

§ 1956.10

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.

29 CFR Ch. XVII (7-1-05 Edition)

(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,

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 pub-

lished 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

§ 1956.11

29 CFR Ch. XVII (7-1-05 Edition)

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 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 employee 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