

§ 1955.45

rule or order contained in the decision of the administrative law judge. The final decision shall also include reference to any material fact based on official notice.

(b) The Secretary's final decision shall be served upon all the parties and shall become final upon the 30th day after service thereof unless the Secretary grants a stay pending judicial review.

§ 1955.45 Effect of appeal of administrative law judge's decision.

An administrative law judge's decision shall be stayed pending a decision on appeal to the Secretary. If there are no exceptions filed to the decisions of the administrative law judge, the administrative law judge's decision shall be published in the FEDERAL REGISTER as a final decision and served upon the parties.

§ 1955.46 Finality for purposes of judicial review.

Only a final decision by the Secretary under §1955.44 shall be deemed final agency action for purposes of judicial review. A decision of an administrative law judge which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

§ 1955.47 Judicial review.

The State may obtain judicial review of a decision by the Secretary in accordance with section 18(g) of the Act.

PART 1956—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS APPLICABLE TO STATE AND LOCAL GOVERNMENT EMPLOYEES IN STATES WITHOUT APPROVED PRIVATE EMPLOYEE PLANS

Subpart A—General

Sec.

1956.1 Purpose and scope.

1956.2 General policies.

Subpart B—Criteria

1956.10 Specific criteria.

1956.11 Indices of effectiveness.

29 CFR Ch. XVII (7–1–00 Edition)

Subpart C—Approval, Change, Evaluation and Withdrawal of Approval Procedures

1956.20 Procedures for submission, approval and rejection.

1956.21 Procedures for submitting changes.

1956.22 Procedures for evaluation and monitoring.

1956.23 Procedures for certification of completion of development and determination on application of criteria.

1956.24 Procedures for withdrawal of approval.

Subpart D—General Provisions and Conditions [Reserved]

Subpart E—Connecticut

1956.40 Description of the plan.

1956.41 Where the plan may be inspected.

1956.43 Developmental schedule.

1956.44 Completion of developmental steps and certification.

Subpart F—New York

1956.50 Description of the plan as initially approved.

1956.51 Developmental schedule.

1956.52 Completed developmental steps.

1956.53 Determination of operational effectiveness. [Reserved]

1956.54 Location of plan for inspection and copying.

1956.55 Changes to approved plans.

AUTHORITY: Secs. 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable, unless otherwise noted.

SOURCE: 41 FR 12429, Mar. 4, 1977, unless otherwise noted.

Subpart A—General

§ 1956.1 Purpose and scope.

(a) This part sets forth procedures and requirements for approval, continued evaluation, and operation of State plans submitted under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for the development and enforcement of State standards applicable to State and local government employees in States without approved private employee plans. Although section 2(b) of the Act sets forth the policy of assuring every working man and woman safe and healthful working conditions, State and local government

agencies are excluded from the definition of "employer" in section 3(5). Only under section 18 of the Act are such public employees ensured protection under the provisions of an approved State plan. Where no such plan is in effect with regard to private employees, State and local government employees have not heretofore been assured any protections under the Act. Section 18(b), however, permits States to submit plans with respect to any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 6 of the Act. Under §1902.2(c) of this chapter, an issue is defined as "any * * * industrial, occupational, or hazard grouping that is found to be administratively practicable and * * * not in conflict with the purposes of the Act." Since Federal standards are in effect with regard to hazards found in public employment, a State plan covering this occupational category meets the definition of section 18 and the regulations. It is the purpose of this part to assure the availability of the protections of the Act to public employees, where no State plan covering private employees is in effect, by adapting the requirements and procedures applicable to State plans covering private employees to the situation where State coverage under section 18(b) is proposed for public employees only.

(b) In adopting these requirements and procedures, consideration should be given to differences between public and private employment. For instance, a system of monetary penalties applicable to violations of public employers may not in all cases be necessarily the most appropriate method of achieving compliance. Further, the impact of the lack of Federal enforcement authority application to public employers requires certain adjustments of private employer plan procedures in adapting them to plans covering only public employees in a State.

§ 1956.2 General policies.

(a) *Policy.* The Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) will approve a State plan which provides an occupational safety and health program for

the protection of State and local government employees (hereinafter State and local government employees are referred to as public employees) that in his judgment meets or will meet the criteria set forth in §1956.10. Included among these criteria is the requirement that the State plan for public employees (hereinafter such a plan will be referred to as the plan) provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the Act. In determining whether a plan satisfies the requirement of effectiveness, the Assistant Secretary will measure the plan against the indices of effectiveness, set forth in §1956.11.

(b) *Developmental plan.* (1) A State plan for an occupational safety and health program for public employees may be approved although, upon submission, it does not fully meet the criteria set forth in §1956.10, if it includes satisfactory assurances by the State that it will take the necessary steps to bring the program into conformity with these criteria within the 3-year period immediately following the commencement of the plan's operation. In such a case, the plan shall include the specific actions the State proposes to take, and a time schedule for their accomplishment which is not to exceed 3 years, at the end of which the plan will meet the criteria in §1956.10. A developmental plan shall include the dates within which intermediate and final action will be accomplished. Although administrative actions, such as stages for application of standards and enforcement, related staffing, development of regulations may be developmental, to be considered for approval, a State plan for public employees must contain at time of plan approval basic State legislative and/or executive authority under which these actions will be taken. If necessary program changes require further implementing executive action by the Governor or supplementary legislative action by the State, a copy of the appropriate order, or the bill or a draft of legislation that

§ 1956.10

will be or has been proposed for enactment shall be submitted, accompanied by:

- (i) A statement of the Governor's support of the legislation or order and
- (ii) A statement of legal opinion that the proposed legislation or executive action will meet the requirements of the Act and this part in a manner consistent with the State's constitution and laws.

(2) On the basis of the State's submission, the Assistant Secretary will approve the plan if he finds that there is a reasonable expectation that the plan for public employees will meet the criteria in §1956.10 within the indicated 3 year period. In such a case, the Assistant Secretary shall not make a determination that a State is fully applying the criteria in §1956.10 until the State has completed all the developmental steps specified in the plan which are designed to make it at least as effective as the Federal program for the private sector, and the Assistant Secretary has had at least 1 year to evaluate the plan on the basis of actual operations following the completion of all developmental steps. If at the end of 3 years from the date of commencement of the plan's operation, the State is found by the Assistant Secretary, after affording the State notice and an opportunity for a hearing, not to have substantially completed the developmental steps of the plan, he shall withdraw the approval of the plan.

(3) Where a State plan approved under part 1902 of this chapter is discontinued, except for its public employee component, or becomes approved after approval of a plan under this part, the developmental period applicable to the public employee component of the earlier plan will be controlling with regard to any such public employee coverage. For good cause, a State may demonstrate that an additional period of time is required to make adjustments on account of the transfer from one type of plan to another.

(c) *Scope of a State plan for public employees.* (1) A State plan for public employees must provide for the coverage of both State and local government employees to the full extent permitted by the State laws and constitution.

29 CFR Ch. XVII (7-1-00 Edition)

The qualification "to the extent permitted by its law" means only that where a State may not constitutionally regulate occupational safety and health conditions in certain political subdivisions, the plan may exclude such political subdivision employees from coverage.

(2) The State shall not exclude any occupational, industrial, or hazard grouping from coverage under its plan unless the Assistant Secretary finds that the State has shown there is no necessity for such coverage.

Subpart B—Criteria

§ 1956.10 Specific criteria.

(a) *General.* A State plan for public employees must meet the specific criteria set forth in this section.

(b) *Designation of State agency.* (1) The plan shall designate a State agency or agencies which will be responsible for administering the plan throughout the State.

(2) The plan shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to the administration of the plan.

(3) A State agency or agencies must be designated with overall responsibility for administering the plan throughout the State. Subject to this overall responsibility, enforcement of standards may be delegated to an appropriate agency having occupational safety and health responsibilities or expertise throughout the State. Included in this overall responsibility are the requirements that the designated agency have, or assure the provision of necessary qualified personnel, legal authority necessary for the enforcement of the standards and make reports as required by the Assistant Secretary.

(c) *Standards.* The State plan for public employees shall include, or provide for the development or adoption of, standards which are or will be at least as effective as those promulgated under section 6 of the Act. The plan shall also contain assurances that the State will continue to develop or adopt such standards. Indices of the effectiveness

of standards and procedures for the development or adoption of standards against which the Assistant Secretary will measure the plan in determining whether it is approvable are set forth in § 1956.11(b).

(d) *Enforcement.* (1) The State plan for public employees shall provide a program for the enforcement of the State standards which is, or will be, at least as effective in assuring safe and healthful employment and places of employment as the standards promulgated by section 6 of the Act; and provide assurances that the State's enforcement program for public employees will continue to be at least as effective in this regard as the Federal program in the private sector. Indices of the effectiveness of a State's enforcement plan against which the Assistant Secretary will measure the plan in determining whether it is approvable are set forth in § 1956.11(c).

(2) The plan shall require State and local government agencies to comply with all applicable State occupational safety and health standards included in the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

(e) *Right of entry and inspection.* The plan shall contain adequate assurances that inspectors will have a right to enter covered workplaces which is at least as effective as that provided in section 8 of the Act for the purpose of inspection or monitoring. Where such entry is refused, the State agency or agencies shall have the authority through appropriate legal process to compel such entry.

(f) *Prohibition against advance notice.* The State plan shall contain a prohibition against advance notice of inspections. Any exceptions must be expressly authorized by the head of the designated agency or agencies or his representative and such exceptions may be no broader than those authorized under the Act and the rules published in part 1903 of this chapter relating to advance notice.

(g) *Personnel.* The plan shall provide assurances that the designated agency or agencies and all government agencies to which authority has been delegated, have, or will have, a sufficient

number of adequately trained and qualified personnel necessary for the enforcement of standards. For this purpose, qualified personnel means persons employed on a merit basis, including all persons engaged in the development of standards and the administration of the plan. Subject to the results of evaluations, conformity with the Standards for a Merit System of Personnel Administration, 45 CFR part 70, issued by the Secretary of Labor, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission, pursuant to section 208 of the Intergovernmental Personnel Act of 1970, modifying or superseding such standards, and guidelines on "at least as effective as" staffing derived from the Federal private employee program will be deemed to meet this requirement.

(h) *Resources.* The plan shall contain satisfactory assurances through the use of budget, organizational description, and any other appropriate means, that the State will devote adequate funds to the administration and enforcement of the public employee program. The Assistant Secretary will make the periodic evaluations of the adequacy of the resources the State has devoted to the plan.

(i) *Employer records and reports.* The plan shall provide assurances that public employers covered by the plan will maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private employers under the Act.

(j) *State agency reports to the Assistant Secretary.* The plan shall provide assurances that the designated agency or agencies shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require. The agency or agencies shall establish specific goals consistent with the goals of the Act, including measures of performance, output, and results which will determine the efficiency and effectiveness of the State program for public employees, and shall make periodic reports to the Assistant Secretary on the extent to which the State, in implementation of

§ 1956.11

29 CFR Ch. XVII (7-1-00 Edition)

its plan, has attained these goals. Reports will also include data and information on the implementation of the specific inspection and voluntary compliance activities included within the plan. Further, these reports shall contain such statistical information pertaining to work-related deaths, injuries and illnesses in employments and places of employment covered by the plan as the Assistant Secretary may from time to time require.

§ 1956.11 **Indices of effectiveness.**

(a) *General.* In order to satisfy the requirements of effectiveness under § 1956.10 (c)(1) and (d)(1), the State plan for public employees shall:

(1) Establish the same standards, procedures, criteria, and rules as have been established by the Assistant Secretary under the act; or

(2) Establish alternative standards, procedures, criteria, and rules which will be measured against each of the indices of effectiveness in paragraphs (b) and (c) of this section to determine whether the alternatives are at least as effective as the Federal program for private employees, where applicable, with respect to the subject of each index. For each index the State must demonstrate by the presentation of factual or other appropriate information that its plan for public employees will, to the extent practicable, be at least as effective as the Federal program for private employees.

(b) *Standards.* (1) The indices for measurement of a State plan for public employees with regard to standards follow in paragraph (b)(2) of this section. The Assistant Secretary will determine whether the State plan for public employees satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan for public employees:

(i) Provides for State standards which are or will be at least as effective as the standards promulgated under section 6 of the Act. In the case of any State standards dealing with toxic materials or harmful physical agents, they should adequately assure, to the extent feasible, that no em-

ployee will suffer material impairment of health or functional capacity, even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life, by such means as, in the development and promulgation of standards, obtaining the best available evidence through research, demonstration, experiments, and experience under this and any other safety and health laws.

(ii) Provides an adequate method to assure that its standards will continue to be at least as effective as Federal standards, including Federal standards which become effective subsequent to any approval of the plan.

(iii) Provides a procedure for the development and promulgation of standards which allows for the consideration of pertinent factual information and affords interested persons, including employees, employers and the public, an opportunity to participate in such processes, by such means as establishing procedures for consideration of expert technical knowledge, and providing interested persons, including employers, employees, recognized standards-producing organizations, and the public, an opportunity to submit information requesting the development or promulgation of new standards or the modification or revocation of existing standards and to participate in any hearings. This index may also be satisfied by such means as the adoption of Federal standards, in which case the procedures at the Federal level before adoption of a standard under section 6 may be considered to meet the conditions of this index.

(iv) Provides authority for the granting of variances from State standards upon application of a public employer or employers which correspond to variances authorized under the Act, and for consideration of the views of interested parties, by such means as giving affected employees notice of each application and an opportunity to request and participate in hearings or other appropriate proceedings relating to applications for variances.

(v) Provides for prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, by such means as

the authority to promulgate emergency temporary standards. Such authority is particularly appropriate for those situations where public employees are exposed to unique hazards for which existing standards do not provide adequate protection.

(vi) Provides that State standards contain appropriate provision for the furnishing to employees of information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure; by such means as labelling, posting, and, where appropriate, results of medical examinations, being furnished only to appropriate State officials and, if the employee so requests, to his physician.

(vii) Provides that State standards where appropriate, contain specific provision for the protection of employees from exposure to hazards, by such means as containing appropriate provision for the use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure.

(c) *Enforcement.* (1) The indices for measurement of a State plan for public employees with regard to enforcement follow in paragraph (c)(2) of this section. The Assistant Secretary will determine whether the plan satisfies the requirements of effectiveness with regard to each index as provided in paragraph (a) of this section.

(2) The Assistant Secretary will determine whether the State plan for public employees:

(i) Provides for inspection of covered workplaces in the State by the designated agency or agencies or any other agency which is duly delegated authority, including inspections in response to complaints where there are reasonable grounds to believe a hazard exists, in order to assure, so far as possible, safe and healthful working conditions for covered employees by such means as providing for inspections under conditions such as those provided in section 8 of the Act.

(ii) Provides an opportunity for employees and their representative, before, during, and after inspections, to bring possible violations to the atten-

tion of the State or local agency with enforcement responsibility in order to aid inspections, by such means as affording a representative of the employer, and a representative authorized by employees, an opportunity to accompany the inspector during the physical inspection of the workplace, or where there is no authorized representative, provide for consultation by the inspector with a reasonable number of employees.

(iii) Provides for notification of employees, or their representatives, when the State decides not to take compliance action as a result of violations alleged by such employees or their representative, and further provides for informal review of such decisions, by such means as written notification of decisions not to take compliance action and the reasons therefor, and procedures for informal review of such decisions and written statements of the disposition of such review.

(iv) Provides that public employees be informed of their protections and obligations under the Act, including the provisions of applicable standards, by such means as the posting of notices or other appropriate sources of information.

(v) Provides necessary and appropriate protection to an employee against discharge or discrimination in terms and conditions of employment because he has filed a complaint, testified, or otherwise acted to exercise rights under the State program for public employees for himself or others, by such means as providing for appropriate sanctions against the State or local agency for such actions, and by providing for the withholding, upon request, of the names of complainants from the employer.

(vi) Provides that public employees have access to information on their exposure to toxic materials or harmful physical agents and receive prompt information when they have been or are being exposed to such materials or agents in concentrations or at levels in excess of those prescribed by the applicable safety and health standards, by such means as the observation by employees of the monitoring or measuring of such materials or agents, employee

§ 1956.20

access to the records of such monitoring or measuring, prompt notification by a public employer to any employee who has been or is being exposed to such agents or materials in excess of the applicable standards, and information to such employee of corrective action being taken.

(vii) Provides procedures for the prompt restraint or elimination of any conditions or practices in covered places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for in the plan, by such means as immediately informing employees and employers of such hazards, taking steps to obtain immediate abatement of the hazard by the employer, and, where appropriate, authority to initiate necessary legal proceedings to require such abatement.

(viii) Provides that the designated agency (or agencies) and any agency to which it has duly delegated authority, will have the necessary legal authority for the enforcement of standards by such means as provisions for appropriate compulsory process to obtain necessary evidence or testimony in connection with inspection and enforcement proceedings.

(ix) Provides for prompt notice to public employers and employees when an alleged violation of standards has occurred, including the proposed abatement requirements, by such means as the issuance of a written citation to the public employer and posting of the citation at or near the site of the violation; further provides for advising the public employer of any proposed sanctions, wherever appropriate, by such means as a notice to the employer by certified mail within a reasonable time of any proposed sanctions.

(x) Provides effective sanctions against public employers who violate State standards and orders, or applicable public agency standards, such as those prescribed in the Act. In lieu of monetary penalties a complex of enforcement tools and rights, such as various forms of equitable remedies available to the designee including administrative orders; availability of em-

29 CFR Ch. XVII (7-1-00 Edition)

ployee rights such as right to contest citations, and provisions for strengthened employee participation in enforcement may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment. In evaluating the effectiveness of an alternate system for compelling compliance, elements of the enforcement educational program such as a system of agency self inspection procedures, and in-house training programs, and employee complaint procedures may be taken into consideration.

(xi) Provides for an employer to have the right of review of violations alleged by the State or any agency to which it has duly delegated authority, abatement periods and proposed penalties, where appropriate, for employees or their representatives to challenge the reasonableness of the period of time fixed in the citation for the abatement of the hazard, and for employees or their representatives to have an opportunity to participate in review, proceedings, by such means as providing for administrative review, with an opportunity for a full hearing on the issues.

(xii) Provides that the State will undertake programs to encourage voluntary compliance by public employers and employees by such means as conducting training and consultation with such employers and employees, and encouraging agency self-inspection programs.

(d) *Additional indices.* Upon his own motion, or after consideration of data, views, and arguments received in any proceedings held under subpart C of this part, the Assistant Secretary may prescribe additional indices for any State plan for public employees which shall be in furtherance of the purpose of this section.

Subpart C—Approval, Change, Evaluation and Withdrawal of Approval Procedures

§ 1956.20 Procedures for submission, approval and rejection.

The procedures contained in subpart C of part 1902 of this chapter shall be applicable to submission, approval, and rejection of State plans submitted

under this part, except that the information required in §1902.20(b)(1)(iii) would not be included in decisions of approval.

§ 1956.21 Procedures for submitting changes.

The procedures contained in part 1953 of this chapter shall be applicable to submission and consideration of developmental, Federal program, evaluation, and State-initiated change supplements to plans approved under this part.

§ 1956.22 Procedures for evaluation and monitoring.

The procedures contained in part 1954 of this chapter shall be applicable to evaluation and monitoring of State plans approved under this part, except that the decision to relinquish Federal enforcement authority under section 18(e) of the Act is not relevant to Phase II and III monitoring under §1954.2 and the guidelines of exercise of Federal discretionary enforcement authority provided in §1954.3 are not applicable to plans approved under this part. The factors listed in §1902.37(b) of this chapter, except those specified in §1902.37(b)(11) and (12), which would be adapted to the State compliance program, provide the basis for monitoring.

§ 1956.23 Procedures for certification of completion of development and determination on application of criteria.

The procedures contained in §§1902.33 and 1902.34 of this chapter shall be applicable to certification of completion of developmental steps under plans approved in accordance with this part. Such certification shall initiate intensive monitoring of actual operations of the developed plan, which shall continue for at least a year after certification, at which time a determination shall be made under the procedures and criteria of §§1902.38, 1902.39, 1902.40 and 1902.41, that on the basis of actual operations, the criteria set forth in §§1956.10 and 1956.11 of this part are being applied under the plan. The factors listed in §1902.37(b) of this chapter, except those specified in §1902.37(b)(11) and (12) which would be adapted to the State's compliance program provide

the basis for making the determination of operational effectiveness.

§ 1956.24 Procedures for withdrawal of approval.

The procedures and standards contained in part 1955 of this chapter shall be applicable to the withdrawal of approval of plans approved under this part 1956, except that (because these plans, as do public employee programs approved and financed in connection with a State plan covering private employees, must cover all employees of State and local agencies in a State whenever a State is constitutionally able to do so, at least developmentally), no industrial or occupational issues may be considered a separable portion of a plan under §1955.2(a)(10); and, as Federal standards and enforcement do not apply to State and local government employers, withdrawal of approval of a plan approved under this part 1956 could not bring about application of the provisions of the Federal Act to such employers as set out in §1955.4 of this chapter.

Subpart D—General Provisions and Conditions [Reserved]

Subpart E—Connecticut

SOURCE: 43 FR 51390, Nov. 3, 1978, unless otherwise noted.

§ 1956.40 Description of the plan.

(a) The plan designates the Connecticut Department of Labor as the State agency responsible for administering the plan throughout the State. The State has adopted all Federal standards promulgated as of September 1977 and has given assurances that it will continue to adopt all Federal standards, revisions, and amendments. The State further assured that in those situations where public employees are exposed to unique hazards for which existing standards do not provide adequate protection, effective State standards will be adopted. The plan includes legislation, Public Act 73-379, passed by the Connecticut Legislature in 1973 and amended as follows: P.A. 74-176, P.A. 75-285, P.A. 77-107, and P.A. 77-610. Under the legislation the Connecticut

§ 1956.41

Department of Labor, Occupational Safety and Health Division has full authority to enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions. The plan is accompanied by a statement of the Governor's support and a legal opinion that the Connecticut legislation meets the requirements of the Occupational Safety and Health Act of 1970 and is in accord with the constitution of the State.

(b) The plan establishes procedures for variances and the protection of employees from hazards under a variance; insures inspection in response to complaints; provides employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections; notification to employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protection; protection of employees against discharge or discrimination in terms and conditions of employment; provision for prompt notices to employers and employees of violations of standards and abatement requirements; sanctions against employers for violation of standards and orders; employer's right to appeal citations for violations, abatement periods and proposed penalties; employee's right to appeal abatement periods; and employee participation in review proceedings. Also included are provisions for right of entry for inspection, "prohibition" of advance notice of inspection and the requirement for both employers and employees to comply with the applicable rules, standards, and orders, and employer obligations to maintain records and provide reports as required. Further, the plan provides assurances of a fully trained adequate staff and sufficient funding.

(c) The plan includes the following documents as of the date of approval:

- (1) The plan document and appendices submitted January 30, 1978;
- (2) Letter from the Commissioner, Connecticut Department of Labor, dated September 19, 1978, providing supplemental assurances.

29 CFR Ch. XVII (7-1-00 Edition)

§ 1956.41 Where the plan may be inspected.

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of State programs, 2100 M Street NW, Room 149, Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1804, John F. Kennedy Federal Building, Boston, Mass. 02203; Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Conn. 06109.

§ 1956.43 Developmental schedule.

The Connecticut plan is developmental. The following is a schedule of major developmental steps as provided by the plan:

(a) A new State poster will be printed, by December 15, 1978, in order to reflect coverage of the public sector only.

(b) Standards identical to or at least as effective as all existing Federal standards will be adopted by February 1, 1979.

(c) Connecticut regulations equivalent to the following Federal provisions will be revised by April 1, 1979, to show coverage of the public sector only and to accurately reflect the current program: 29 CFR part 1903 (Inspections, Citations, and Proposed Penalties); 29 CFR part 1904 (Recording and Reporting Occupational Injuries and Illnesses); 29 CFR part 1905 (Variance Rules); 29 CFR part 2200 (Review Commission); and the Field Operations Manual.

(d) The State will submit revised and updated provisions dealing with employee discrimination by May 1, 1979.

(e) The State will prepare by June 1, 1979, a comprehensive list of government entities whose employees are covered by the plan, giving the number of employees for each entity, describing the work performed, and assigning for each entity a standard industrial classification (SIC) code.

(f) The State will resubmit its plan in the required outline format by October 1, 1979.

§ 1956.44 Completion of developmental steps and certification.

(a) In accordance with 29 CFR 1956.43(f), Connecticut's reformatted

and revised public employee only plan and narrative description (including background information on program operations) were approved by the Assistant Secretary on August 3, 1983.

(b) In accordance with 29 CFR 1956.43(a), Connecticut's safety and health poster for public employees only was approved by the Assistant Secretary on August 3, 1983.

(c) In accordance with 29 CFR 1956.43(b), Connecticut has promulgated standards identical to all basic Federal standards in 29 CFR parts 1910, 1926, and 1928. The State has continued to adopt Federal standards, amendments and corrections as noted in separate standards approval notices.

(d) In accordance with 29 CFR 1956.43(c), Connecticut promulgated rules for inspections, citations, and proposed penalties (Administrative Regulation Section 31-371-1 through 20) parallel to 29 CFR part 1903; recording and reporting occupational injuries and illness (Administrative Regulation Section 31-374-1 through 15 parallel to 29 CFR part 1904; rules of practices for variances (Administrative Regulation Section 31-372-1 through 51) parallel to 29 CFR part 1905; and review commission procedures (Administrative Regulation Section 31-376-1 through 61) parallel to 29 CFR part 2200. In addition, Connecticut adopted Field Operations and Industrial Hygiene Manuals identical to the Federal. These supplements were approved by the Assistant Secretary on August 3, 1983.

(e) In accordance with 29 CFR 1956.43(d), Connecticut's employee discrimination provisions (Administrative Regulation Section 31-379-1 through 22) were approved by the Assistant Secretary on August 3, 1983.

(f) In accordance with 29 CFR 1956.43(e), Connecticut's comprehensive list classifying governmental entities covered by the plan was approved by the Assistant Secretary on August 3, 1983.

(g) In accordance with 29 CFR 1956.10(g), a State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. The Connecticut Public Employee Only State plan provides for three (3) safety compliance officers and

one (1) health compliance officer as set forth in the Connecticut Fiscal Year 1986 grant. This staffing level meets the "fully effective" benchmarks established for Connecticut for both safety and health.

(h) In accordance with § 1956.23 of this chapter, the Connecticut occupational safety and health public employee only plan was certified effective August 19, 1986 as having completed all developmental steps specified in the plan as approved October 2, 1978, on or before October 2, 1979. This certification attests to the structured completeness of the plan, but does not render judgment on adequacy of performance.

[48 FR 37027, Aug. 16, 1983, as amended at 51 FR 32454, Sept. 12, 1986]

Subpart F—New York

AUTHORITY: Secs. 8(g), 18, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 667); 29 CFR part 1956, Secretary of Labor's Order 9-83 (48 FR 35736).

SOURCE: 49 FR 23000, June 1, 1984, unless otherwise noted.

§ 1956.50 Description of the plan as initially approved.

(a) *Authority and scope.* The New York State Plan for Public Employee Occupational Safety and Health received initial OSHA approval on June 1, 1984. The plan designates the New York Department of Labor as the State agency responsible for administering the plan throughout the State. The plan includes legislation, the New York Act (Public Employees Safety and Health Act, Chapter 729 of the Laws of 1980), enacted in 1980, and amended on April 30, 1984, to clarify the State's right of entry for inspection authority. Under this legislation, the Industrial Commissioner (now the Commissioner of Labor), has full authority to enforce and administer all laws and rules protecting the safety and health of all employees of the State and its political subdivisions. In response to OSHA concern that language in section 27-a(2) of the New York Act, regarding the Commissioner of Education's authority with respect to school buildings, raised questions about the coverage under the plan of public school employees, New York submitted amendments to its

plan consisting of Counsel's opinion and assurance that public school employees are fully covered under the terms of the New York Act. In a March 4, 1984 letter from Lee O. Smith, Deputy Commissioner of Labor for Legal Affairs, New York indicated that the Commissioner of Education's authority applies only to ensuring the safety and health of pupils, and that the Commissioner of Labor has exclusive authority to enforce occupational safety and health standards covering public employees in school buildings. Furthermore, New York has provided assurance that should the Department of Labor's interpretation on coverage of public school employees be challenged successfully, appropriate legislative correction would be sought.

(b) *Standards.* The New York plan provides for the adoption of all Federal OSHA standards promulgated as of July 31, 1983, and for the incorporation of any subsequent revisions or additions thereto in a timely manner, including in response to Federal OSHA emergency temporary standards. The procedure for adoption of Federal OSHA standards calls for publication of the Commissioner of Labor's intent to adopt a standard in the *New York State Register* 30 days prior to such adoption. Subsequent to adoption and upon filing of the standard with the Secretary of State, a notice of final action will be published as soon as is practicable in the *State Register*. The plan also provides for the adoption of alternative or different occupational safety and health standards if a determination is made by the State that an issue is not properly addressed by OSHA standards and is relevant to the safety and health of public employees. In such cases, the State shall propose legislation mandating the development of an alternative standard to protect the safety and health of public employees. The procedures for adoption of alternative standards will contain criteria for development and consideration of expert technical knowledge in the field to be addressed by the standard, and provisions allowing interested persons to submit information requesting development or promulgation of any standard and to participate in any hearing

for the development, modification or establishment of standards.

(c) *Variations.* The plan includes provisions for the granting of permanent and temporary variations from State standards in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variations may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

(d) *Employee notice and discrimination protection.* The plan provides for notification to employees of their protections and obligations under the plan by such means as a State poster, and required posting of notices of violations. The plan also provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Act in terms essentially identical to section 11(c) of the Federal Act.

(e) *Inspections and enforcement.* The plan provides for inspection of covered workplaces including inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant shall be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. The plan also provides the opportunity for employer and employee representatives to accompany the inspector during an inspection for the purpose of aiding in the inspection. The plan also provides for right of entry for inspection and prohibition of advance notice of inspection. In lieu of monetary penalties for violations, the plan establishes a scheme of enforcement for compelling compliance under which public employers are issued notices of violation and orders to comply, for any violation of standards and orders. Such notices will fix a reasonable time for compliance. The Commissioner of Labor may seek judicial enforcement (mandamus actions) of orders to comply by commencing a proceeding pursuant to Article 78 of the New York Civil Practice

Law and Rules against public employers who fail to abide by the requirements of the order.

(f) *Review procedures.* Under the plan, employers, employees and other affected parties may seek informal review with the Department of Labor of a notice of violation, including the reasonableness of the abatement period, and/or may seek formal administrative review with the Industrial Board of Appeals, the independent State agency authorized by section 27-a(6)(c) of the New York Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations pursuant to the New York Act. The "Rules of Practice and Procedure" of the Industrial Board of Appeals also permit public employees or their representatives to participate in the review process when a public employer contests a notice. Judicial review of the decision of the Industrial Board of Appeals may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules. The period fixed in the plan for contesting notices of violation is 60 calendar days, which is significantly longer than the 15 working day period allowed under the Federal OSHA program. However, New York has provided assurance, by Counsel's opinion of March 4, 1984, that it has the authority under Article 78 of the New York Civil Practice Law and Rules to obtain judicial enforcement of an uncontested order to comply upon expiration of the period stipulated for abatement, regardless of whether the 60 day contest period has expired or not. New York has also assured that should the State Labor Department's interpretation be challenged successfully appropriate legislative correction would be sought.

(g) *Staffing and resources.* The plan provides assurances of a fully trained, adequate staff, including 30 safety and 8 health compliance officers for enforcement inspections and 10 safety and 12 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of adequate funding to support the plan. In addition, the plan assures that New York will meet the compliance staffing benchmarks established pursuant to the terms of the

court order in *AFL-CIO v. Marshall* (CA 74-406).

(h) *Records and reports.* The plan provides that public employers in New York will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to that required for private sector employers under Federal OSHA. New York has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses and will include the public sector under its plan after approval. The plan also contains assurances that the Commissioner of Labor will provide reports to OSHA in such form as the Assistant Secretary may require, and that New York will participate in OSHA's Integrated Management Information System.

(i) *Voluntary compliance programs.* The plan provides that training will be provided to public employers and employees; seminars will be conducted to familiarize affected individuals with OSHA standards and requirements (as adopted by New York), and safe work practices; an on-site consultation program in the public sector will be established to provide services to public employers who so desire; and, all State agencies and political subdivisions will be encouraged to develop and maintain self-inspection programs as an adjunct to but not substitute for the Commissioner of Labor's enforcement inspections.

§ 1956.51 Developmental schedule.

The New York plan is developmental. The following is a schedule of major developmental steps as provided in the plan:

(a) Adopt all OSHA standards promulgated as of July 1, 1983 (within three months after plan approval).

(b) Promulgate regulations for inspections, citations and abatement, equivalent to 29 CFR part 1903 (within three years after plan approval).

(c) Submit State poster (within six months after plan approval).

(d) Extend BLS Survey of Injuries and Illnesses to State and local government (within one year after plan approval).

§ 1956.52

(e) Promulgate regulations for granting variances, equivalent to 29 CFR part 1905 (within one year after plan approval).

(f) Promulgate regulations for injury/illness recordkeeping, equivalent to 29 CFR part 1904 (within two years after plan approval).

(g) Develop employee nondiscrimination procedures (within three years after plan approval).

(h) Promulgate procedures for review of contested cases (within three years after plan approval).

(i) Promulgate regulations for development of alternative State standards, equivalent to 29 CFR part 1911 (within three years after plan approval).

(j) Develop Field Operations Manual (within three years after plan approval).

(k) Develop Industrial Hygiene Manual (within three years after plan approval).

(l) Develop on-site consultation procedures for state and local government employers (within three years after plan approval).

(m) Fully implement public employer/employee training and education program (within three years after plan approval).

[49 FR 23000, June 1, 1984, as amended at 52 FR 20073, May 29, 1987]

§ 1956.52 Completed **developmental steps.**

(a) In accordance with 29 CFR 1956.51(c), the New York Safety and Health poster for public employees only was approved by the Assistant Secretary on May 16, 1985.

(b) In accordance with 29 CFR 1956.51(a) the State of New York has promulgated standards identical to all Federal OSHA standards promulgated as of July 1, 1983. This supplement was approved by the Assistant Secretary on August 26, 1986. (51 FR 30449).

(c) In accordance with 29 CFR 1956.51(d) the State extended its participation in the Bureau of Labor Statistics (BLS) Survey of Injuries and Illnesses to the public sector. This supplement was approved by the Assistant Secretary on December 29, 1989.

(d) In accordance with 29 CFR 1956.51(e) the State promulgated regulations for granting variances, equivalent to 29 CFR part 1905, which were approved by the Assistant Secretary on December 29, 1989.

29 CFR Ch. XVII (7-1-00 Edition)

(e) In accordance with 29 CFR 1956.51(f) the State promulgated regulations for injury/illness recordkeeping, equivalent to 29 CFR part 1904, which were approved by the Assistant Secretary on December 29, 1989.

(f) In accordance with 29 CFR 1956.51(g) the State developed and adopted employee non-discrimination procedures equivalent to 29 CFR part 1977, which were approved by the Assistant Secretary on December 29, 1989.

(g) In accordance with 29 CFR 1956.51(h) the State adopted procedures for the review of contested cases equivalent to 29 CFR part 2200, which were approved by the Assistant Secretary on December 29, 1989.

(h) In accordance with 29 CFR 1956.51(i) the State revised its plan to reflect the procedures dictated by State law that require specific legislative action in the development and adoption of alternative standards as the State's Public Employee Safety and Health Act provides only for the adoption of identical OSHA safety and health standards, which were approved by the Assistant Secretary on December 29, 1989.

(i) In accordance with 29 CFR 1956.51(k) the State has adopted the Federal Industrial Hygiene Manual, including changes one (1) and two (2), through April 7, 1987, which was approved by the Assistant Secretary on December 29, 1989.

(j) In accordance with 29 CFR 1956.51(l) the State issued a directive implementing an on-site consultation program in the public sector which was approved by the Assistant Secretary on December 29, 1989.

[50 FR 21047, May 22, 1985, as amended at 52 FR 20073, May 29, 1987; 55 FR 1206, Jan. 12, 1990]

§ 1956.53 Determination of operational effectiveness. [Reserved]

§ 1956.54 Location of plan for inspection and copying.

A copy of the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Third Street and Constitution Avenue, NW., Room N-3476, Washington, DC 20210;

Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza) Room 3445, New York, New York 10036;

State of New York Department of Labor, State Office Building Campus, Building 12, Room 579, Albany, New York 12226;

Division of Occupational Safety and Health, State of New York Department of Labor, Room 6994, 2 World Trade Center, New York, New York 10047.

§ 1956.55 Changes to approved plans.

In accordance with part 1953, the following New York plan changes were approved by the Assistant Secretary:

(a) The State submitted a staffing pattern change involving the reassignment of two positions from Industrial Hygiene Consultation to Industrial Hygiene Enforcement. The Assistant Secretary approved the supplement on May 26, 1987.

(b) The State submitted a staffing pattern change which establishes an Analysis and Management Information System Unit. The Assistant Secretary approved the supplement on December 29, 1989.

[52 FR 20073, May 29, 1987, as amended at 55 FR 1206, Jan. 12, 1990]

PART 1960—BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND RELATED MATTERS

Subpart A—General

Sec.

- 1960.1 Purpose and scope.
1960.2 Definitions.

Subpart B—Administration

- 1960.6 Designation of agency safety and health officials.
1960.7 Financial management.
1960.8 Agency responsibilities.
1960.9 Supervisory responsibilities.
1960.10 Employee responsibilities and rights.
1960.11 Evaluation of occupational safety and health performance.
1960.12 Dissemination of occupational safety and health program information.

Subpart C—Standards

- 1960.16 Compliance with OSHA standards.
1960.17 Alternate standards.
1960.18 Supplementary standards.
1960.19 Other Federal agency standards affecting occupational safety and health.

Subpart D—Inspection and Abatement

- 1960.25 Qualifications of safety and health inspectors and agency inspections.
1960.26 Conduct of inspections.
1960.27 Representatives of officials in charge and representatives of employees.
1960.28 Employee reports of unsafe or unhealthful working conditions.
1960.29 Accident investigation.
1960.30 Abatement of unsafe or unhealthful working conditions.
1960.31 Inspections by OSHA.

Subpart E—General Services Administration and Other Federal Agencies

- 1960.34 General provisions.
1960.35 National Institute for Occupational Safety and Health.

Subpart F—Occupational Safety and Health Committees

- 1960.36 General provisions.
1960.37 Committee organization.
1960.38 Committee formation.
1960.39 Agency responsibilities.
1960.40 Establishment committee duties.
1960.41 National committee duties.

Subpart G—Allegations of Reprisal

- 1960.46 Agency responsibility.
1960.47 Results of investigations.

Subpart H—Training

- 1960.54 Training of top management officials.
1960.55 Training of supervisors.
1960.56 Training of safety and health specialists.
1960.57 Training of safety and health inspectors.
1960.58 Training of collateral duty safety and health personnel and committee members.
1960.59 Training of employees and employee representatives.
1960.60 Training assistance.

Subpart I—Recordkeeping and Reporting Requirements

- 1960.66 Purpose, scope and general provisions.
1960.67 Log of occupational injuries and illnesses.