

practice before the Internal Revenue Service (as defined in Treasury Department Circular No. 230). For disclosures in these cases, see section 6103(e)(6) and §§ 601.501 through 601.508 of this chapter.

(d) *Acknowledgments of electronically filed returns and other documents; combined filing programs with State tax agencies—(1) Acknowledgment of, and notices regarding, electronically filed returns and other documents.* When a taxpayer files returns or other documents or information with the Internal Revenue Service electronically, the taxpayer may consent to the disclosure of return information to the transmitter or other third party, such as the taxpayer's financial institution, necessary to acknowledge that the electronic transmission was received and either accepted or rejected by the Internal Revenue Service, the reason for any rejection, and such other information as the Internal Revenue Service determines is necessary to the operation of the electronic filing program. The consent must inform the taxpayer of the return information that will be transmitted and to whom disclosure will be made. The requirements of paragraphs (b) and (c) of this section do not apply to a consent under this paragraph (d)(1).

(2) *Combined return filing programs with State tax agencies.* (i) A taxpayer's participation in a combined return filing program between the Internal Revenue Service and a State agency, body, or commission (State agency) described in section 6103(d)(1) constitutes a consent to the disclosure by the Internal Revenue Service, to the State agency, of taxpayer identity information, signature, and items of common data contained on such return. For purposes of this paragraph, common data means information reflected on the Federal return required by State law to be attached to or included on the State return. Instructions accompanying the forms or published procedures involved in such program must indicate that by participating in the program, the taxpayer is consenting to the Internal Revenue Service's disclosure to the State agency of the taxpayer identity information, signature, and items of common data, and that such information will be treated by the State agency as if it had been directly filed with the State agency. Such instructions or procedures must also describe any verification that takes place before the taxpayer identity information, signature and common data is transmitted by the Internal Revenue Service to the State agency.

(ii) No disclosures may be made under this paragraph (d)(2) unless there are provisions of State law protecting the confidentiality of such items of common data.

(e) *Definitions and rules applicable to this section—(1) Separate written document.* (i) For the purposes of paragraph (b) of this section, *separate written document* means—

(A) One side of a standard (8½" by 11" or larger) sheet of paper, which may be included as part of a larger document;

(B) Text appearing on a single computer screen containing all the elements described in paragraph (b)(1) of this section, which can be signed (see paragraph (e)(2) of this section) and dated by the taxpayer, and which can be reproduced, if necessary; or

(C) A consent on the record in an administrative or judicial proceeding, or a transcript of such proceeding recording such consent, containing the information required under paragraph (b)(1) of this section.

(ii) A provision included in a taxpayer's application for a loan or other benefit authorizing the grantor of the loan or other benefit to obtain any financial information, including returns or return information, from any source as the grantor may request for purposes of verifying information supplied on the application, does not meet the requirements of paragraph (b)(1) of this section because the provision is not a separate written document relating solely to the disclosure of returns and return information. In addition, the provision does not contain the other information specified in paragraph (b)(1) of this section.

(2) *Method of signing.* A request for or consent to disclosure may be signed by any method of signing the Secretary of the Treasury has prescribed pursuant to § 301.6061-1(b) in forms, instructions, or other appropriate guidance.

(3) *Permissible designees and public forums.* Permissible designees under this section include individuals; trusts; estates; corporations; partnerships; Federal, State, local and foreign government agencies or subunits of such agencies; or the general public. When disclosures are to be made in a public forum, such as in a courtroom or congressional hearing, the request for or consent to disclosure must describe the circumstances surrounding the public disclosure, e.g., congressional hearing, judicial proceeding, media, and the date or dates of the disclosure.

(4) *Authority to execute a request for or consent to disclosure.* Any person who may obtain returns under section 6103(e)(1) through (5), except section

6103(e)(1)(D)(iii), may execute a request for or consent to disclose a return or return information to third parties. For taxpayers that are legal entities, such as corporations and municipal bond issuers, any officer of the entity with authority under applicable State law to legally bind the entity may execute a request for or consent to disclosure. A person described in section 6103(e)(6) (a taxpayer's representative or individual holding a power of attorney) may not execute a request for or consent to disclosure unless the designation of representation or power of attorney specifically delegates such authority. A designee pursuant to this section does not have authority to execute a request for or consent to disclosure permitting the Internal Revenue Service to disclose returns or return information to another person.

(5) *No disclosure of return information if impairment.* A disclosure of return information shall not be made under this section if the Internal Revenue Service determines that the disclosure would seriously impair Federal tax administration (as defined in section 6103(b)(4) of the Internal Revenue Code).

(f) *Effective date.* This section is applicable on January 11, 2001 through January 12, 2004.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: December 29, 2000.

**Jonathan Talisman**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1956

RIN 1218-AB98

#### Notice of Initial Approval Determination; New Jersey Public Employee Only State Plan

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

**ACTION:** Final Rule: Initial State Plan Approval; New Jersey Public Employee Only State Plan.

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**SUMMARY:** The New Jersey Public Employee Only State plan, a State occupational safety and health plan applicable only to public sector employees (employees of the State and its political subdivisions), is approved

as a developmental plan under section 18 of the Occupational Safety and Health Act of 1970 and 29 CFR part 1956. Under the approved plan, the New Jersey Department of Labor is designated as the State agency responsible for the development and enforcement of occupational safety and health standards applicable to public employment throughout the State. The Occupational Safety and Health Administration (OSHA) retains full authority for coverage of private sector employees in the State of New Jersey as well as for coverage of Federal government employees.

**EFFECTIVE DATE:** January 11, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Paula O. White, Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693-2200, Fax: (202) 693-1671, E-mail: [Paula.White@osha.gov](mailto:Paula.White@osha.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Introduction**

Section 18 of the Occupational Safety and Health Act of 1970 (the "OSH Act"), 29 U.S.C. 667, provides that a State which desires to assume responsibility for the development and enforcement of occupational safety and health 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 in detail the proposed program. Regulations promulgated pursuant to the OSH Act at 29 CFR part 1956 provide that a State may submit a State plan for the development and enforcement of standards applicable only to employees of the State and its political subdivisions ("public employees"). State and local government workers are excluded from Federal coverage under the OSH Act and are provided protection only through the vehicle of a State Plan approved pursuant to Section 18 of the Act.

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 OSH 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. A State plan for public employees may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1956.10 and 1956.11, if it includes satisfactory assurances by the State that it will take the necessary steps, and establishes an acceptable developmental schedule, to meet the criteria within a 3-year period (29 CFR 1956.2(b)). The Assistant Secretary publishes a notice of "certification of completion of developmental steps" when all of a State's developmental commitments have been met satisfactorily (29 CFR 1956.23; 1902.33 and 1902.34) and the plan is structurally complete. After certification of a State plan for public employees, OSHA may initiate a period of at least one year of intensive monitoring, after which OSHA may make a determination under the procedures of §§ 1902.38, 1902.39, 1902.40 and 1902.41 as to whether, on the basis of actual operations, the criteria set forth in §§ 1956.10 and 1956.11 for "at least as effective" State plan performance are being applied under the plan—a determination of "operational effectiveness."

**B. History of the Present Proceeding**

In 1973, the New Jersey Department of Labor and Industry 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 New Jersey. That plan was approved by the Assistant Secretary on January 22, 1973 (37 FR 2426); 29 CFR 1952.140 et seq). That plan was subsequently withdrawn by the State of New Jersey effective June 30, 1975, after the State was unable to gain enactment of the necessary State OSHA legislation (40 FR 27655).

In 1984, the New Jersey State Legislature passed the New Jersey Public Employees Occupational Safety and Health (PEOSH) Act, N.J.S.A. 34:6A (the "State Act"), which was signed into law by the Governor, and which provided the basis for establishing a comprehensive occupational safety and health program applicable to the public employees in the State.

The State formally submitted for Federal approval a plan applicable only to public employees in February 1988. OSHA's review findings were detailed

in an October 1988 letter to the State in which OSHA determined that the New Jersey statute, as then structured, and the proposed State plan failed to meet Federal Public Employee Only State plan approval criteria.

A revised plan was submitted by the State on February 19, 1992. On March 27, 1992, OSHA informed the State of its findings, identifying areas of the proposed plan which needed to be addressed or needed clarification. Amended enabling legislation was signed into law on July 25, 1995, to conform the proposed State plan to OSHA requirements. On October 11, 1995, the New Jersey State Labor Commissioner submitted a newly revised State plan which OSHA determined was conceptually approvable as a developmental State plan, but which could not be approved until additional Federal matching grant funds, necessary for approval of a new State plan, were appropriated under section 23(g) of the OSH Act. (The OSH Act provides for funding "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. Thus Federal matching grant funds must be available before a State plan can be approved.)

On August 1, 2000, current New Jersey Commissioner of Labor, Mark B. Boyd, and Commissioner of Health and Senior Services, Christine Grant, submitted a further revised plan document, with subsequent amendments submitted on August 15, August 29, September 1, September 22, September 28, and October 5, 2000. On December 21, 2000, the President signed the appropriation act for FY 2001 for the Department of Labor, as approved by the Congress, which includes funding for the Occupational Safety and Health Administration specifically designated for initial approval of the New Jersey State plan.

On November 13, 2000, OSHA published notice in the **Federal Register** (65 FR 67672) concerning the submission of the New Jersey Public Employee Only State plan, announcing that initial Federal approval of the plan was at issue, and offering interested parties an opportunity to review the plan and submit data, views, arguments or requests for a hearing concerning the plan. The New Jersey Department of Labor published similar notices throughout the State from November 15-17, 2000, in the following New Jersey newspapers: *The Newark Star-Ledger*, *The South Jersey Courier-Post*,

*The Trenton Times, The Atlantic City Press, and The Bergen Record.* (Ex. #5)

To assist and encourage public participation in the initial approval process, copies of the New Jersey State plan were maintained as Docket No. T-034 in the Docket Office, Department of Labor, Occupational Safety and Health Administration, Third Street and Constitution Avenue, NW, Room N-2625, Washington, DC 20210; Office of the New York Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; and the New Jersey Department of Labor, Division of Public Safety and Occupational Safety and Health, Office of Public Employees' Safety, P.O. Box 386, 225 East State Street, 8th Floor West, Trenton, New Jersey 08625-0386.

### C. Summary and Evaluation of Comments Received

In response to OSHA's November 13, 2000, **Federal Register** notice, which announced submission of the New Jersey State plan and its availability for public comment, three (3) written public comments were submitted by: (1) Peter P. Guzzo, Executive Director/Legislative Agent, for Consumers for Civil Justice (OSHA Docket #T-034, Exhibit 3-1.); (2) Rick Engler, Director, New Jersey Work Environment Council, cosigned by the following 15 organizations: Harold Schaitberger, General President, for International Association of Fire Fighters, AFL-CIO; Thomas Canzanella, President, for Professional Firefighters Association of New Jersey, IAFF; William J. Lavin, for New Jersey Firemen's Mutual Benevolent Association; Michael Johnson, President, for New Jersey Education Association; David Legrande, Director of Occupational Safety and Health, for Communications Workers of America (CWA), AFL-CIO; Robert Pursell, New Jersey Area Director, for CWA District 1; Carla Katz, President, for CWA Local 1034; Michael Lohman, Staff Representative, for CWA, Local 1033, and Chairman, CWA New Jersey State Worker Locals Health and Safety Coordinating Committee; Bill Borwegan, Director of Occupational Safety and Health, for Service Employees International Union, AFL-CIO; Daryl Alexander, Associate Director for Occupational Safety and Health, for American Federation of Teachers (AFT), AFL-CIO; Nicholas C. Yovnello, President, for Council of New Jersey State College Locals, AFT; Ken Carlson, President for Rutgers Council of American Association of University Professors; Gerald Newsome, Trustee,

for International Federation of Professional and Technical Engineers Local, 195, AFL-CIO; Edward II Lennon, President, for State Troopers Fraternal Association of New Jersey; Mark Dudzie, President, for Paper, Allied-Industrial, Chemical, and Energy Workers Local 2-149, AFL-CIO (OSHA Docket # T-034, Exhibit 3-2.); and; (3) Verri Andrea, student, University of Wisconsin-Madison. (OSHA Docket # T-034, Exhibit #4-1.)

All of the commenters listed above indicated their support for OSHA approval of the New Jersey Public Employee Only State plan. None has requested a public hearing or raised any issues for consideration.

### D. Review Findings

As required by 29 CFR 1956.2 in considering the granting of initial approval to a State public employee only plan, OSHA must determine whether the State plan meets or will meet the criteria in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR 1956.11. Findings and conclusions in each of the major State plan areas addressed by 29 CFR part 1956 are as follows:

#### (1) Designated Agency

Section 18(c)(1) of the OSH Act provides that a State occupational safety and health plan must designate a State agency or agencies responsible for administering the plan throughout the State (29 CFR 1956.10(b)(1)). The plan must describe the authority and responsibilities of the designated agency and provide assurance that other responsibilities of the agency will not detract from its responsibilities under the plan (29 CFR 1956.10(b)(2)). The New Jersey Department of Labor is designated by revised N. J. S. A. 34:6A-25 *et seq.*, as the sole agency responsible for administering and enforcing the New Jersey Public Employee Occupational Safety and Health (PEOSH) plan. (New Jersey State plan, p. 15.) The plan also describes the authority of the New Jersey Department of Labor and its other responsibilities. (New Jersey State plan, pp.16-16.2.) The New Jersey Department of Health and Senior Services has responsibility for conducting inspections with regard to occupational health hazards but all standards adoption and enforcement authority rests with the New Jersey Department of Labor. (N.J.S.A. 34:6A-30(e))

#### (2) Scope

Section 18(c)(6) of the OSH Act provides that the State, to the extent permitted by its law, shall under its

plan establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of the State and its political subdivisions. Only where a State is constitutionally precluded from regulating occupational safety and health conditions in certain political subdivisions may the State exclude such political subdivision employees from coverage (29 CFR 1956.2(c)(1)). Further, the State may not exclude any occupational, industrial or hazard grouping from coverage under its plan unless OSHA finds that the State has shown there is no necessity for such coverage (29 CFR 1956.2(c)(2)).

The scope of the New Jersey State plan includes any employee of the State and any political subdivision thereof, including a public authority or any other governmental agency or authority. No employees of any political subdivision of the State or local government are excluded from the plan. (New Jersey State plan, pp 10-11.) The New Jersey Department of Labor adopts all Federal OSHA occupational safety and health standards, and the plan excludes no occupational, industrial or hazard grouping. (New Jersey State plan, p. 10)

Consequently, OSHA finds that the New Jersey plan contains satisfactory assurances that no employees of the State and its political subdivisions are excluded from coverage, and the plan excludes no occupational, industrial or hazard grouping.

#### (3) Standards

Section 18(c)(2) of the OSH Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal OSHA standards. A State plan for public employees must therefore provide for the development or adoption of such standards and must contain assurances that the State will continue to develop or adopt such standards (29 CFR 1956.10(c); 1956.11(b)(2)(ii)). A State may establish the same standards as Federal OSHA (29 CFR 1956.11(a)(1)), or alternative standards that are at least as effective as those of Federal OSHA (29 CFR 1956.11(a)(2)). Where a State's standards are not identical to Federal OSHA, they must meet the following criteria: they must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1956.11(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1956. 11(b)(2)(i));

must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1956.11(b)(2)(vi)); and, must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1956.11(b)(2)(vii)).

In addition, the State plan must provide for prompt and effective standards setting actions for protection of employees against new and unforeseen hazards, by such means as authority to promulgate emergency temporary standards (29 CFR 1956.11(b)(2)(v)).

The PEOSH Act, 34:6A-30 *et seq.*, mandates that the Commissioner of Labor (the "Commissioner") shall adopt all safety and health standards promulgated under the OSH Act which are in effect on the effective date of the State Act (January 17, 1984, as amended July 25, 1995), and incorporate future revisions. (New Jersey State plan, p.19) The procedures for State adoption of Federal occupational safety and health standards include publication in the New Jersey Register in accordance with N.J.S.A. 52:14B-5. New Jersey has adopted State standards identical to Federal occupational safety and health standards promulgated as of December 7, 1998, with the exception of the hazard communication and fire protection standards. The State plan includes a commitment to bring those standards into conformance with OSHA requirements and to update all standards within one year after plan approval. (The State intends to incorporate appropriate provisions of the New Jersey Right to Know Act into its public sector occupational hazard communication standard.) The State plan also provides that future OSHA standards and revisions will be adopted by the State in accordance with 29 CFR 1953.21.

Under the New Jersey State plan, the Commissioner of Labor, in consultation with the Commissioner of Health and Senior Services, and the Commissioner of Community Affairs, and with the advice of the Public Employees' Safety and Health Advisory Board may adopt alternative or different occupational safety and health standards where no federal standards are applicable or where more stringent standards are deemed advisable. (N.J.S.A. 34:6A-30(c); New Jersey State plan, pp.21-28). Such standards will be adopted in accordance with the State Act and the New Jersey Administrative Procedures Act, N.J.S.A. 52-148-1 *et seq.*, which include provisions for interested persons to petition the State for a new or revised standard and which give

interested persons the opportunity to participate in any hearing for the development, modification or establishment of standards.

Section 34:6A-30(b) of the amended State Act provides for coordination of the provisions of the State uniform construction code and the uniform fire safety code with State occupational safety and health standards. The Commissioner of Community Affairs is charged with amending the uniform construction or fire codes to reflect any more stringent applicable provisions of the State OSHA standards and with preparing an application to the Assistant Secretary for approval of any equally effective provision of the uniform construction or fire codes for incorporation into the State plan. In response to OSHA's concerns that building or fire codes may not appropriately address employee protection, New Jersey amended its State Act and provided assurance that Federal approval will be obtained prior to the incorporation of building or fire codes as State occupational safety and health standards into the State plan. (New Jersey State plan, p.27)

The New Jersey State plan also provides for the adoption of Federal emergency temporary standards within 30 days of Federal promulgation. State regulations will be amended to reflect this. (New Jersey State plan, p. 27)

Based on the foregoing plan provisions and assurances and commitments, OSHA finds the New Jersey State plan to have met the statutory and regulatory requirements for initial plan approval with respect to occupational safety and health standards.

#### (4) Variances

A State plan must provide authority for the granting of variances from State standards upon application of a public employer or employers which corresponds to variances authorized under the OSH 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 (29 CFR 1956.11(b)(2)(iv)).

The State Act provides for the granting of permanent and temporary variances from State standards (N.J.S.A., Section 34:6A-39; New Jersey State Plan, pp. 35-51) in terms substantially similar to the variance provisions of 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. However, the State's variance procedures at N.J.A.C. 12:110-6.5(c) require revision. The State has provided assurance in its developmental schedule that within two years of initial plan approval it will amend its regulations to reflect variance provisions contained in the Federal 29 CFR Part 1905. (New Jersey State Plan p. 38.)

Accordingly, OSHA finds that the New Jersey State plan effectively provides or will provide opportunity and procedures for variances from its occupational safety and health standards.

#### (5) Enforcement

Section 18(c)(2) of the OSH Act and 29 CFR 1956.10(d)(1) require a State plan to include provisions for enforcement of State standards which are or will be at least as effective in providing safe and healthful employment and places of employment as the Federal program, and to assure that the State's enforcement program for public employees will continue to be at least as effective as the Federal program in the private sector.

(a) *Legal Authority.* The State must require public employer and employee compliance with all applicable standards, rules and orders (29 CFR 1956.10(d)(2)) and must have the legal authority for standards enforcement (section 18(c)(4)) including compulsory process (29 CFR 1956.11(c)(2)(viii)).

Section 34:6A-33 of the State Act requires public employers to comply with the New Jersey Department of Labor's occupational safety and health standards; section 34:6A-34 requires employees to comply with all standards and regulations applicable to their own actions and conduct. Section 34:6A-31 of the revised State Act also provides that space leased by a public employer must be in conformance with current occupational safety and health requirements at the time a lease is executed.

(b) *Inspections.* A State plan must provide for inspection of covered workplaces, including in response to complaints, where there are reasonable grounds to believe a hazard exists (29 CFR 1956.11(c)(2)(i)).

When no compliance action results from inspection of violations alleged by employee complaints, the State must notify the complainant of its decision not to take compliance action by such means as written notification and

opportunity for informal review (29 CFR 1956.11(c)(2)(iii)).

The State Act provides for inspections of covered workplaces including inspections in response to employee complaints by the Commissioner of Labor, and with regard to health hazards, by the Commissioner of Health and Senior Services (N.J.S.A., Sections 34:6A–35, 36, and 38.) The New Jersey State plan (Section 1, pp. 73–75) provides that when a determination has been made that a complaint does not warrant an inspection, the complainant shall be notified in writing of the determination and given an opportunity to request a review of that determination. In response to OSHA comments, New Jersey revised its regulations and procedures to allow complainants to elect anonymity in the process.

(c) *Employee Notice and Participation in Inspection.* In conducting inspections, the State plan must provide an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1956.11(c)(2)(ii)).

The State Act provides the opportunity for an employer and employee representative to accompany a Department of Labor or Department of Health and Senior Services inspector for the purpose of aiding in the inspection. (N.J.S.A., Section 34:6A–36 and –38.) Where there is no authorized employee representative, the inspectors are required to consult with a reasonable number of employees concerning matters of safety and health in the workplace. Any employee who accompanies an inspector representing either Commissioner on an inspection shall receive payment of normal wages for the time spent on the inspection. (N.J.S.A. Sec 34:6A–35, –36, –38)

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1956.11(c)(2)(iv)); and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1956.11(c)(2)(vi)).

The State Act provides that the Commissioner of Labor must issue regulations requiring that employers, through posting of notices, training or other appropriate means, keep their employees informed of their protections. (N.J.S.A., Section 34:6A–31.) A poster, which outlines employee protections and obligations under the Act, has been designed and distributed

to public employers. Specific regulations as well as the poster have been submitted by the State. (New Jersey State Plan, Attachments 3 and 9.)

Information on employee exposure to regulated agents (in the public sector), access to medical and exposure records, and provision and use of suitable protective equipment is provided through State standards. New Jersey has adopted all Federal standards as of December 7, 1998 with the exception of 29 CFR part 1910, subpart L—Fire protection, and 29 CFR 1910.1200 Hazard Communication. The State plan contains an assurance that the State intends to adopt all applicable Federal standards either identically or submit alternative standards which are at least as effect as the Federal standards within one year of plan approval as a part of the 3-year developmental schedule. (New Jersey State Plan, pp. 28–32)

(d) *Nondiscrimination.* A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program, including provision for employer sanctions and employee confidentiality (29 CFR 1956.11(c)(2)(v)).

The State Act provides that no person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on behalf of the employee or others of any right under this section. (N.J.S.A., Section 34:6A–45.)

The State Act provides that an employee who believes that he or she has been discharged, disciplined or otherwise discriminated against by any person in violation of this section, may within 180 days after the employee first has knowledge such a violation did occur, file a complaint with the Commissioner of Labor alleging that discrimination. (N.J.S.A., Section 34:6A–45b.) The Commissioner shall investigate such complaints as appropriate and make a determination within 90 days which shall include an order for all appropriate relief. The monetary penalty established for repeated violations may also be applied to repeated discriminatory acts. (N.J.S.A. 34:6A–41(d))

New Jersey will amend its regulations on nondiscrimination procedures, N.J.A.C. 12:110–7, to conform with Federal guidelines within two years

after plan approval. (New Jersey State Plan, p. 80; Attachment 3.)

e. *Restraint of Imminent Danger.* A State plan is required to provide for the prompt restraint of imminent danger situations (29 CFR 1956.11(c)(2)(vii)).

Section 34:6A.44 of the State Act provides that the Attorney General, at the request of and on behalf of the Commissioner of Labor, may bring an action in the Superior Court to restrain any conditions or practices in any workplace which the Commissioner determines, in accordance with the State Act ( N.J.S.A. 34:6A–41), are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger could be eliminated through the enforcement process. (New Jersey State plan, pp. 66–69.)

(f) *Right of Entry; Advance Notice.* A State program is required to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1956.10(e)). Likewise, a State is expected to prohibit advance notice of inspection, allowing exception thereto no broader than in the Federal program (29 CFR 1956.10(f)).

The State Act provides that the Commissioner of Labor and the Commissioner of Health and Senior Services both have the right of immediate entry of any premises occupied by a public employer at reasonable hours, and without advance notice if there is reason to believe that a violation of this section of State law has occurred. (N.J.S.A., 34:3A–35.)

The New Jersey State plan ( p.63–64) describes its general policy and procedures prohibiting advance notice of inspections and allowing exception thereto. Any person who gives advance notice of any inspection to be conducted under this act, without authority from the Commissioner of Labor or the Commissioner of Health and Senior Services or their designees, shall upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six (6) months, or by both. (N.J.S.A. 34:6A–35(g)).

(g) *Citations, Sanctions, and Abatement.* A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations, including proposed abatement requirements, identified during inspection, for the proposal of effective first-instance sanctions against employers found in violation of standards, and for prompt employer notification of any such sanctions. In lieu of monetary penalties as a sanction, a complex of enforcement

tools and rights, including administrative orders and employee right to contest citations (as well as abatement dates), may be demonstrated to be as effective as monetary penalties in achieving compliance in public employment (29 CFR 1956.11(c)(2)(ix) and (x)).

The State Act describes the authority and general procedures of the Commissioner of Labor to promptly notify public employers and employees of violations, and abatement requirements and to compel compliance therewith. The Commissioner of Labor must issue a written order to comply with reasonable promptness which is in no case no more than six months after determination of the existence of a safety violation or certification from the Commissioner of Health and Senior Services of a health violation. (N.J.S.A., Section 34:6A-35 and -41.)

The New Jersey State plan (pp. 87-90) provides that when an inspection of an establishment has been made, and the Commissioner of Labor has issued an order to comply, the employer shall post such order or a copy thereof at or near each location of the violation cited in the order so that it is clearly visible to affected employees. The Commissioner must make such order available to employee representatives, affected employees and the public. A written citation (Order to Comply) will be issued, citing the sections of the law, standards, rules or regulations alleged to be violated, the location of the violation, the abatement period, posting requirements and will also include the employer's and employee's right to contest any or all orders.

Although the State Plan does not provide for first instance sanctions, it does provide for monetary penalties for failures-to-abate and willful and repeated violations. The State Act (N.J.S.A., Section 34:6A-41(d)) provides that 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, the Commissioner of Labor shall impose a civil administrative penalty of up to \$7,000 per day for each violation. In addition, any employer who willfully or repeatedly violates the requirements of any standard, rule, order or regulation shall be assessed a civil administrative penalty of up to \$70,000 for each violation. Penalties may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under the Penalty Enforcement Law. (N.J.S.2A:58-1 *et seq.*) The State has given an assurance that it will adopt appropriate penalty procedures that will include gravity-

based penalties (severity and probability) as well as penalty adjustment factors (size, history, and good faith) as a part of its developmental step commitment to adopt amendments to regulations regarding inspections, citations, and proposed penalties equivalent to 29 CFR 1903 within one year after state plan approval. Specific regulations and detailed procedures on compliance orders, abatement and sanctions will be submitted by New Jersey in accordance with its developmental schedule. (New Jersey State plan, pp. 96-96.)

(h) *Contested Cases.* A State plan must have authority and procedures for employer contest of violations alleged by the State, penalties/sanctions and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1956.11(c)(2)(xi)).

The State Act provides that any employer, employee or employee representative affected by a determination of the Commissioner of Labor may file with the Commissioner, within fifteen working days of the issuance of an order to comply, a notice to contest any provision of the order. (N.J.S.A. Sections 34:6A-36, 41 and N.J.A.C. 12:110-4.13.) The Commissioner must immediately advise the Occupational Safety and Health Review Commission of the notification and the Commission will afford an opportunity for a hearing. The Review Commission will issue an order, based on a finding of fact, affirming, modifying, or vacating the Commissioner's order to comply or the proposed penalty, or directing other appropriate relief, and the order shall become final 45 days after its issuance. (N.J.S.A. 34:6A-42) N.J.A.C. 12:110, establishes the opportunity for the Commissioner of Labor to hold an informal conference. Such a conference would be for the purpose of discussing any issue raised by an inspection, order to comply, a notice of proposed penalty, or notice of intention to contest. No such conference or request for such conference will serve as a stay of any 15 working day period for filing a notice of intention to contest as prescribed in N.J.A.C. 12:110-4.14. Appeals from decisions of the Review Commission are to the Appellate Division of the Superior Court. (N.J.S.A. 34:6A-43)

(i) *Enforcement Conclusion.* Accordingly, OSHA finds that the enforcement provisions of the New Jersey State plan as described above

meet or will meet the statutory and regulatory requirements for initial State plan approval.

#### 6. Staffing and Resources

Section 18(c)(4) of the OSH Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1956.10(g), one factor which OSHA must consider in considering a plan for initial approval is whether the State has or will have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The New Jersey State plan (pp. 150-154) 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 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 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 (New Jersey State plan, p.156) that it will meet the staffing requirements of 29 CFR 1956.10.

Section 18(c)(5) of the OSH Act requires that the State plan devote adequate funds to administration and enforcement of its standards (29 CFR 1956.10(h)). New Jersey has funded its public employee occupational safety and health program since 1984 solely utilizing State funds. The State plan will be funded at \$5,118,360 (\$1,771,000 Federal 50% share; \$1,771,000 State 50% matching share; \$1,576,360 100% State funds) during federal fiscal year 2001.

Accordingly, OSHA finds that the New Jersey State plan has provided for sufficient, qualified personnel and adequate funding for the various activities to be carried out under the plan.

#### 7. Records and Reports

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7)) of the OSH Act). Under a public employee State plan, public employers must maintain records and

make reports on occupational injuries and illnesses in a manner similar to that required of private sector employers under the OSH Act and (29 CFR 1956.10(i)). The plan must also provide assurances that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the OSH Act and 29 CFR 1956.10(j)).

New Jersey has provided assurance in its State plan (pp. 139–144) that all jurisdictions covered by the State plan will maintain valid records and make timely reports on occupational injuries and illnesses as required for private employers under the OSH Act. Specific regulations on this aspect of the State plan will be submitted by New Jersey in accord with its developmental schedule in which the State has agreed to adopt amendments to regulations regarding recordkeeping equivalent to 29 CFR part 1904 within two years after state plan approval. Current State recordkeeping regulations, at N.J.A.C. 12:110–5., infer that employees' names may be considered confidential. As this conflicts with the Federal requirement at 29 CFR 1904.7 which provides for full access to the OSHA Log including Column C, "Employee's Name," for compliance staff, employees, former employees and employee representatives, the State has provided assurance that it will comply with § 1904.7 upon plan approval and will amend its regulation accordingly. (New Jersey State Plan, p. 140)

New Jersey has also provided assurance in its State plan (pp. 144 and 148) that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses (for the private sector) and will similarly continue its statistical survey of the public sector under its approved plan. The New Jersey State plan also contains assurances that it will provide reports to OSHA in the desired form and participate in OSHA's Integrated Management Information System. (New Jersey State plan, pp. 145–148)

OSHA finds that the New Jersey State plan has met the requirements of section 18(c)(7) and (8) of the OSH Act on employer and State reports to the Secretary.

#### 8. Voluntary Compliance Program

A State plan must undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees (29 CFR 1956.11(c)(2)(xii)).

The New Jersey State plan (pp.125–130) provides that the State Labor and

Health Departments will include voluntary compliance as an essential component of its program. Training will be provided to public employers and employees; seminars will be conducted to familiarize affected individuals with OSHA standards and requirements, and safe work practices; and, an on-site consultation program in the public sector parallel to New Jersey State's existing private sector on-site consultation program (under section 21(d) of the OSH Act) will be established. The public employee consultation program will have both safety and health consultants available to employers who request such service. All State agencies and political subdivisions will also be encouraged to develop and maintain self-inspection programs and to develop internal safety and health programs in accordance with the State public employee safety and health program guidelines. The State has committed under its developmental schedule to fully implement public employer/employee consultation, training and education program equivalent to 29 CFR part 1908 within three years after state plan approval.

OSHA finds that the New Jersey State plan provides for the establishment and administration of an effective voluntary compliance program.

#### E. Decision

OSHA, after carefully reviewing the New Jersey State plan for the development and enforcement of State standards applicable to State and local government employees and the record developed during the above described proceedings, has determined that the requirements and criteria for initial approval of a developmental plan have been met. The plan is hereby approved as a developmental plan under section 18 of the Act and 29 CFR part 1956. This decision incorporates the requirements of the Act and of regulations applicable to State plans generally.

The initial approval of a State plan for public employees in New Jersey is not a significant regulatory action as defined in Executive Order 12866.

#### F. 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 New Jersey 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 New Jersey

legislation has been in effect since 1984, when the State first established a safety and health program for State and local government employees. Since that time, the New Jersey program has been in operation 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.

#### G. 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 New Jersey 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 New Jersey initial approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

#### H. List of Subjects in 29 CFR PART 1956

Intergovernmental relations, Law enforcement, Occupational Safety and Health, Reporting and recordkeeping requirements.

#### I. Effective Date January 11, 2001

OSHA's decision granting initial Federal approval to the New Jersey State plan for public employees only is effective January 11, 2001. The program described in the plan has been in effect for many years and no immediate modifications of the program are required by today's decision. Federal 50% matching funds have been explicitly provided in the Department of Labor's FY 2001 appropriation. Notice of proposed initial approval of the plan was published both in the **Federal Register** and in several newspapers throughout the State with requests for comment. No comments opposing initial approval of the plan were received, and OSHA believes that no

party is adversely affected by initial approval of the plan. OSHA therefore finds, pursuant to section 553(d) of the Administrative Procedures Act, that good cause exists for making Federal approval of the New Jersey Public Employee Only State plan effective upon publication in the **Federal Register**.

#### J. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act, (29 U. S. C. 667), 29 CFR parts 1902 and 1956, and Secretary of Labor's Order No. 3-2000 (65 FR 50017).

Signed at Washington, D.C. this 4th of January, 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

For the reasons set out in the preamble, 29 CFR Part 1956 is hereby amended by adding a new Subpart G as follows:

#### Subpart G—New Jersey

Sec.

- 1956.60 Description of the plan as initially approved.
- 1956.61 Developmental schedule.
- 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.

#### 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).

#### § 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) *Variations.* 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 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 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 Administration, 200 Constitution Avenue, N.W., Room N-3700, Washington, D.C. 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 1201 Varick Street, Room 670, New York, New York 10014; and New Jersey Department of Labor, Division of Public Safety and Occupational Safety and Health, Office of Public Employees' Safety, P.O. Box 386, 225 East State Street, 8th Floor West, Trenton, New Jersey 08625-0386.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 141

[FRL-6920-6]

RIN 2040-AD58

### Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for List 2 Contaminants; Clarifications to the Unregulated Contaminant Monitoring Regulation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Safe Drinking Water Act (SDWA), as amended in 1996, requires the U.S. Environmental Protection Agency to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. In fulfillment of this requirement, EPA published the Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) for public water systems on September 17, 1999, which included lists of contaminants for which monitoring was required or would be required in the future. These lists included: List 1 for contaminants with approved analytical methods; List 2 for contaminants with methods that were being refined; and List 3 for