

Telephone Number: \_\_\_\_\_  
 Facsimile Number: \_\_\_\_\_

For Existing, New, or Modified Models: <sup>1</sup> or  
 For Discontinued Models: <sup>2</sup>  
 Submit by Certified Mail to: U.S.

Department of Energy, Building Technologies  
 Program, Mailstop EE-2J, 1000 Independence  
 Avenue, SW., Washington, DC 20585-0121.

**Appendix C to Subpart T of Part 431—  
 Enforcement for Performance Standards;  
 Compliance Determination Procedure for  
 Certain Commercial Equipment**

The Department will determine  
 compliance as follows:

(a) After it has determined the sample size,  
 the Department will measure the energy  
 performance for each unit in accordance with  
 the following table:

Sample size	Number of tests for each unit
4	1
3	1
2	2
1	4

(b) Compute the mean of the measured  
 energy performance ( $x_i$ ) for all tests as  
 follows:

$$x_i = \frac{1}{n_i} \left\{ \sum_{i=1}^{n_i} x_i \right\} \quad [1]$$

Where  $x_i$  is the measured energy efficiency  
 or consumption from test  $i$ , and  $n_i$  is the total  
 number of tests.

(c) Compute the standard deviation ( $S_i$ ) of  
 the measured energy performance from the  $n_i$   
 tests as follows:

$$S_i = \sqrt{\frac{\sum_{i=1}^{n_i} (x_i - x_i)^2}{n_i - 1}} \quad [2]$$

(d) Compute the standard error ( $S_{x_i}$ ) of the  
 measured energy performance from the  $n_i$   
 tests as follows:

$$S_{x_i} = \frac{S_i}{\sqrt{n_i}} \quad [3]$$

(e)(1) For an energy efficiency standard,  
 compute the lower control limit ( $LCL_1$ )  
 according to:

$$LCL_1 = EPS - ts_{x_i} \quad [4a]$$

or

$$LCL_1 = 97.5 \text{ EPS} \quad [4b]$$

(whichever is greater)

(2) For an energy use standard, compute  
 the upper control limit ( $UCL_1$ ) according to:

$$UCL_1 = EPS + ts_{x_i} \quad [5a]$$

$$UCL_1 = 1.025 \text{ EPS} \quad [5b]$$

(whichever is less)

Where EPS is the energy performance  
 standard, and  $t$  is a statistic based on a 99  
 percent, one-sided confidence limit and a  
 sample size of  $n_i$ .

(f)(1) Compare the sample mean to the  
 control limit. The basic model is in  
 compliance and testing is at an end if, for an  
 energy efficiency standard, the sample mean  
 is equal to or greater than the lower control  
 limit or, for an energy consumption standard,  
 the sample mean is equal to or less than the  
 upper control limit. If, for an energy  
 efficiency standard, the sample mean is less  
 than the lower control limit or, for an energy  
 consumption standard, the sample mean is  
 greater than the upper control limit,  
 compliance has not been demonstrated.  
 Unless the manufacturer requests  
 manufacturer-option testing and provides the  
 additional units for such testing, the basic  
 model is in noncompliance and the testing is  
 at an end.

(2) If the manufacturer does request  
 additional testing, and provides the  
 necessary additional units, DOE will test  
 each unit the same number of times it tested  
 previous units. DOE will then compute a  
 combined sample mean, standard deviation,  
 and standard error as described above. (The  
 "combined sample" refers to the units DOE  
 initially tested plus the additional units DOE  
 has tested at the manufacturer's request.)  
 DOE will determine compliance or  
 noncompliance from the mean and the new  
 lower or upper control limit of the combined  
 sample. If, for an energy efficiency standard,  
 the combined sample mean is equal to or  
 greater than the new lower control limit or,  
 for an energy consumption standard, the  
 sample mean is equal to or less than the  
 upper control limit, the basic model is in  
 compliance, and testing is at an end. If the  
 combined sample mean does not satisfy one  
 of these two conditions, the basic model is  
 in noncompliance.

[FR Doc. E9-15881 Filed 7-9-09; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health  
 Administration**

**29 CFR Part 1956**

[Docket No. OSHA-2009-0010]

RIN 1218-AC44

**Illinois State Plan for Public  
 Employees Only; Notice of  
 Submission; Proposal To Grant Initial  
 State Plan Approval; Request for  
 Public Comment and Opportunity To  
 Request Public Hearing**

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

**ACTION:** Proposed rule; request for  
 written comments; notice of opportunity  
 to request informal public hearing.

**SUMMARY:** This document gives notice of  
 the submission by the Illinois  
 Department of Labor of a developmental  
 State Plan for occupational safety and  
 health, applicable only to public sector  
 employment (employees of the State  
 and its political subdivisions), for  
 determination of initial approval under  
 section 18 of the Occupational Safety  
 and Health Act of 1970 (the "Act").  
 OSHA is seeking written public  
 comment on whether or not initial State  
 Plan approval should be granted and  
 offers an opportunity to interested  
 persons to request an informal public  
 hearing on the question of initial State  
 Plan approval.

Approval of the Illinois Public  
 Employee Only State Plan will be  
 contingent upon a determination that  
 the Plan meets, or will meet within  
 three years, OSHA's Plan approval  
 criteria and the availability of funding  
 as contained in the Department of  
 Labor's Fiscal Year 2009 budget.

**DATES:** Written comments and requests  
 for a hearing must be submitted  
 (postmarked, sent or received) by  
 August 10, 2009.

**ADDRESSES:** You may submit comments  
 and requests for a hearing, identified by  
 Docket No. OSHA-2009-0010, by any of  
 the following methods:

*Electronically:* Comments and  
 attachments and requests for a hearing  
 may be submitted electronically at  
<http://www.regulations.gov>, which is  
 the Federal eRulemaking Portal. Follow  
 the instructions for submitting  
 comments.

*Facsimile:* If your comments,  
 including attachments, and requests for  
 a hearing do not exceed 10 pages, you  
 may fax them to the OSHA Docket

<sup>1</sup> Provide specific equipment information  
 including, for each basic model, the product class,  
 the manufacturer's model number(s), and the other  
 information required in 431.371(a)(6)(i).

<sup>2</sup> Provide manufacturer's model number(s).

Office at 202-693-1648. Hard copies of these documents are not required.

*Regular mail, hand delivery, express mail, messenger or courier service:* Submit three copies of your comments and attachments, as well as hearing requests, to the OSHA Docket Office, Docket No. OSHA-2009-0010, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone 202-693-2350 (TTY number 877-889-5627). Note that security-related problems may result in significant delays in receiving submissions by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or courier service. The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA-2009-0010). All submissions, including any personal information, are placed in the public docket without revision, and will be available online at <http://www.regulations.gov>. Therefore, OSHA cautions members of the public against submitting information and statements that should remain private, including comments that contain personal information, such as Social Security numbers, birth dates, and medical data.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or to the OSHA Docket Office at the address above. Documents in the docket are listed in the <http://www.regulations.gov> index. However, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions, including notices of intention to appear, the text of testimony, and documentary evidence.

*Copies of this Federal Register notice:* Electronic copies of this notice as well as copies of the proposed Illinois State Plan for Public Employees Only are available at <http://www.regulations.gov>. Electronic copies of this notice, as well as news releases and other relevant information, are available on OSHA's Web page at <http://www.osha.gov>.

Copies of the proposed Illinois State Plan for Public Employees Only are also available for review and copying at: OSHA's Regional Office in Chicago, Illinois, at 230 South Dearborn Street,

32nd Floor, Room 3244, Chicago, Illinois 60604, and at: The Offices of the Illinois Department of Labor, Safety Inspection and Education Division at 1 West Old State Capitol Plaza, 3rd floor, Springfield, Illinois 62701; 160 North LaSalle Street, Suite C-1300, Chicago, Illinois 60601; or 2309 West Main Street, Suite 115, Marion, Illinois 62959.

**FOR FURTHER INFORMATION CONTACT:**

*Press inquiries:* Contact Jennifer Ashley, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 693-1999.

*General and technical inquiries:* Contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, OSHA, U.S. Department of Labor, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693-2244 or Fax (202) 693-1671.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act"), 29 U.S.C. 667, provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a State Plan to the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") documenting the proposed program in detail. Regulations promulgated pursuant to the Act at 29 CFR part 1956 provide that a State may submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions ("public employees"). Under these regulations the Assistant Secretary will approve a State Plan for public employees if 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 Federal Act, giving due consideration to differences between public and private sector employment. In making this determination the Assistant Secretary will consider, among other things, the criteria and indices of effectiveness set forth in 29 CFR part 1956, subpart B. State and local government workers are excluded from Federal OSHA coverage under the

Occupational Safety and Health Act of 1970.

**B. Illinois State Plan History**

In 1973 the Illinois Industrial Commission and the Illinois Department of Labor obtained OSHA approval of a State Plan for the enforcement of occupational safety and health standards covering private sector workplaces as well as a program for public employees in Illinois. That Plan was approved by the Assistant Secretary on November 5, 1973 (38 FR 30436; 29 CFR 1952.280 *et seq.*). The Plan was subsequently withdrawn effective June 30, 1975 by the State of Illinois under the authority of then Governor Dan Walker after the State was unable to make the necessary modifications to its program and statutory authority, and its State funding was withdrawn (40 FR 24523).

Since 1985, the Illinois Department of Labor (IDOL), Safety Inspection and Education Division (SIED), has adopted standards and performed inspections in the public sector (State, county, and municipal employees) as outlined under the provisions of the State's existing enabling legislation: The Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] and the Illinois Health and Safety Act (HSA) [820 ILCS 225]. In 2005, Illinois began working on a Public Employee Only State Plan and submitted a draft Plan to OSHA in May of 2006. OSHA's review findings were detailed in various memoranda and other documents, including a May 18, 2007 letter to the Illinois Department of Labor Director Catherine Shannon. OSHA determined that the Illinois statutes, as structured, and the proposed State Plan presented several obstacles to meeting the Federal Public Employee Only State Plan approval criteria in 29 CFR 1956. Amendments to both the Illinois Safety Inspection and Education Act and the Illinois Health and Safety Act were proposed and enacted by the Illinois General Assembly and signed into law by the Governor in 2006 and 2007. The amended legislation provides the basis for establishing a comprehensive occupational safety and health program applicable to the public employees in the State.

Illinois formally submitted a revised Plan applicable only to public employees for Federal approval on June 18, 2008. Over the next several months, OSHA worked with Illinois in identifying areas of the proposed Plan which needed to be addressed or required clarification. In response to Federal review of the proposed State Plan, supplemental assurances, and revisions, corrections and additions to

the Plan were submitted on April 8, 2009 and May 15, 2009. Further modifications were submitted by the State on June 8, 2009. The revised IDOL/SIED Plan has been found to be conceptually approvable as a developmental State Plan.

The Act provides for funding of up to 50% of the State Plan costs, but longstanding language in OSHA's appropriation legislation further provides that OSHA must fund “\* \* \* no less than 50% of the costs required to be incurred” by an approved State Plan. Such Federal funds to support the State Plan must be available prior to State Plan approval. The Omnibus Appropriations Act for Fiscal Year 2009 includes \$1.5 million in additional OSHA State Plan grant funds to allow for Department of Labor approval of an Illinois State Plan.

After an opportunity for public comment and a hearing, should one be requested, the Assistant Secretary of Labor will approve the Illinois Public Employee Only State Plan if it is determined that the Plan meets the criteria set forth in the Occupational Safety and Health Act of 1970 and applicable regulations at 29 CFR Part 1956, Subpart B. The approval of a State Plan for public employees in Illinois is not a significant regulatory action as defined in Executive Order 12866.

### C. Description of the Illinois State Plan

The Plan designates the Illinois Department of Labor as the State agency responsible for administering the Plan throughout the State. Under the Plan's legislation, the Illinois Safety Inspection and Education Act [820 ILCS 220] and the Illinois Health and Safety Act [820 ILCS 225], the Illinois Department of Labor has full authority to adopt standards and regulations and enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions. Illinois has adopted State standards identical to Federal occupational safety and health standards as promulgated through September 30, 2005. The State Plan includes a commitment to update all standards within one year after Plan approval. The Plan also provides that future OSHA standards and revisions will be adopted by the State within six months of Federal promulgation (30 days for any emergency temporary standard) in accordance with the requirements at 29 CFR 1953.5.

Section 4.2 of the Illinois Health and Safety Act [820 ILCS 225] includes provisions for the granting of permanent and temporary variances from State standards to public employers 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. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

Sections 2 and 2.1 of the Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] provide for inspections 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 will be notified in writing of such determination. Additionally, Section 2 of the SIEA provides the opportunity for employer and employee representatives to accompany an inspector during an inspection for the purpose of aiding in the inspection.

The Plan provides for notification to employees of their protections and obligations under the Plan by such means as a State poster, required posting of notices of violation, etc. Section 2.2 of the Illinois Safety Inspection and Education Act provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State Acts in terms essentially identical to section 11(c) of the Federal Act. The Plan also includes provisions for right of entry for inspection, prohibition of advance notice of inspection, and employers' obligations to maintain records and provide reports as required.

Although Section 2.3 of the SIEA contains authority for a system of first-instance monetary penalties, in practice it is the State's intent to issue monetary penalties only for failure to correct and egregious violations. The State has discretionary authority for civil penalties of not more than \$10,000 for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to \$1,000 per violation and failure-to-correct violations may be assessed a penalty of up to \$1,000 per violation per day. In addition, any public employer who willfully violates any standard, rule, or order can be charged by the Attorney General with a Class 4 felony if that violation causes death to any employee. The Plan provides a scheme of enforcement for compelling compliance under which public employers are issued citations for any violation of standards. These citations must describe the nature of the violation, including reference to the standard, and fix a reasonable time for abatement. The

Illinois Plan does not include an independent review authority for review of contested cases. Although the Director has statutory responsibility for both the enforcement and the appeals process, in practice, Administrative Law Judges hear contested cases without any oversight or review by the Director. The State will make appropriate changes to its regulations and procedures to ensure the separation of these functions and the independence of the adjudicatory process. The Director of Labor will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested. Public employers or their representatives who receive a citation or a proposed penalty may within 15 working days contest the citation, proposed penalty and/or abatement period and request a hearing before an Administrative Law Judge (ALJ) on behalf of the Director. Any public employee or representative may within 15 working days request a hearing before an ALJ regarding the reasonableness of the abatement period. Informal review prior to contest may also be requested at the division level. The ALJ's decision is subject to appeal to the courts.

The State has a currently authorized staff of eight safety and three health compliance officers who, in addition to inspections, also perform duties equivalent to OSHA's on-site consultation program. The Illinois Department of Commerce and Economic Development delivers OSHA's On-Site Consultation program to private sector employers throughout the State. The Plan provides assurances that within three years no staff will have dual roles, and the State will have a fully trained, adequate staff, of eleven safety and three health compliance officers for enforcement inspections, and three safety and two health consultants to perform consultation services in the public sector. As new staff members are hired they will perform either enforcement or consultation functions. 29 CFR 1956.10(g) requires that State Plans for public employees provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. The compliance staffing requirements (or benchmarks) for State Plans covering both the private and public sectors are established based on the “fully effective” test established in *AFL-CIO v. Marshall*, 570 F.2d 1030 (D.C. Cir., 1978). This staffing test, and the complicated formula used to derive benchmarks for complete private/public sector Plans, is not intended, nor is it

appropriate, for application to the staffing needs of public employee only Plans. However, the State has given satisfactory assurance in its Plan that it will meet the staffing requirements of 29 CFR 1956.10. The State has also given satisfactory assurances of adequate State matching funds (50%) to support the Plan and is requesting initial Federal funding of \$1,500,000 for a total initial program effort of \$3 million.

Although the State Acts set forth the general authority and scope for implementing the Illinois Public Employee Plan, the Plan is developmental under the terms of 29 CFR 1956.2(b), in that specific rules, regulations, and implementing procedures must still be adopted or revised to carry out the Plan and make it structurally "at least as effective" as Federal OSHA and fully operational. The Plan sets forth a timetable for the accomplishment of these and other developmental goals within three years of Plan approval. This timetable addresses such general areas as the adoption of standards and the revision of regulations governing enforcement, consultation, variances, contested cases, employee access to information, and recordkeeping. Other developmental aspects include hiring and training of staff, participation in OSHA's management information system, development of a Field Operations Manual and all other implementing policies, procedures and instruction necessary for the operation of an effective program. The State has extensively revised its initial State Plan submission to address a number of issues which were raised during the course of Federal review of the Illinois Plan and that required further clarification from the State.

#### **D. Request for Public Comment and Opportunity To Request Hearing**

Public comment on the Illinois Public Employee Only State Plan is hereby requested. Interested persons are invited to submit written data, views, and comments with respect to this proposed initial State Plan approval. These comments must be received on or before August 10, 2009. Written submissions must clearly identify the issues that are addressed and the positions taken with respect to each issue. The State of Illinois will be afforded the opportunity to respond to each submission. The Illinois Department of Labor must also publish appropriate notice within the State of Illinois within 5 days of publication of this notice, announcing OSHA's proposal to approve an Illinois State Plan for Public Employees Only, contingent on the availability of

appropriated funds, and giving notice of the opportunity for public comment.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed initial State Plan approval. Such requests also must be received on or before August 10, 2009 and may be submitted electronically, by facsimile, or by regular mail, hand delivery, express mail, messenger or courier service, as indicated under **ADDRESSES** above. Such requests must present particularized written objections to the proposed initial State Plan approval. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish a decision in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing, and all materials submitted in response to this notice and at any subsequent hearing, are available at <http://www.regulations.gov> or the OSHA Docket Office at the address above.

#### **E. Regulatory Flexibility Act**

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the proposed initial approval of the Illinois State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment, but is limited to the State and its political subdivisions. Moreover, the Illinois Safety Inspection and Education Act has been in effect since 1961 and the Illinois Health and Safety Act has been in effect since 1936, when the State first established a safety and health program. Since 1985, the Illinois program for public employees has been in operation under the Illinois Department of Labor with State funding and most public sector employers in the State, including small units of local government, have been subject to its terms. Compliance with State OSHA standards is required by State law; Federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan. Accordingly, no new obligations would be placed on public

sector employers as a result of Federal approval of the Plan.

#### **F. Federalism**

Executive Order 13132, "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 consulted extensively with Illinois throughout the development, submission and consideration of its proposed State Plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the Act, which have no effect outside the particular State receiving the approval, OSHA has reviewed the Illinois initial approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

#### **G. Authority and Signature**

This document was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR Parts 1956 and 1902, and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, this 7th day of July 2009.

**Jordan Barab,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. E9-16379 Filed 7-9-09; 8:45 am]

**BILLING CODE 4510-26-P**

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## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 59**

**RIN 2900-AM70**

#### **Grants to States for Construction or Acquisition of State Home Facilities—Update of Authorized Beds**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations regarding grants to States for construction or acquisition of State homes to update the maximum number of nursing home and domiciliary beds designated for each State and to amend the definition of "State" for purposes of these grants to include Guam, the