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§ 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]

Subpart G—New Jersey

AUTHORITY: Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, 29 CFR 1956, and Secretary of Labor's Order No. 3-2000 (65 FR 50017).

SOURCE: 66 FR 2272, Jan. 11, 2001, unless otherwise noted.

§ 1956.60 **Description of the plan as initially approved.**

(a) *Authority and scope.* The New Jersey State Plan for Public Employee Occupational Safety and Health received

initial OSHA approval on January 11, 2001. The plan designates the New Jersey Department of Labor as the State agency responsible for administering the plan throughout the State. The plan includes enabling legislation, Public Employees Occupational Safety and Health Act of 1995 (N.J.S.A. 34:6A-25 *et seq.*), enacted in 1984, and amended on July 25, 1995. Under this legislation, the State 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 under the Public Employee Occupational Safety and Health program (PEOSH). The Commissioner of Health and Senior Services has authority for occupational health matters including the authority to conduct health inspections, investigations and related activities. However, all standards adoption and enforcement authority for both occupational safety and health remain the responsibility of the New Jersey Department of Labor.

(b) *Standards.* New Jersey has adopted State standards identical to OSHA occupational safety and health standards promulgated as of December 7, 1998, with differences only in its hazard communication and fire protection standards. The State plan includes a commitment to bring those two (2) standards into conformance with OSHA requirements and to update all standards within one year after plan approval. The State plan also provides that future OSHA standards and revisions will be adopted by the State within six (6) months of Federal promulgation, in accordance with 29 CFR 1953.21. Any emergency temporary standards will be adopted within 30 days of Federal adoption. The State will adopt Federal OSHA standards in accordance with the provisions of New Jersey statute, N.J.S.A. 52:14B-5; Federal standards shall be deemed to be duly adopted as State regulations upon publication by the Commissioner of Labor. The plan also provides for the adoption of alternative or different occupational safety and health standards by the Commissioner of Labor in consultation with the Commissioner of Health and Senior Services, the Commissioner of Community Affairs, and

the Public Employee Occupational Safety and Health Advisory Board, where no Federal standards are applicable to the conditions or circumstances or where standards more stringent than the Federal are deemed advisable.

(c) *Variances.* The plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the OSH 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. The State has committed to amend its current variance procedures at N.J.A.C. 12:110-6 to bring them into conformance with Federal procedures at 29 CFR Part 1905 within two years after state plan approval.

(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 similar to section 11(c) of the OSH Act. However, employees have 180 days to file complaints of discrimination with the Commissioner of Labor; and the Commissioner is authorized to both investigate and order all appropriate relief. The monetary penalty for repeated violations (up to \$70,000 per violation) may also be applicable to repeated employer acts of discrimination.

(e) *Inspections and enforcement.* The plan provides for inspection of covered workplaces including inspections in response to employee complaints, by both the Department of Labor, and by the Department of Health and Senior Services with regard to health issues. 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. Employee(s) accompanying an inspector are entitled to normal wages for the time spent during the inspection. The plan also provides for right of entry for inspection and prohibition of advance notice of inspection. The Commissioner of Labor is responsible for all enforcement actions including the issuance of citations/Orders to Comply which must also specify the abatement period, posting requirements and the employer's and employee's right to contest any or all orders. Although the plan does not provide for initial (first instance) monetary sanctions, the Commissioner of Labor has the authority to impose civil administrative penalties of up to \$7,000 per day for each violation, for failure to abate, if the time for compliance with an order has elapsed, and the employer has not contested and has not made a good faith effort to comply. Willful or repeated violations also are subject to civil administrative penalties of up to \$70,000 for each violation. Penalties may be recovered with costs in a civil action brought under the New Jersey Penalty Enforcement Act (N.J.S.2A.:58-1 *et seq.*)

(f) *Review procedures.* Under the plan, employers, employees and other affected parties may seek informal review with the Department of Labor relative to a notice of violation/Order to Comply, the reasonableness of the abatement period, any penalty and/or may seek formal administrative review with the Occupational Safety and Health Review Commission, a board appointed by the Governor and authorized under section 34:6A.42 of the New Jersey Act to hear and rule on appeals of orders to comply and any penalties proposed. Any employer, employee or employee representative affected by a determination of the Commissioner may file a contest within fifteen (15) working days of the issuance of an order to comply. The Review Commission will issue an order, based on a finding of fact, affirming, modifying, or vacating the commissioner's order to

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comply or the proposed penalty, or directing other appropriate relief, and the order shall become final 45 days after its issuance. Judicial review of the decision of the Review Commission may be sought at the Appellate Division of the Superior Court.

(g) *Staffing and Resources.* The plan further provides assurances of a fully trained, adequate staff, including 20 safety and 7 health compliance officers for enforcement inspections, and 4 safety and 3 health consultants to perform consultation services in the public sector, and 2 safety and 3 health training and education staff. The State has assured that it will continue to provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards as required by 29 CFR 1956.10. The State has also given satisfactory assurance of adequate funding to support the plan.

(h) *Records and reports.* The plan provides that public employers in New Jersey 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 Jersey has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses with regard to both private and public sector employers. The State will comply with the provisions of 29 CFR 1904.7 which allows full employee and employee representative access, including employee's names, to the log of workplace injuries and illnesses; and will amend its regulations accordingly. 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 Jersey 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, requirements and safe work practices; an on-site consultation program in the public sector will be established to provide services to public

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employers who so desire; and, all State agencies and political subdivisions will be encouraged to develop and maintain self inspection programs as well as internal safety and health programs as an adjunct to but not a substitute for the Commissioner of Labor's enforcement.

§ 1956.61 Developmental Schedule.

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

(a) Adopt standards identical to or at least as effective as all existing OSHA standards within one year after plan approval.

(b) Adopt amendments to regulations regarding inspections, citations, and proposed penalties equivalent to 29 CFR part 1903 within one year after plan approval.

(c) Develop a five year strategic plan within two years after plan approval.

(d) Develop field inspection reference manual and/or field operations manual within two years after plan approval.

(e) Fully implement public employer/employee consultation, training and education program equivalent to 29 CFR part 1908 within three years after plan approval.

(f) Adopt amendments to regulations regarding discrimination against employees equivalent to 29 CFR part 1977 within two years after plan approval.

(g) Adopt amendments to regulations regarding variances equivalent to 29 CFR part 1905 within two years after plan approval.

(h) Adopt amendments to regulations regarding record keeping equivalent to 29 CFR part 1904 within two years after plan approval.

§ 1956.62 Completion of developmental steps and certification. [Reserved]

§ 1956.63 Determination of operational effectiveness. [Reserved]

§ 1956.64 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