

§ 1956.2

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

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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 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. 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,