for Enforcement (ARA-EP) and Cooperative and State Programs (ARA-CSP) will occur prior to the commencement of any inspection/investigation activity at the site.

Attachment A

discrimination under section 11(c) of the Act (29 U.S.C. 660(c));

(2) Standards in the maritime issues covered by 29 CFR parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which have been specifically excluded from coverage under the plan;

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

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

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

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

(7) Enforcement of occupational safety and health standards at worksites located within the Warm Springs Indian Reservation;

(8) Enforcement of occupational safety and health standards at all private sector establishments, including tribal and Indian-owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the Umatilla Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Umatilla;

(9) Enforcement of occupational safety and health standards at worksites located within Federal military reservations, except private contractors working on U.S. Army Corps of Engineers dam construction projects, including reconstruction of docks or other appurtenances; and,

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

* * * * *
3. Section 1952.107 is amended by adding paragraph (f) to read as follows:

§ 1952.107 Changes to approved plans.

* * * * *
(f) Oregon's State plan changes excluding coverage under the plan of all private sector employment (including tribal and Indian-owned enterprises) on Umatilla Indian reservation or trust lands, by letters of April 29 and July 14, 1997 (see §§ 1952.105); extending coverage under the plan to Superfund sites and private contractors working on

U.S. Army Corps of Engineers dam construction projects, as noted in a 1992 Memorandum of Understanding; and specifying four (4) unusual circumstances where Federal enforcement authority may be exercised, as described in a 1991 addendum to the State's operational status agreement, were approved by the Acting Assistant Secretary on September 24, 1997.

[FR Doc. 97-25307 Filed 9-23-97; 8:45 am]
BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

New Mexico State Plan; Approval of Plan Supplement; Change in Level of Federal Enforcement: Military Facilities and Indian Reservations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of the approval of a State-initiated plan change and resumption of Federal enforcement responsibility in the State of New Mexico over private sector employment on military facilities and bases, and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government.

OSHA is hereby amending its regulations on approved plans to reflect this change to the level of Federal enforcement authority in New Mexico.

EFFECTIVE DATE: September 24, 1997.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room, N-3637, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219-8148.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (The Act), 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards, may do so by submitting, and obtaining Federal approval of, a State plan. State plan approval occurs in stages which include initial approval under section 18(c) of the Act and, ultimately, final approval under section

18(e). In the interim, between initial approval and final approval, there is a period of concurrent Federal/State jurisdiction within a State operating an approved plan. See 29 CFR 1954.3 for guidelines and procedures.

The New Mexico Occupational Health and Safety State plan was approved under section 18(c) of the Act of 1970 and part 1902 of this chapter on December 10, 1975 (40 FR 57455), and certified by OSHA as having completed all of its developmental steps on December 4, 1984 (49 FR 48915). On December 5, 1981, OSHA and the State of New Mexico entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in all except specifically identified areas. The pertinent provisions concerning the level of Federal enforcement in the State are codified at 29 CFR 1952.365.

By letter dated January 3, 1997, from Sam A. Rogers, Bureau Chief, Occupational Health and Safety Bureau, New Mexico Environment Department, to OSHA Regional Administrator Ernzell Blanton, Jr., the State of New Mexico has requested that Federal OSHA to resume enforcement authority over private sector employment on military facilities and bases and, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government. After extensive research which identified numerous problems with regard to the exercise of New Mexico occupational health and safety enforcement authority, the State of New Mexico, for administrative convenience, will exclude coverage of all private sector employment on Federal military lands and facilities, 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, etc., from under its State plan. In addition, since all of New Mexico's Indian tribes have treaties with the Federal Government and the applicability of State laws and jurisdiction on tribal reservations and other Indian owned land have been questionable at best, New Mexico will also exclude tribal or private sector employment within any Indian reservation or lands under the control of a tribal government from coverage under its State plan.

B. Location of Supplement for Inspection and Copying

A copy of the plan supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Office of the Secretary, Environment Department, 1190 St. Francis Drive, Room 2200-North, Santa Fe, New Mexico 87503; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210. For electronic copies of this notice, contact OSHA's WebPage at <http://www.osha.gov/>.

C. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. To assure worker protection under the OSH Act, the Assistant Secretary finds that New Mexico's State-initiated plan change requesting that Federal OSHA resume enforcement authority in New Mexico over private sector employment on military facilities and bases, and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government, is consistent with Federal requirements, and with commitments contained in the plan and previously made available for public comment. Good cause is therefore found for approval of this plan supplement, and further public participation is unnecessary.

D. Decision

After careful consideration, OSHA is approving under Part 1953 of this chapter, the New Mexico State-initiated plan change concerning the level of Federal enforcement authority, as described in the 1981 New Mexico Operational Status Agreement. Concurrently, OSHA is announcing its resumption of Federal enforcement authority in New Mexico over the coverage of private sector employment on Federal military facilities and bases, and, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation or lands under the control of a tribal government. OSHA is hereby amending 29 CFR part 1952, Subpart DD, to reflect this change in the level of Federal enforcement and to revise the format.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

This document was prepared under the direction of Greg Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, DC, this 18th day of September 1997.

Greg Watchman,
Acting Assistant Secretary of Labor.

For the reasons set out in the preamble 29 CFR part 1952, Subpart DD (New Mexico) is hereby amended as set forth below:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

1. The authority citation for Part 1952 continues to read as follows:

Authority: Sec. 18, 84, Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

Subpart DD—New Mexico

2. Section 1952.365 is revised to read as follows:

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

(9) 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.

3. Section 1952.367 is amended by adding paragraph (b) to read as follows:

§ 1952.367 Changes to approved plans.

* * * * *

(b) In accordance with Subpart E of 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.

[FR Doc. 97-25306 Filed 9-23-97; 8:45 am]

BILLING CODE 4510-26-P

Kramer-Wilt, Attorney/Adviser, Office of the Chief Counsel, at 304-480-5190.

SUPPLEMENTARY INFORMATION:

I. Background

exceeding the statutory debt limit. Announcement of such changes shall be provided by such means as the Secretary deems appropriate.

(6) 343.1(3)—This paragraph has been

Attachment B

**PART 524—OPHTHALMIC AND
TOPICAL DOSAGE FORM NEW
ANIMAL DRUGS**

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1451 [Amended]

2. Section 524.1451 *Moxidectin* is amended in the first sentence of paragraph (d)(2) by removing the phrase "Beef and non-lactating dairy cattle" and by adding in its place the phrase "Beef and dairy cattle", and in paragraph (d)(3) by removing the first and second sentences.

**PART 556—TOLERANCES FOR
RESIDUES OF NEW ANIMAL DRUGS
IN FOOD**

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.426 is revised to read as follows:

§ 556.426 Moxidectin.

(a) *Acceptable daily intake (ADI)*. The ADI for total residues of moxidectin is 4 micrograms per kilogram of body weight per day.

(b) *Tolerances*. The tolerance for parent moxidectin (the marker residue) in edible tissues of cattle is 200 parts per billion (ppb) in liver (the target tissue) and 50 ppb in muscle. The tolerance for parent moxidectin is 50 ppb in milk.

Dated: May 29, 2000.

Claire M. Lathers,

*Director, Office of New Animal Drug
Evaluation, Center for Veterinary Medicine.*
[FR Doc. 00-14463 Filed 6-8-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

**Occupational Safety and Health
Administration**

29 CFR Part 1952

State Plans: Coverage of the United States Postal Service and Other Coverage Issues—Changes to Level of Federal Enforcement for Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington and Wyoming

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This document amends OSHA's regulations to reflect declination of jurisdiction over the United States Postal Service (U.S. Postal Service or USPS) and its facilities by all twenty-three (23) approved State Plans which cover the private sector. The Postal Employees' Safety Enhancement Act of 1998 (PESEA) amended the Occupational Safety and Health Act of 1970 (the Act) to include the USPS within its definition of "employer." Accordingly, OSHA assumed jurisdiction for the USPS on September 29, 1998. PESEA extends all provisions of the Act to the USPS, including section 18 of the Act, thus granting the OSHA-approved State plans the authority to regulate the USPS. Subsequently, OSHA required the State plan States to either elect to amend their State plans to cover the USPS, or to decline to exercise such coverage, in which case coverage would remain a Federal OSHA responsibility. All affected State plans declined. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect the declination of State jurisdiction and the continuation of Federal OSHA enforcement authority over the USPS, including contract employees and contractor-operated facilities engaged in USPS mail operations, in all of the twenty-three (23) States operating OSHA-approved State plans covering the private sector, and notifying affected employers and employees of this action. As a result, Federal OSHA is responsible for safety and health enforcement with respect to the USPS and its facilities in all States nationwide. In addition, technical corrections are being made pertaining to maritime jurisdiction in several of the

States; military jurisdiction in the State of Washington; coverage on Indian Reservations in the State of Oregon; and information on where the plan documents for the various State plans may be inspected.

EFFECTIVE DATE: June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW, Washington, D.C. 20210, (202) 693-1999.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667, provides that States which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining Federal approval of a State plan. State plan approval occurs in stages which include initial approval under section 18(c) of the Act and ultimately, final approval under section 18(e) of the Act. In the interim, between initial approval and final approval, there is a period of concurrent Federal/State jurisdiction within a State operating an approved plan. In the following States which have not received section 18(e) final approval, concurrent Federal enforcement authority remains in effect but has been suspended voluntarily in accordance with operational status agreements between OSHA and the individual States. See 29 CFR 1954.3 for guidelines and procedures. These States are: California, Michigan, New Mexico, Oregon, Puerto Rico, Vermont and Washington. In the following States which have received final approval pursuant to section 18(e) of the Act, Federal OSHA standards and enforcement authority have been relinquished. These States are: Alaska, Arizona, Hawaii, Indiana, Iowa, Kentucky, Maryland, Minnesota, Nevada, North Carolina, South Carolina, Tennessee, Utah, Virginia, and Wyoming. (Concurrent Federal enforcement authority is currently being exercised in the Virgin Islands. Connecticut and New York operate State plans limited in coverage to State and local government employees and are not affected by this rule.)

Background

United States Postal Service

States ordinarily cannot exercise regulatory authority over Federal agencies or other Federal institutions or

instrumentalities, unless specifically authorized by Congress. The Postal Employees' Safety Enhancement Act (Public Law 105-241) (PESEA), enacted on September 28, 1998, subjects the United States Postal Service (U.S. Postal Service or USPS) to all provisions of the Occupational Safety and Health Act (the Act) in the same manner as a private sector employer. PESEA amends two sections of the Act to provide full private-sector coverage of the USPS. The first provision amends section 3(5) of the Act, 29 U.S.C. 652(5), to exclude the USPS from the existing exemption of the United States from the definition of "employer." As a result, the USPS is now covered by OSHA in the same manner as a private sector employer. The second provision clarifies the status of the USPS under section 19 of the OSH Act, 29 U.S.C. 668(a), which deals with Federal agency safety and health programs. The new provision affirmatively states that the USPS is not to be considered a "Federal agency" for purposes of section 19. Thus, PESEA makes the USPS subject to coverage under all provisions of the federal OSHA Act which are applicable to private sector employment, including the State plan provisions of section 18 of the Act, thus granting the States with OSHA-approved State plans the authority to regulate this Federal instrumentality. (Prior to enactment, a colloquy on the floor of the House of Representatives confirmed this intent.)

Federal OSHA now regulates the working conditions of USPS employees as well as contract employees engaged in official USPS mail operations, e.g., contract mail carriers and truck drivers transporting and unloading mail. (OSHA notes that pursuant to section 4(b)(1), OSHA standards do not apply to working conditions regulated by the Department of Transportation, Office of Motor Carrier and Highway Safety.) Federal OSHA also regulates the working conditions of postal stations located in other public or commercial facilities.

In a memorandum dated October 20, 1998, OSHA offered the State plan States the opportunity to amend their State plans to extend State jurisdiction to the USPS, as authorized by PESEA, or to decline to exercise such jurisdiction, in which case coverage would remain a Federal OSHA responsibility. All 23 State plan States with private sector responsibility determined they would not assume responsibility for coverage of USPS employees and contractors engaged in USPS mail handling operations. OSHA is hereby amending pertinent sections of its regulations on approved State plans

to reflect this declination of State jurisdiction and continuation of Federal OSHA enforcement authority over this occupational safety and health issue in the twenty-three (23) States operating approved State plans. This rule modifies each State's subpart at 29 CFR 1952 to document that coverage of USPS workplaces and employees is not an issue covered by the State plan and remains a Federal OSHA responsibility. Federal coverage in State plan States encompasses USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. State plan States will continue to exercise jurisdiction, where permitted by State law, over all other private sector contractors and employees working on USPS sites but not engaged in USPS mail operations, such as building maintenance and construction workers.

Connecticut and New York operate State plans limited in coverage to State and local government employees and are not affected by this rule

Other Technical Corrections

Five (5) States (California, Washington, Oregon, Minnesota, Vermont) include some aspects of private sector maritime operations (shipyards, longshoring, marine terminals, gear certification) within the scope of their plans. All State plans provide coverage to State and local government employees engaged in maritime activities. This rule modifies pertinent sections of 29 CFR 1952 to reflect, in more uniform language, the extent of State Plan and Federal OSHA maritime jurisdiction. This rule also makes other technical corrections and updates with regard to military jurisdiction in the State of Washington and coverage on Indian Reservations in the State of Oregon. Finally, this rule updates information in each State's subpart regarding where the plan documents for that State are made available to the public.

Decision

29 CFR Part 1953 sets forth the procedures by which the Assistant Secretary will review changes to State plans approved in accordance with section 18(c) of the Act and Part 1902. Upon review of the twenty-three State plan decisions in accordance with these procedures, OSHA hereby approves these actions and amends each State's subpart in 29 CFR Part 1952 to reflect the State's determination not to extend State Plan jurisdiction to the U.S. Postal Service. Today's rule in the **Federal Register** further provides notice to affected employers and employees of

the extent of Federal OSHA enforcement authority over the U.S. Postal Service in each of the 23 State plan States which cover private sector employment.

Technical corrections with regard to the extent of State and Federal enforcement authority over safety and health issues in the maritime industry in several of the States; military jurisdiction in the State of Washington; coverage on Indian Reservations in the State of Oregon; and information on where the plan documents for the various State plans may be inspected are also approved, and the pertinent subparts of Part 1952 amended. (Note: In the interest of clarity, the full text of each of the amended sections, including unchanged provisions which reflect previously approved determinations by the affected States, is included in the following amendments to Part 1952.)

Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. As these State actions impose no new responsibilities or requirements on employers, employees or the State, no opportunity for public comment is required.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this action will not have a significant economic impact on a substantial number of small entities. No additional burden will be placed upon the State government beyond the responsibilities already assumed as part of the approved State plan.

Federalism

Executive Order 13132 on "Federalism" emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect State or local governments. OSHA has included in the Supplementary Information section of today's notice a general explanation of the relationship between Federal OSHA and the State Plan States under the Occupational Safety and Health Act and the effect of the Postal Employees' Safety Enhancement Act and other issues on this relationship. OSHA has consulted extensively with the States on their individual decisions on these issues. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order

13132 are not applicable to State decisions on the extent of State Plan coverage under the OSH Act which have no effect outside the particular State. OSHA has reviewed the decisions approved today and believes they have been made in a manner consistent with the principles and criteria set forth in the Executive Order.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1-90 (55 FR 9033).

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, D.C. this 30th day of May 2000.

Charles N. Jeffress,
Assistant Secretary.

For the reasons set out in the preamble, 29 CFR Part 1952 is hereby amended as set forth below:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read as follows:

Authority: Sec 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

Subpart C—South Carolina

2. Section 1952.94 is amended by revising paragraph (b) to read as follows:

§ 1952.94 Final approval determination.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in South Carolina. The plan does not cover private sector maritime employment; military bases; 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; private sector employment at Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas) and at the Three Rivers Solid Waste Authority; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural

employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that South Carolina retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

3. Section 1952.95 is amended by revising paragraph (b)(1) to read as follows:

§ 1952.95 Level of Federal enforcement.

(b)(1) In accordance with section 18(a), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the South Carolina 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; employment on military bases; and private sector employment at Area D of the Savannah River Site (power generation and transmission facilities operated by South Carolina Electric and Gas) and at the Three Rivers Solid Waste Authority. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.94(b). 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.

4. Section 1952.96 is revised to read as follows:

§ 1952.96 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, Atlanta Federal Center, 61 Forsyth Street, SW, Room 6T50, Atlanta, Georgia 30303; and

Office of the Director, South Carolina Department of Labor, Licensing and Regulation, Koger Office Park, Kingsree Building, 110 Centerview Drive, P.O. Box 11329, Columbia, South Carolina 29210.

Subpart D—Oregon

5. Section 1952.105 is amended by revising paragraphs (a)(2), (a)(7), (a)(8), (a)(9) and (a)(10) to read as follows:

§ 1952.105 Level of Federal enforcement.

(a) * * *

(2) Standards in the maritime issues covered by 29 CFR Parts 1915, 1917, 1918, and 1919 (shipyards, marine terminals, longshoring, and gear certification), and enforcement of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, which have been specifically excluded from coverage under the plan. This includes: employment on the navigable waters of the U.S.; shipyard and boatyard employment on or immediately adjacent to the navigable waters—including floating vessels, dry docks, graving docks and marine railways—from the front gate of the work site to the U.S. statutory limits; longshoring, marina terminal and marine grain terminal operations, except production or manufacturing areas and their storage facilities; construction activities emanating from or on floating vessels on the navigable waters of the U.S.; commercial diving originating from an object afloat a navigable waterway; and all other private sector places of employment on or adjacent to navigable waters whenever the activity occurs on or from the water;

* * * * *

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. Federal jurisdiction is retained and exercised by the Employment Standards Administration, U.S. Department of Labor, (Secretary's Order 5-96, dated December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.344(b). Federal jurisdiction is also retained for employment at Warren Air Force Base; 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.

52. Section 1952.346 is revised to read as follows:

§ 1952.346 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, 1999 Broadway Suite 1690, Denver, Colorado 80202-5716; and

Office of the Assistant Administrator, Worker's Safety and Compensation Division, Wyoming Department of Employment, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002.

Subpart CC—Arizona

53. Section 1952.354 is amended by revising paragraph (b) to read as follows:

§ 1952.354 Final approval determination.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Arizona. The plan does not cover private sector maritime employment; Federal government employers and employees; enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; copper smelters; concrete and asphalt batch plants that are physically connected to a mine or so interdependent with a mine as to form one integral enterprise; and Indian reservations.

54. Section 1952.355 is amended by revising paragraph (b) to read as follows:

§ 1952.355 Level of Federal enforcement.

(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 Arizona 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 1916, 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. Federal jurisdiction is also retained with respect to Federal government employers and employees; enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; in copper smelters; in concrete and asphalt batch plants which

are physically connected to a mine or so interdependent with the mine as to form one integral enterprise; and within Indian reservations.

(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.

55. Section 1952.356 is revised to read as follows:

§ 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

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

Subpart DD—New Mexico

56. Section 1952.365 is amended by removing "and" at the end of paragraph (a)(8), by revising paragraph (a)(9), and by adding paragraph (a)(10) to read as follows:

§ 1952.365 Level of Federal enforcement.

(a) ***
(9) Enforcement of occupational safety and health standards with regard 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; 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)).

* * * * *

contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard

Attachment C

FOR FURTHER INFORMATION CONTACT: Paul Handleman or Lauren Ross Taylor, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 199 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (TD 9262) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 9262), which was the subject of FR Doc. 06-4828, is corrected as follows:

1. On page 31075, column 1, in the preamble, under the paragraph heading "Qualified Production Activities Income," first paragraph of the column, line 3, the language "mean: (A) Tangible personal property;" is corrected to read "mean: (A) tangible personal property;".

2. On page 31075, column 1, in the preamble, under the paragraph heading "Summary of Comments", last paragraph of the column, line 16, the language "include: (1) Whether an agreement" is corrected to read "include: (1) whether an agreement".

3. On page 31075, column 3, in the preamble, under the paragraph heading "Explanation of Provisions", first paragraph of the column, line 11, the language "applies if a taxpayer that derives gross" is corrected to read "applies if a taxpayer derives gross".

4. On page 31076, column 1, in the preamble, under the paragraph heading "Effective Date", first paragraph of the column, line 4, the language "regulations expires on or before May 25," is corrected to read "regulations expires on or before May 22,".

5. On page 31077, column 2, in the signature block, the language "Mark E. Matthews," is corrected to read "Mark E. Matthews,".

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 06-10248 Filed 6-28-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Occupational Safety and Health of Contractor Employees at Certain Energy Department Sites; Jurisdiction and Enforcement Responsibilities; Clarification Regarding State Plans—Arizona, California, Iowa, Kentucky, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Utah, Virginia, Washington, and Wyoming

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This notice provides further clarification as to the jurisdiction and enforcement responsibilities of the Occupational Safety and Health Administration and 14 of its approved State Plans at various Department of Energy (DOE) sites which are not subject to the Atomic Energy Act (AEA). OSHA's regulations in 29 CFR 1952 are amended to reflect this jurisdiction, as appropriate.

DATES: Effective Date: June 29, 2006.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Kevin Rupp, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Room N-3700, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2244. An electronic copy of this *Federal Register* notice is available on OSHA's website at www.osha.gov.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Labor (DOL) and the U.S. Department of Energy (DOE) previously clarified their regulatory authority over the occupational safety and health of private-sector contractor employees at a number of DOE government-owned or leased facilities that are not subject to the Atomic Energy Act (AEA). (65 FR 41492, July 5, 2000) Some of these facilities are either government-owned and government-operated (GOGO) or government-owned and contractor-operated (GOCO).

The Atomic Energy Act provides statutory authority to DOE to regulate occupational safety and health matters relating to private sector employees at facilities subject to the AEA. Section 4(b)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. (the Act), Section 653(b)(1), precludes OSHA coverage of working conditions over which other federal agencies have exercised statutory authority to prescribe or enforce standards for occupational safety or health. A 1992 Interagency Memorandum of Understanding provides that the Occupational Safety and Health Act shall not apply to government owned-contractor operated (GOCO) sites or other facilities with private sector employees for which DOE, pursuant to the AEA, has exercised its authority to regulate occupational safety and health.

By letter of June 18, 1999, and further clarified by letter on March 31, 2000, DOE provided OSHA with a list of DOE sites that were not covered by the AEA and requested OSHA's concurrence with DOE's views that the facilities and operations in question were subject to OSHA's jurisdiction. These sites are primarily involved in fossil fuel energy research and power marketing administration. OSHA responded by letter on July 13, 1999, agreeing with DOE that OSHA has jurisdiction over the working conditions of private sector employers and employees at such facilities.

On July 5, 2000, OSHA published a notice in the *Federal Register* (65 FR 41492), listing these sites and stating that private sector employers and employees at these DOE facilities are subject to all standards, rules and requirements issued under the Occupational Safety and Health Act. The sites are:

Department of Energy (DOE) Non-Atomic Energy Act (AEA) Sites and Facilities

Western Area Power Administration
Headquarters, P.O. Box 3402, Golden, CO 80401-0098, Covers all or part of the following States: AZ*, CA*, CO, IA*, KS, MN*, MT, NE, ND, NM*, NV*, SD, TX, UT*, WY*

Southwestern Power Administration,
Headquarters, P.O. Box 1619, Tulsa, OK 74101, Covers all or part of the following States: AR, KS, LA, MO, OK, TX

Southeastern Power Administration,
Headquarters, 2 South Public Square, Elberton, GA 30635, Covers all or part of the following States: AL, FL, GA, IL, KY*, MS, NC*, SC*, VA*, WV

Bonneville Power Administration, 905 NE 11th Ave., P.O. Box 3621,

Portland, OR 97208-3621. Covers all or part of the following States: CA*, ID, MT, NV*, OR*, UT*, WA*, WY* National Energy Technology Laboratory (NETL), 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507-0880

National Energy Technology Laboratory (NETL), 626 Cochran's Mill Road, Pittsburgh, PA 15236-0940

Strategic Petroleum Reserves (SPR), Project Office, 900 Commerce Road East, New Orleans, LA 70123

National Petroleum Technology Office, Williams Center Tower 1.1 West Third St., Suite 1400, Tulsa, OK 74103

Albany Research Center, 1450 Queen Ave., SW, Albany, OR* 97321-2198

Naval Petroleum & Oil Shale Reserves in CO, UT*, & WY*, 907 N. Poplar St., Suite 150, Casper, WY 82601

Naval Petroleum Reserves in California, 28590 Highway 119, P.O. Box 11, Tupman, CA* 93276

OSHA noted that a number of the non-AEA facilities are located in states which operate OSHA-approved state plans under Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C 667 (noted with asterisk above), and which have primary authority for private sector occupational safety and health coverage in their states. However, pending a final determination, the state plan non-AEA sites were deemed "issues not covered by the state plan" and thus subject to federal enforcement jurisdiction.

Federal OSHA would exercise enforcement jurisdiction over private sector employers and employees at the non-AEA sites located in state plan states, until it was determined whether a state would exercise jurisdiction. These determinations have now been made and this document provides notice that the affected states will assume occupational safety and health regulatory responsibility for all except five of the non-AEA sites in their states.

The following State Plans intend to exercise jurisdiction over private contractors performing work at these non-AEA facilities and operations located in their states, except that federal employees and employees of private sector companies responsible for operating an entire facility under contract to DOE (contractor-operated facility) remain subject to federal OSHA jurisdiction. (Under the provisions of the Act and various interpretations by the courts, states with OSHA-approved state plans are precluded from exercising jurisdiction over federal employees or over federal instrumentalities such as government owned-contractor operated (GOCO)

facilities.) To the extent that a state should be unable to exercise jurisdiction over other private contractors at these sites, for whatever reason, OSHA will assume responsibility for coverage.

Arizona—Western Area Power Administration¹ (Phoenix, AZ, *et al*)

California—Western Area Power Administration, Bonneville Power Administration, Naval Petroleum Reserve (Tupman, CA)

Iowa—Western Area Power Administration

Kentucky—Southeastern Power Administration

Minnesota—Western Area Power Administration

Nevada—Western Area Power

Administration, Bonneville Power Administration

New Mexico—Western Area Power Administration (except Elephant Butte)

North Carolina—Southeastern Power Administration

Oregon—Bonneville Power

Administration (Portland, OR, *et al*)

South Carolina—Southeastern Power Administration

Utah—Western Area Power

Administration, Bonneville Power Administration, activities at the site of the Naval Petroleum and Oil Shale Reserve in Utah where divested by the Department of Energy

Virginia—Southeastern Power Administration (except the Kerr-Philpott System)

Washington—Bonneville Power Administration (Vancouver, WA, *et al*) (except in controlled areas of the Hanford Reservation)

Wyoming—Western Area Power Administration, Bonneville Power Administration

The following State Plans do not intend to exercise jurisdiction over private sector workers at the following non-AEA sites in their states. All employees at these DOE sites, both federal and private sector, remain subject to federal OSHA jurisdiction, so long as they remain facilities operated by the Department of Energy. If a site is divested by DOE, or otherwise transferred, private sector employees are subject to State Plan jurisdiction absent a further determination.

¹ The Power Marketing Administrations operate in multiple states, with headquarters in Lakewood, Colorado (Western Area Power Administration), Portland, Oregon (Bonneville Power Administration), and Elberton, Georgia (Southeastern Power Administration). Power authority site locations in these state plan states are noted where available; in some states, Power Marketing Administration activity may be limited to power lines traversing the state with no site locations—but there may still be employee exposure to hazards during construction and maintenance operations.

New Mexico—Western Area Power Administration site at Elephant Butte
Oregon—Albany Research Center in Albany, OR

Utah—Naval Petroleum and Oil Shale Reserve (if divested by DOE, coverage reverts to the state)

Virginia—Southeastern Power Administration's Kerr-Philpott System

Wyoming—Naval Petroleum and Oil Shale Reserve

Decision

29 CFR Part 1953 sets forth the procedures by which the Assistant Secretary will review changes to State Plans approved in accordance with Section 18(c) of the Act and Part 1902. Upon review of the 14 State Plan decisions to assert or decline jurisdiction, and in accordance with these procedures, OSHA hereby approves these actions and amends the subparts in 29 CFR Part 1952 for New Mexico (Western Area Power Administration at Elephant Butte), Oregon (Albany Research Center), Utah (Naval Petroleum and Oil Shale Reserve), Virginia (Southeastern Power Administration's Kerr-Philpott System) and Wyoming (Naval Petroleum and Oil Shale Reserve) to reflect the formal exclusion of these entities from the State Plan and continuation of federal jurisdiction over private sector contractor employees at these sites so long as they remain DOE sites not subject to the Atomic Energy Act. For all other listed facilities in states with OSHA-approved State Plans, this document provides notification to affected private sector employers and employees of these non-AEA sites that they will be subject to State Plan occupational safety and health jurisdiction like most other private sector employers in those States. Those States assuming jurisdiction over these private sector employers and employees will make available to them detailed information on the State's standards, regulations, procedures and practices, including differences from the Federal.

Public Participation

Under Section 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. As these changes in jurisdiction generally impose no new responsibilities or requirements on employers or employees, no opportunity for public comment is required.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this action will not have a significant economic impact on a substantial number of small entities. The change from federal to state jurisdiction for private contractors at these DOE non-AEA sites would not place small contractors at these sites under any significant new or different requirements. No additional burden will be placed upon the state governments beyond the responsibilities already assumed as part of the approved state plans.

Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), emphasizes consultation between federal agencies and the states and establishes specific review procedures the federal government must follow as it carries out policies which affect state or local governments. OSHA has included in the Supplementary Information section of today's notice a general explanation of the relationship between federal OSHA and the state plan states under the Occupational Safety and Health Act. Although it appears that the specific consultation procedures provided under Section 6 of Executive Order 13132 are not mandatory for state plan jurisdiction changes because they neither impose a burden upon the state nor involve preemption of any state law, OSHA has nonetheless consulted extensively with these states on their individual decisions on these issues. OSHA has reviewed the decisions approved today and believes they are consistent with the principles and criteria set forth in the Executive Order.

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902; and Secretary of Labor's Order No. 5-2002 (67 FR 65008, Oct. 22, 2002).

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

Signed at Washington, DC, this 30th day of May, 2006.

Edwin G. Foulke, Jr.,
Assistant Secretary.

■ Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

■ 1. The authority section for part 1952 continues to read as follows:

Authority: Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

Subpart D—Oregon

■ 2. Amend § 1952.104 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.104 Final approval determination.

* * * * *

(b) * * * The plan does not cover private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; employment at Crater Lake National Park; employment at the U.S. Department of Energy's Albany Research Center (ARC); Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

* * * * *

■ 3. Amend § 1952.105 by redesignating paragraph (b)(1)(v) as (b)(1)(vi) and adding a new paragraph (b)(1)(v), to read as follows:

§ 1952.105 Level of Federal enforcement.

* * * * *

(b)(1) * * *

(v) Enforcement of occupational safety and health standards with regard to employment at the U.S. Department of Energy's Albany Research Center (ARC);

* * * * *

Subpart E—Utah

■ 4. Amend § 1952.114 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.114 Final approval determination.

* * * * *

(b) * * * The plan does not cover private sector maritime employment; employment on Hill Air Force Base; employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve, to the extent that it remains a U.S. DOE facility; 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; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29

CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Utah retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

■ 5. Amend § 1952.115 by revising the fifth sentence of paragraph (b) to read as follows:

§ 1952.115 Level of Federal enforcement.

* * * * *

(b) * * * Federal jurisdiction is also retained with regard to: all employment on the Hill Air Force Base; all employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve, to the extent that it remains a U.S. DOE facility; 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.

* * * * *

Subpart BB—Wyoming

■ 6. Amend § 1952.344 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.344 Final approval determination.

* * * * *

(b) * * * The plan does not cover private sector maritime employment; employment on the Warren Air Force Base; employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve; 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; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including

employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Wyoming retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

■ 7. Amend § 1952.345 by revising the last sentence of paragraph (b)(1) to read as follows:

§ 1952.345 Level of Federal enforcement.

(b)(1) * * * Federal jurisdiction is also retained for employment at Warren Air Force Base; employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve; 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.

* * * * *

Subpart DD—New Mexico

■ 8. Amend § 1952.365 by revising paragraph (a)(9) to read as follows:

§ 1952.365 Level of Federal enforcement.

(a) * * *
(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

* * * * *

Subpart EE—Virginia

■ 9. Amend § 1952.374 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.374 Final approval determination.

(b) * * * 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.

* * * * *

■ 10. Amend § 1952.375 by revising the last sentence of paragraph (b)(1) to read as follows:

§ 1952.375 Level of Federal enforcement.

* * * * *

(b)(1) * * * 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.

* * * * *
(FR Doc. 06-5789 Filed 6-28-06; 8:45 am)
BILLING CODE 4510-25-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-06-025]

RIN 1625-AA08

Special Local Regulations for Marine Events; Mill Creek, Fort Monroe, Hampton, VA

AGENCY: Coast Guard, DHS.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the "Hampton Cup Regatta," a power boat race to be held on the waters of Mill Creek, near Fort Monroe, Hampton, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Mill Creek adjacent to Fort Monroe during the power boat race.

DATES: This rule is effective from 7:30 a.m. on August 18, 2006 to 6:30 p.m. on August 20, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05-06-025 and are available for inspection or copying at Commander (dpl), Fifth

Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION

Regulatory Information

On April 17, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Mill Creek, Fort Monroe, Hampton, VA in the *Federal Register* (71 FR 19672). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On August 18, 19 and 20, 2006, the Virginia Boat Racing Association will sponsor the "Hampton Cup Regatta," on the waters of Mill Creek adjacent to Fort Monroe, Hampton, Virginia. The event will consist of approximately 100 inboard hydroplanes racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the *Federal Register*. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of Mill Creek, Fort Monroe, Hampton, Virginia.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of Mill Creek, near Fort Monroe, Hampton,