

Section 3(7) of the OSH Act makes several U.S. Territories and possessions including the U.S. Virgin Islands eligible to submit State plans under Section 18. The United States Virgin Islands ("Virgin Islands") State plan received initial approval for its comprehensive State plan on September 11, 1973 (38 FR 24896). A description of the plan and Federal OSHA approval was codified in the Code of Federal Regulations at 29 CFR part 1952, subpart S. The Virgin Islands Department of Labor, Division of Occupational Safety and Health (VIDOSH) was designated as the State agency with responsibility for administering the State plan, and operations under the plan commenced at the time of initial plan approval in 1973. The Virgin Islands State plan covered all issues of occupational safety in private and public sector workplaces located within the Virgin Islands. Although in the public sector the State plan covered occupational health as well as safety, in the private sector the State plan did not exercise enforcement authority over occupational health issues; enforcement of health standards and other health-related requirements in the Virgin Islands with regard to private sector employment remained a Federal OSHA responsibility.

The Virgin Islands State plan successfully completed all of its State plan developmental steps and was certified as structurally complete on September 22, 1981. Pursuant to Section 18(e) of the OSH Act and procedures at 29 CFR 1902, OSHA determined that the Virgin Islands program met all requirements and, in actual operation, was "at least as effective" as the Federal program, granted the Virgin Islands State plan final approval, and relinquished Federal enforcement authority effective April 17, 1984 (49 FR 16766). However, on November 13, 1995, OSHA announced that, as a result of its monitoring, it had found that the Virgin Islands State plan, was no longer "at least as effective as" Federal OSHA and that other 18(e) requirements were no longer being met. In response to this finding, the Virgin Islands Commissioner of Labor agreed to voluntarily relinquish the State plan's final approval status under Section 18(e), to the reassertion of concurrent Federal OSHA enforcement authority and jurisdiction, and to undertake necessary corrective action to regain final approval status (60 FR 56950).

The decision to reinstate concurrent jurisdiction in 1995 allowed Federal OSHA to exercise full discretionary concurrent enforcement authority to assure worker protection, while

allowing the Virgin Islands time and assistance to improve its performance. However, since the agreement in 1995 the Virgin Islands has been unable to institute significant improvements to its staffing and operational performance. Federal OSHA monitoring of the State plan has not indicated sufficient improvements in the Territory's performance to alleviate the deficiencies identified at that time. This has made it necessary for OSHA to continue to provide Federal staffing and resources in recent years to assure an appropriate level of worker safety and health protection in workplaces in the Virgin Islands.

B. Partial Withdrawal of the Virgin Islands State Plan; Resumption of Exclusive Federal Enforcement Authority in the Private Sector

In a letter dated May 12, 2003, Governor Charles Turnbull of the United States Virgin Islands notified the Assistant Secretary of the decision of the Territory to formally withdraw that portion of its federally-approved occupational safety and health State plan which provides for occupational safety coverage of private sector employment, pursuant to 29 CFR 1955.3(b). This letter also notified the Assistant Secretary of the Virgin Islands' request that the OSHA-approved State plan be converted from a comprehensive State plan covering both private and public sector employees, as currently reflected in 29 CFR 1952, subpart S, to a public employee only State plan, as authorized by 29 CFR part 1956, covering employees of the Territory and its political subdivisions only. In addition, the Governor expressed the Territory's agreement to provide on-site consultation services to the private sector in the Virgin Islands pursuant to a cooperative agreement under section 21(d) of the OSH Act. (The Virgin Islands, up-to-now, has provided private sector consultation services under the auspices and funding of its State plan.) The Virgin Islands indicated such conversion would allow it to focus resources on increasing the protection provided to public sector employees, while at the same time providing increased safety and health assistance for small business employers and employees in the Territory with the additional Federal funding and assistance available through a Section 21(d) consultation agreement.

OSHA has conveyed to the Virgin Islands its agreement with the resolution set forth in the Governor's May 12 letter. This agreement resolves unique and long-standing issues regarding the status and funding of the

Virgin Islands State plan, in a manner which recognizes Federal OSHA's ongoing responsibility to provide staffing and resources for private sector enforcement in the Virgin Islands, while assuring continued recognition and funding for the valuable public sector compliance and consultation activity provided by the Territory. The agreement makes it possible for OSHA to devote its resources to providing safety and health protection in Virgin Islands workplaces, rather than expending its resources in a possibly lengthy and complex proceeding under 29 CFR part 1955 to formally withdraw State plan approval. The agreement also allows the Virgin Islands to qualify for enhanced funding under a provision of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469 (d)), which authorizes OSHA to waive the requirement for Territorial matching funds for grant amounts under \$200,000.

Accordingly, OSHA is revising 29 CFR 1952 and 29 CFR part 1956 to reflect the Virgin Islands' decision to exclude private sector employment from coverage under the plan while retaining coverage of public sector employment, and to reflect the new status of the plan as one that applies to the public sector only. Pursuant to the Governor's May 12 letter, State plan coverage of all private sector employers and employees is terminated effective July 1, 2003; exclusive Federal OSHA jurisdiction over private sector employment in the Virgin Islands is resumed on the same date. In accordance with Section 18(f) of the OSH Act and 29 CFR part 1955.4, the Territory may retain jurisdiction in any case commenced prior to the July 1 voluntary termination of its private sector program in order to enforce standards under the plan. 29 CFR 1952, subpart S, which reflects the prior status of the Virgin Islands program as a comprehensive State plan, is being rescinded and reserved.

The Virgin Islands' decision to retain its existing State plan in the public sector is being implemented by adding a new subpart H to 29 CFR part 1956, which reflects the new status of the Virgin Islands plan as a public sector only plan. The new subpart codifies the Virgin Islands plan as a developmental plan under 29 CFR part 1956, as it will be necessary for the Territory to make certain adjustments to its public employee program structure and to revise its State plan document to reflect its new, more limited scope. The State plan already meets the majority of the criteria for public sector State plans in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR part 1956.11.