

(2) *The nature, circumstances, extent and gravity of the violation.* Under this factor, the Commission will consider the totality of the circumstances surrounding a violation, including how many provisions of law were violated. The Commission will continue to look at the enumerated statutory factors, as well as other factors (as described in paragraph (b) of this section) that the Commission may determine are appropriate, and consider all of the factors in determining the civil penalty amount.

(3) *Nature of the product defect.* The Commission will consider the nature of the product hazard/substance for which a penalty is sought. A product defect under this factor includes violations for products that contain defects which could create substantial product hazards as referenced in the CPSA and defined and explained in 16 CFR 1115.4; regulatory violations of a rule, regulation, standard or ban; or product hazards presented by any other violation of the prohibited acts of section 19 of the CPSA.

(4) *Severity of the risk of injury.* Consistent with its discussion of severity of the risk at 16 CFR 1115.12, the Commission will consider, among other factors, the potential for serious injury or death (and whether any injury required actual medical treatment including hospitalization or surgery); the likelihood of injury; the intended or reasonably foreseeable use or misuse of the product; and the population at risk (including vulnerable populations such as children, the elderly, or those with disabilities).

(5) *The occurrence or absence of injury.* The Commission will consider whether injuries have or have not occurred with respect to any product associated with the violation.

(6) *The number of defective products distributed.* The Commission will consider the actual number of products or amount of substances imported or placed in the stream of commerce to distributors, retailers, and consumers.

(7) *The appropriateness of such penalty in relation to the size of the business of the person charged including how to mitigate undue adverse economic impacts on small businesses.* (i) The Commission is required to consider the size of a business in relation to the amount of the proposed penalty. This factor reflects the relationship between the size of the business of the person charged and the deterrent effect of civil penalties. In considering business "size," the Commission may look to several factors including the firm's number of employees, net worth, and annual sales.

The Commission may be guided, where appropriate, by any relevant financial factors to help determine a violator's ability to pay a proposed penalty including: liquidity factors; solvency factors; and profitability factors.

(ii) The statute requires the Commission to consider how to mitigate the adverse economic impacts on small business violators *only* if those impacts would be "undue." What the Commission considers to be "undue" will vary based upon the violator's business size and financial condition as well as the nature, circumstances, extent and gravity of the violation(s). When considering how to mitigate undue adverse economic consequences, the Commission may also follow its Small Business Enforcement Policy set forth at 16 CFR 1020.5.

(b) *Other factors as appropriate.* In determining the amount of any civil penalty to be pursued when a knowing violation of the prohibited acts section of the CPSA, FHSA, or FFA has occurred, the Commission may consider, where appropriate, other factors in addition to those listed in the statutes. Both the Commission and the violator are free to raise any other factors they believe are relevant in determining an appropriate penalty amount. Which, if any, additional factors the Commission considers in determining an appropriate penalty amount, including but not limited to those listed above, will be unique to each case. In all civil penalty matters, any additional factors beyond those enumerated in the statute that the Commission takes into consideration for purposes of determining an appropriate civil penalty amount will be made known to and discussed with the violator. Additional factors which may be considered in an individual case include, but are not limited to, the following:

(1) *Safety/Compliance Program and/or System:* The Commission may consider, for example, whether a violator had at the time of the violation, a reasonable program/or system for collecting and analyzing information related to safety issues, including incident reports, lawsuits, warranty claims, and safety-related issues related to repairs or returns; and whether a violator conducted adequate and relevant premarket and production testing of the product(s) at issue.

(2) *History of noncompliance:* The Commission may consider if the violator has a history of noncompliance with the CPSC and whether a higher penalty should be assessed for repeated noncompliance.

(3) *Economic Gain from Noncompliance:* The Commission may consider whether a firm benefitted economically from a delay in complying with statutory and regulatory requirements.

(4) *Failure of the violator to respond in a timely and complete fashion to the Commission's requests for information or remedial action:* The Commission may consider whether a violator's failure to respond in a timely and complete fashion to requests from the Commission for information or for remedial action should increase the amount of the penalty.

#### **§ 1119.5 Enforcement notification.**

A potential violator will be informed in writing that the Commission believes it is subject to a possible civil penalty. The violator will be able to submit evidence and arguments that it is not subject to such a penalty.

Dated: August 19, 2009.

**Alberta E. Mills,**

*Acting Secretary, Consumer Product Safety Commission.*

[FR Doc. E9-20591 Filed 8-31-09; 8:45 am]

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## **DEPARTMENT OF LABOR**

### **Occupational Safety and Health Administration**

#### **29 CFR Part 1956**

[Docket No. OSHA-2009-0010]

RIN 1218-AC44

#### **Notice of Initial Approval Determination; Illinois Public Employee Only State Plan**

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

**ACTION:** Final rule.

**SUMMARY:** The Illinois 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 the Occupational Safety and Health Act of 1970 and OSHA regulations. Under the approved Plan, the Illinois 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 Illinois as well as for coverage of Federal government employees.

**DATES:** *Effective Date:* September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

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

*General and technical inquiries:*

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

**SUPPLEMENTARY INFORMATION:**

**A. Introduction**

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act"), 29 U.S.C. 667, provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a State Plan to the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") documenting the proposed program in detail. Regulations promulgated pursuant to the Act at 29 CFR Part 1956 provide that a State may submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employees of the State and its political subdivisions ("public employees"). State and local government workers are excluded from Federal coverage under the 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 three year period (29 CFR 1956.2(b)). The Assistant Secretary may publish 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 performance 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.

**B. History of the Present Proceeding**

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

Since 1985, the Illinois Department of Labor (IDOL), Safety Inspection and Education Division (SIED), has adopted standards and performed inspections in the public sector (State, county, and municipal employees) as outlined under the provisions of the State's existing enabling legislation: the Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] and the Illinois Health and Safety Act (HSA) [820 ILCS 225]. In 2005, Illinois began working on a Public Employee Only State Plan and submitted a draft Plan to OSHA in May 2006. OSHA's review findings were detailed in various memoranda and other documents, including a May 18, 2007 letter to the Illinois Department of Labor Director Catherine Shannon.

OSHA determined that the Illinois statutes, as structured, and the proposed State Plan presented several obstacles to meeting the Federal Public Employee Only State Plan approval criteria in 29 CFR 1956. Amendments to both the Illinois Safety Inspection and Education Act and the Illinois Health and Safety Act were proposed and enacted by the Illinois General Assembly and signed into law by the Governor in 2006 and 2007. The amended legislation provides the basis for establishing a comprehensive occupational safety and health program applicable to public employees in the State.

Illinois formally submitted a revised Plan applicable only to public employees for Federal approval on June 18, 2008. Over the next several months, OSHA worked with Illinois in identifying areas of the proposed Plan which needed to be addressed or required clarification. In response to Federal review of the proposed State Plan, supplemental assurances, and revisions, corrections and additions to the Plan were submitted on April 8, 2009 and May 15, 2009. Further modifications were submitted by the State on June 8, 2009. The revised IDOL/SIED Plan has been found to be conceptually approvable as a developmental State Plan.

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

On July 10, 2009, OSHA published notice in the **Federal Register** (74 FR 33189) concerning the submission of the Illinois 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 Illinois Department of Labor similarly published notice of the availability of the State Plan for comment on July 15, 2009 in the *Daily Herald* newspaper in Illinois.

To assist and encourage public participation in the initial approval process, the documents constituting the Illinois State Plan for Public Employees Only are available at <http://>

[www.regulations.gov](http://www.regulations.gov) as Docket No. OSHA-2009-0010. Copies of the Illinois State Plan also were maintained and are available for inspection in the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; OSHA's Regional Office in Chicago, Illinois, at 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, IL 60604; and at the Offices of the Illinois Department of Labor, Safety Inspection and Education Division at 1 West Old State Capitol Plaza, 3rd floor, Springfield, IL 62701; 160 North LaSalle Street, Suite C-1300, Chicago, IL 60601; or 2309 West Main Street, Suite 115, Marion IL 62959.

Electronic copies of this notice, as well as news releases and other relevant information, are available on OSHA's Web page at <http://www.osha.gov>.

### C. Summary and Evaluation of Comments Received

In response to OSHA's July 10, 2009, **Federal Register** notice, which announced the submission of the Illinois Public Employee Only State Plan and its availability for public comment, nine (9) written public comments were submitted by: (1) Mark Bishop, Deputy Director, Healthy Schools Campaign (Document # OSHA-2009-0010-0024); (2) Linda Gibbons, Certified School Nurse, Illinois Association of School Nurses (Document # OSHA-2009-0010-0028); (3) Brenda McCracken and (4) Patrick Genovese, President, Three Rivers Chapter of the American Society of Safety Engineers (Document # OSHA-2009-0010-0025 and 0026); (5) Lorraine M. Conroy, Associate Professor, Environmental and Occupational Health Sciences, and eight other officials of the University of Illinois, School of Public Health at Chicago (Document # OSHA-2009-0010-0029); (6) Symantha Aydt, School of Labor and Employment Relations, University of Illinois (Document # OSHA-2009-0010-0030 and 0031); (7) Scott D. Miller, Counsel, American Federation of State, County and Municipal Employees, Council 31, Chicago, Illinois (Document # OSHA-2009-0010-0032); (8) C. Christopher Patton, President, American Society of Safety Engineers (Document # OSHA-2009-0010-0034); and (9) John T. Coli, President, Teamsters Joint Council 25 (Document # OSHA-2009-0010-0035).

Mark Bishop, Deputy Director of the Healthy Schools Campaign (exhibit 0024), expressed support for the Illinois PEO State Plan, in particular IDOL's protection of the health and safety of school teachers and staff.

Linda J. Gibbons, Certified School Nurse and member of the Illinois Association of School Nurses (exhibit 0028), also expressed support for the Illinois PEO State Plan.

The comments from Patrick Genovese, President, Three Rivers Chapter of the American Society of Safety Engineers (ASSE) (exhibit 0026), as transmitted by Brenda McCrackin (exhibit 0025), supported the State of Illinois, for its " \* \* \* intent to establish an Illinois Public Employee Only State Plan", and the extension of such coverage to all public employees either under Federal standards or through other non-State Plan states following Illinois' example. In addition, Mr. Genovese mentioned efforts ASSE members in Florida have taken to see that public sector workers are protected and the successes that other established State Plans have achieved.

The comments from Lorraine M. Conroy, Associate Professor of Environmental and Occupational Health Sciences at the University of Illinois at Chicago and eight other officials of the University of Illinois, School of Public Health (exhibit 0029), supported approval of the Illinois PEO State Plan. In addition, Ms. Conroy requested clarification in the areas of coverage, the complaint process, discrimination, rule making, penalties, and comprehensive safety and health programs in order to assure that the Illinois program is as effective, or more effective, than Federal OSHA.

Symantha Aydt of the School of Labor and Employment Relations at the University of Illinois (exhibits 0030 and 0031) requested clarifications in several areas, including methods for compelling compliance, the State's voluntary compliance program, and coverage of prisoners and volunteers.

Scott D. Miller, Counsel, American Federation of State, County and Municipal Employees (AFSCME), Council 31 (exhibit 0032), which represents more than 75,000 State government public-service workers as well as "thousands" of local government employees in Illinois, supported approval of the Illinois PEO State Plan. However, Mr. Miller, on behalf of AFSCME, requested that the State provide "a heightened level of assurances" that it will provide adequate matching funds, that its compliance officers will receive comprehensive training on hazards in the public sector, that it consider expanded use of its first-instance sanction authority, that the independence of its Administrative Law Judges be assured through specific regulations and separation from IDOL's

legal department, that procedural rules be developed to implement the right of employees and their representatives to challenge the State's failure to enforce, and that IDOL undertake outreach beyond its poster to inform public employees of their rights and responsibilities under the Plan.

C. Christopher Patton, President, American Society of Safety Engineers (exhibit 0034) on behalf of its 32,000 members nationwide and 1,400 members in Illinois, supported approval of the Illinois PEO State Plan. Mr. Patton also supported the extension of such coverage to all public employees either under Federal standards or through other non-State Plan states following Illinois' example and mentioned efforts ASSE members in Florida have taken to see that public sector workers are protected.

John T. Coli, President, Teamsters Joint Council 25 (exhibit 0035) supported approval of the Illinois PEO State Plan on behalf of the Joint Council and the 22 local unions under its jurisdiction, who collectively represent approximately 50,000 members in Illinois State and municipal governments. Mr. Coli emphasized the need for adequate assurances that Illinois will fund "a fully trained and adequate staff," support for monetary penalties for failure to correct and egregious violations, the importance of the independence of the adjudicatory process, and workers' right to request a hearing regarding the reasonableness of the abatement period.

Several of the commenters requested that the Plan extend coverage to include safety and health protection of students and other non-employee classes. Both Federal OSHA's and State Plans' jurisdiction is statutorily limited to the working conditions of employees and does not extend to coverage of the general public or of students. However, the Illinois PEO State Plan extends coverage to students who are working, such as teaching or research assistants in public colleges and universities. Improved working conditions for public school employees likely result in benefits for students as well.

OSHA has carefully considered the public comments and finds that none of the commenters offered specific facts or observations that would preclude approval of the Illinois State Plan or questioned whether the plan meets the statutory and regulatory criteria for initial approval as a developmental plan. All of the commenters listed above indicated their support for OSHA approval of the Illinois Public Employee Only State Plan. However, included in the public comment are many useful

suggestions for program clarifications and enhancements. OSHA will require the State to address these issues as they develop the key elements of their program during the next three years. No requests for a public hearing were submitted.

#### D. Review Findings

As required by 29 CFR 1956.2 in considering the granting of initial approval to a Public Employee Only State 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 1956 are as follows:

##### (1) Designated Agency

Section 18(c)(1) of the OSH Act provides that a State occupational safety and health program 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 Illinois Department of Labor is designated by the Illinois Safety Inspection and Education Act [820 ILCS 220] and the Illinois Health and Safety Act [820 ILCS 225] as the sole agency responsible for administering and enforcing the public employee protection program in Illinois. The Illinois Department of Labor, Safety Inspection and Education Division is designated as the agency responsible for the Public Employee Only State Plan. The Plan describes the authority of the Illinois Department of Labor and its other responsibilities. (A separate agency, the Illinois Department of Commerce and Economic Development delivers OSHA's On-Site Consultation program to private sector employers throughout the State.) (Illinois State Plan, pp. 1–3)

##### (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 further coverage (29 CFR 1956.2(c)(1)). Further, the State may not exclude any occupational, industrial or hazard groupings 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 Illinois State Plan includes any employee of the State, including members of the General Assembly, members of the various State commissions, persons employed by public universities and colleges, and employees of counties, cities, townships, school districts, municipal corporations, etc. No employees of any political subdivision of the State or local government are excluded from the Plan. However, the definition of public employee does not extend to students or incarcerated or committed individuals in public institutions, or volunteers, unless they receive benefits such as health insurance or Workers' Compensation. The Illinois Department of Labor will adopt all Federal OSHA occupational safety and health standards, and the Plan excludes no occupational, industrial or hazard grouping.

Consequently, OSHA finds that the Illinois 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. (Illinois State Plan, p. 2)

##### (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)).

Under the Plan's legislation, the Illinois Safety Inspection and Education Act [820 ILCS 220] and the Illinois Health and Safety Act [820 ILCS 225], the Illinois Department of Labor has full authority to adopt standards and regulations and enforce and administer all laws and rules protecting the safety and health of employees of the State and its political subdivisions. The procedures for State adoption of Federal occupational safety and health standards include publication of a first and second notice in the *Illinois Register*, opportunity for a public hearing, notification to the Joint Committee on Administrative Rules, etc., in accordance with the Illinois Administrative Procedures Act [5 ICLS 100]. Illinois has adopted State standards identical to Federal occupational safety and health standards as promulgated through September 30, 2005. The State Plan includes a commitment to update all standards within one year after Plan approval. The Plan also provides that future OSHA standards and revisions will be adopted by the State within six months of Federal promulgation in accordance with the requirements at 29 CFR 1953.5.

Under the Plan, the Illinois Department of Labor has the authority to adopt alternative or different occupational safety and health standards where no Federal standards are applicable or where more stringent standards are deemed advisable. Such standards will be adopted in accordance with the State Acts and the Illinois Administrative Procedures Act, which include provisions allowing submissions from interested persons and the opportunity to participate in any hearing for the development, modification or establishment of standards. (Illinois State Plan, pp. 4–6)

The Illinois State Plan also provides for the adoption of Federal emergency temporary standards within 30 days of Federal promulgation. (Illinois State Plan pp. 5–6)

Based on the preceding Plan provisions, assurances, and commitments, OSHA finds the Illinois 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)).

Section 4.2 of the Illinois Health and Safety Act [820 ILCS 225] includes provisions for the granting of permanent and temporary variances from State standards to public employers in terms substantially similar to the variance provisions contained in the Federal Act. The State provisions require employee notification of variance applications as well as employee rights to participate in hearings held on variance applications. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance. However, the State's variance procedures at 56 ILAC 350.40 require revision. The State has provided assurances in its developmental schedule that within two years of initial approval it will amend its regulations to reflect variance provisions equivalent to those contained in the Federal 29 CFR 1905. (Illinois State Plan pp. 7–8 and 19)

#### (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 3 of the Illinois Health and Safety Act [820 ILCS 225/3] establishes the duty of public employers to provide a place of employment free of recognized hazards, to comply with the Illinois Department of Labor's occupational safety and health standards, to inform employees of their protections and obligations and provide information on hazards in the workplace. Public employees must comply with all standards and regulations applicable to their own actions and conduct.

(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)).

Sections 2 and 2.1 of the Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] provide for inspections of covered workplaces, including inspections in response to employee complaints, by the Director of Labor. If a determination is made that an employee complaint does not warrant an inspection, the complainant will be notified in writing of such determination. The complainant will be notified of the results of any inspection in writing and provided a copy of any citation that is issued. Employee complainants may request that their names not be revealed. (Illinois State Plan, pp. 10–11)

(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 Illinois Safety Inspection and Education Act provides the opportunity for employer and employee representatives to accompany a Department of Labor inspector for the purpose of aiding the inspection. 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. (820 ILCS 220/2(b)(6))

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 Plan provides for notification to employees of their protections and obligations under the Plan by such means as a State poster, required posting of notices of violation, etc. The State has provided assurances in its developmental schedule to update and submit the State poster for posting at all public sector workplaces in the State within one year of initial plan approval. (Illinois State Plan, p. 20)

Section 2.5 of the Illinois Safety Inspection and Education Act authorizes the Director of Labor to issue rules requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents. Information on employee exposure to regulated agents, access to medical and exposure records, and provision and use of suitable protective equipment is provided through State standards which will be updated within one year of plan approval. (Illinois State Plan, p. 13; p. 19)

(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)).

Section 2.2 of the Illinois Safety Inspection and Education Act [820 ILCS 220] provides that a person may not discharge or in any other way discriminate against any employee because the employee has filed a complaint or instituted or caused to be instituted any proceeding under or related to the Acts or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or herself or others of any right afforded by the State Acts.

The SIEA provides that an employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 calendar days after the violation occurs, file a complaint with the Director of Labor alleging the discrimination. The Plan provides that the Director shall investigate such complaints as appropriate and make a determination within 90 days. If the Director determines that the provisions of this

section have been violated, the Director shall bring an action in the circuit court for appropriate relief. (820 ILCS 220/2.2 and Illinois State Plan, p.11)

The Illinois State Plan provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State Acts in terms essentially identical to section 11(c) of the Federal Act.

(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 2(b)(7)(B) of the Illinois Safety Inspection and Education Act [820 ILCS 220] provides that the Director may file a complaint in the circuit court for appropriate relief, by such means as an order to cease and desist, to restrain any conditions or practices in the workplace which the Director determines, in accordance with the State Acts, 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. (Illinois State Plan, p. 10)

(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 OSH 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)).

Section 2(b)(3) of the Illinois Safety Inspection and Education Act [820 ILCS 220] provides that the Director of Labor has the right to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, agent or employee.

Section 2.6(a) of the SIEA prohibits advance notice of inspections. A person who gives advance notice of any inspection to be conducted under the authority of this Act or the Health and Safety Act without authority from the Director of Labor, or his or her authorized representative, commits a Class B misdemeanor. (Illinois State Plan, p. 9)

(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 employees' right to contest, 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 Illinois Safety Inspection and Education Act establishes the authority and general procedures for the Director of Labor to promptly notify public employers and employees of violations, abatement requirements, and to compel compliance. The Director of Labor must issue a written order to comply with reasonable promptness, which in no case may be more than six months after the occurrence of any violation. The SIEA provides that when an inspection of an establishment has been made, and the Director of Labor has issued a citation, the employer shall post such citation or a copy thereof at or near the location where the violation occurred. Each citation shall be in writing; describe with particularity the nature of the violation and include a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated; and fix a reasonable time for the abatement of the violation. (820 ILCS 220/2.3)

Although Section 2.3 of the SIEA contains authority for a system of first-instance monetary penalties, in practice it is the State's intent to issue monetary penalties only for failure to correct and egregious violations. The State has discretionary authority for civil penalties of not more than \$10,000 for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to \$1,000 per violation and failure-to-correct violations may be assessed a penalty of up to \$1,000 per violation per day. In addition, any public employer who willfully violates any standard, rule, or order can be charged by the Attorney General with a Class 4 felony if that violation causes death to any employee. (Illinois State Plan, p. 11–12)

The State has given an assurance that it will revise its regulations regarding inspections, citations, and proposed penalties to be equivalent to 29 CFR 1903 within two years of plan approval. (Illinois State Plan, p. 19)

(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)).

Public employers or their representatives who receive a citation or a proposed penalty may within 15 working days contest the citation, proposed penalty and/or abatement period and request a hearing before an Administrative Law Judge (ALJ) on behalf of the Director. Any public employee or representative may within 15 working days request a hearing before an ALJ regarding the reasonableness of the abatement period. Informal review prior to contest may also be requested at the division level. The ALJ's decision is subject to appeal to the courts. (Illinois State Plan, pp. 12–13)

Although the Illinois Plan does not include an independent authority for review of contested cases, and the Director technically has statutory responsibility for both the enforcement and the appeals process (820 ILCS 220/2.4), in practice, Administrative Law Judges hear contested cases without any oversight or review by the Director. ALJ's decisions are subject to judicial review under the Illinois Administrative Review Law. (56 ILCS 350.120). Within one year of plan approval, the State will make appropriate changes to its regulations and procedures to ensure the separation of these functions and the independence of the adjudicatory process. The Director of Labor will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested.

The State's developmental schedule also includes an assurance that it will revise its regulations regarding the review system for contested cases to be equivalent to 29 CFR 2200 within two years of plan approval. (Illinois State Plan, p. 19)

(i) *Enforcement Conclusion.* Accordingly, OSHA finds that the enforcement provisions of the Illinois 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 Illinois State Plan (p. 17; pp. 19–20) provides assurances of a fully trained, adequate staff, including 11 safety and 3 health compliance officers for enforcement inspections, and 3 safety and 2 health consultants to provide consultation, training and education services in the public sector. The State has a currently authorized staff of 8 safety and 3 health compliance officers who, in addition to inspections, also perform duties equivalent to OSHA's on-site consultation program. The Plan provides assurances that within three years of plan approval no staff will have dual roles, and the State will have a fully trained, adequate, and separate staff of compliance officers for enforcement inspections, and consultants to perform consultation services in the public sector. As new staff members are hired they will perform either enforcement or consultation functions. 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 (DC Cir. 1978). This staffing test, and the complicated formula used to derive benchmarks for complete private/public sector Plans, are not intended, nor are they appropriate, for application to the staffing needs of public employee only Plans. However, the State has given satisfactory assurance in its Plan that it will meet the requirements of 29 CFR 1956.10 for an adequately trained and qualified staff sufficient for the enforcement of standards. (Illinois State Plan, p. 17; pp. 19–20)

Section 18(c)(5) of the OSH Act requires that the State Plan devote adequate funds for the administration and enforcement of its standards (29 CFR 1956.10(h)). Illinois has funded its public employee safety and health program since 1985 solely utilizing State funds. The State Plan will be funded at \$3 million (\$1.5 million Federal 50% share and \$1.5 million State 50% matching share) during Federal Fiscal Year 2009.

Accordingly, OSHA finds that the Illinois 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 Assistant 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 Assistant Secretary in such form and containing such information as he or she may from time to time require (section 18(c)(8) of the OSH Act and 29 CFR 1956.10(j)).

Illinois has provided assurances in its State Plan (p. 19) 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 sector employers under the OSH Act. Specific regulations on this aspect of the State Plan will be submitted by Illinois in accord with its developmental schedule, in which the State has agreed to adopt amendments to regulations regarding recordkeeping equivalent to 29 CFR 1904 within two years of plan approval.

Illinois has also provided assurance in its State Plan (p. 20) that it will coordinate with the Illinois Department of Public Health and the Bureau of Labor Statistics (BLS) to expand the current BLS Annual Survey of Injuries and Illnesses in the State to provide more detailed injury, illness, and fatality rates for the public sector within two years of plan approval. Illinois will also provide reports to OSHA in the desired form and participate in OSHA's Integrated Management Information System as well as OSHA's Information System, once deployed. (Illinois State Plan p. 16; p. 20)

OSHA finds that the Illinois State Plan has met the requirements of section 18(c)(7) and (8) of the OSH Act on the employer and State reports to the Assistant 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 Illinois State Plan (pp. 13–14) provides that the State Department of Labor will continue and expand educational programs for public employees specifically designed to meet the regulatory requirements and needs of the public employer. The Plan also provides that consultation visits and training classes will be conducted at

work sites by request of the employer and will be tailored to the public employer's concerns. In addition, public agencies are encouraged to develop and maintain their own safety and health programs as an adjunct to but not a substitute for the IDOL enforcement program.

Illinois will establish an on-site consultation program for the public sector parallel to Illinois' existing private sector on-site consultation program (under section 21(d) of the OSH Act) within three years of plan approval, which includes establishing a public sector consultation staff separate from enforcement. (Illinois State Plan, p. 19)

OSHA finds that the Illinois State Plan provides for the establishment and administration of an effective voluntary compliance program.

#### E. Decision

OSHA, after carefully reviewing the Illinois 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 State Plan have been met. The Plan is hereby approved as a developmental plan for public employees only under section 18 of the Act and 29 CFR 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 Illinois 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 initial approval of the Illinois State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment, but is limited to the State and its political subdivisions. Moreover, the Illinois Safety Inspection and Education Act has been in effect since 1961 and the Illinois Health and Safety Act has been in effect since 1936, when the State first established a safety and health program. Since 1985, the Illinois program for public employees has been in operation under the Illinois Department of Labor with State funding and most public sector employers in the State, including small units of local government, have been subject to its terms. Compliance with State OSHA

standards is required by State law; Federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan. Accordingly, no new obligations would be placed on public sector employers as a result of Federal approval of the Plan.

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

### H. Effective Date

OSHA's decision granting initial Federal approval to the Illinois State Plan for public employees only is effective September 1, 2009. Although the State has had a program in effect for many years, modification of the program will be required over the next three years by today's decision. Federal 50% matching funds have been explicitly provided in the U.S. Department of Labor's FY 2009 appropriation. Notice of proposed initial approval of the plan was published in both the **Federal Register** and in the *Daily Herald* newspaper in Illinois with requests for comment. No comments requesting 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 Illinois Public Employee Only State Plan effective upon publication in today's **Federal Register**.

### I. Authority and Signature

This document was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970, (29 U.S.C. 667), 29 CFR parts 1956

and 1902, and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, this 26th day of August 2009.

**Jordan Barab,**

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

### List of Subjects in 29 CFR 1956

Administrative practice and procedure, Government employees, Intergovernmental relations, Law enforcement, Occupational safety and health.

For the reasons set out in the preamble, 29 CFR part 1956 is amended as follows:

### PART 1956—[AMENDED]

- 1. The authority citation for part 1956 is revised to read as follows:

**Authority:** Section 18 of the Occupational Safety and Health Act of 1970, (29 U.S.C. 667), 29 CFR 1902, 1952, and 1955, and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

- 2. Subpart I is added to read as follows:

#### Subpart I—Illinois

Sec.	Description of the plan as initially approved.
1956.80	Description of the plan as initially approved.
1956.81	Developmental schedule.
1956.82	[Reserved]
1956.83	[Reserved]
1956.84	Location of plan for inspection and copying.

#### Subpart I—Illinois

##### § 1956.80 Description of the plan as initially approved.

(a) *Authority and scope.* The Illinois State Plan for Public Employee Occupational Safety and Health received initial OSHA approval on September 1, 2009. The Plan designates the Illinois Department of Labor as the State agency responsible for administering the Plan throughout the State. The Plan includes as enabling legislation the Illinois Safety Inspection and Education Act (SIEA) [820 ILCS 220] and the Illinois Health and Safety Act (HSA) [820 ILCS 225]. Under the legislation, the State Director of Labor has full authority to adopt, enforce and administer all laws and rules protecting the safety and health of all employees of the State and its political subdivisions under the Illinois Public Employee Only State Plan.

(b) *Standards.* Illinois has adopted State standards identical to OSHA occupational safety and health standards promulgated through September 30, 2005. The State Plan

provides that these standards will be updated within one year of plan approval and future OSHA standards and revisions will be adopted by the State within six months of Federal promulgation, in accordance with 29 CFR 1953.5. 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 the Illinois Health and Safety Act [820 ILCS 225/4.1]. The Plan also provides for the adoption of alternative or different occupational safety and health standards by the Director of Labor, where no Federal standards are applicable to the conditions or circumstances or where standards more stringent than Federal are deemed appropriate.

(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 56 ILAC 350.40 to bring them into conformance with Federal procedures at 29 CFR 1905 within two years of 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 the 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 Acts in terms similar to section 11(c) of the OSH Act. The SIEA provides that an employee who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this section may, within 30 calendar days after the violation occurs, file a complaint with the Director of Labor alleging the discrimination. The Plan provides that the Director shall investigate such complaints as appropriate and make a determination within 90 days. If the Director determines that the provisions of this section have been violated, the Director shall bring an action in the circuit court for appropriate relief.

(e) *Inspections and enforcement.* The Plan provides for inspection of covered

workplaces, including inspections in response to employee complaints by the Department of Labor. 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 provides the opportunity for employer and employee representatives to accompany the inspector during an inspection for the purpose of aiding in the inspection and in the absence of such a representative, the right to interview a reasonable number of employees during the inspection. The Plan also provides for the right of entry for inspection and prohibition of advance notice of inspection. The Director of Labor is responsible for all enforcement actions, including the issuance of all citations which must specify the abatement period, posting requirements, and the employer's and employees' right to contest any or all citations. Although the Plan contains authority for a system of first-instance monetary penalties, in practice it is the State's intent to issue monetary penalties only for failure to correct and egregious violations. The State has discretionary authority for civil penalties of not more than \$10,000 for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to \$1,000 per violation and failure-to-correct violations may be assessed a penalty of up to \$1,000 per violation per day. In addition, any public employer who willfully violates any standard, rule, or order can be charged by the Attorney General with a Class 4 felony if that violation causes death to any employee.

(f) *Review procedures.* Although the Director has statutory responsibility for both the enforcement and the appeals process (820 ILCS 220/2.4), in practice, Administrative Law Judges (ALJ) hear contested cases without any oversight or review by the Director. The State will make appropriate changes to its regulations and procedures to ensure the separation of these functions and the independence of the adjudicatory process within one year of plan approval. The Director of Labor will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested. Public employers or their representatives who receive a citation or a proposed penalty may within 15 working days contest the citation, proposed penalty and/or abatement period and request a hearing before an Administrative Law Judge.

Any public employee or representative may within 15 working days request a hearing before an ALJ regarding the reasonableness of the abatement period. Informal review prior to contest may also be requested at the division level. The ALJ's decision is subject to appeal to the courts.

(g) *Staffing and resources.* The Plan further provides assurances of a fully trained, adequate staff within three years of plan approval, including 11 safety and 3 health compliance officers for enforcement inspections, and 3 safety and 2 health consultants to perform consultation services in the public sector. 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 Illinois 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. Illinois has assured that it will coordinate with the Illinois Department of Health to expand its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses to include public sector employers. The State will comply with the provisions of 29 CFR 1904.7, which allow full employee and employee representative access, including employee's names, to the log of workplace injuries and illnesses; and will amend its recordkeeping regulations within two years of plan approval. The Plan also contains assurances that the Director of Labor will provide reports to OSHA in such form as the Assistant Secretary may require, and that Illinois will participate in OSHA's Integrated Management Information System as well as its successor, OSHA Information System, once deployed.

(i) *Voluntary compliance programs.* The Plan provides that training will be provided to public employers and employees; a separate on-site consultation program in the public sector will be established to provide services to public employers who request assistance; and all State agencies and political subdivisions will be encouraged to develop and maintain internal safety and health programs as an adjunct to, but not a substitute for, the Director of Labor's enforcement.

#### **§ 1956.81 Developmental schedule.**

The Illinois State Plan is developmental. The following is a schedule of major developmental steps as provided in the Plan that will be accomplished within three years of plan approval:

(a) Illinois will adopt standards identical to or at least as effective as the applicable existing OSHA standards and revise the Rules of Procedures in Administrative Hearings (56 ILAC 120), clarifying the separation of the enforcement role of the Director of Labor from the adjudicatory role in contested cases, within one year after plan approval.

(b) Illinois will update and adopt amendments to the Illinois Administrative Rules (56 ILAC 350) regarding identical standards, variances, inspections, review system for contested cases and employee access to information equivalent to 29 CFR parts 1903, 1905, 1911 and 2200 within two years after plan approval.

(c) Illinois will adopt amendments to rules regarding recordkeeping substantially identical to 29 CFR part 1904 within two years after plan approval.

(d) An annual performance plan will be developed and submitted with the FY 2010 Grant Application. The performance plan will focus on achievement of developmental steps and activity reporting until such time as the program is fully operational, at which point objective, results-oriented performance goals will be established.

(e) Illinois will develop an inspection scheduling system that targets high hazard establishments within two years of plan approval.

(f) Illinois will develop a comprehensive field operations manual that is at least as effective as the Federal Field Operations Manual within two years after plan approval.

(g) Illinois will begin hiring critical program management staff and filling current vacancy positions within 30 days of plan approval.

(h) Illinois will hire the additional Enforcement program field and support staff within two years of plan approval.

(i) Illinois will fully implement and staff a public employer/employee Consultation program equivalent to 29 CFR part 1908, and training and education programs separate from Enforcement, within three years after plan approval.

(j) Illinois will have an authorized compliance staff of 11 Safety Inspectors and 3 Industrial Hygienists (non-supervisory) and a public sector consultation staff of 3 Safety Hygiene Consultants and 2 Industrial Hygiene

Consultants within three years of plan approval.

(k) Illinois and OSHA will develop a plan for joining the OSHA Integrated Management Information System to report State plan activity, including specific information on inspections, consultation visits, etc., in conjunction with OSHA, within six months of plan approval. Illinois will convert to the new OSHA Information System upon its deployment. In the interim, Illinois will provide monthly reports on its activity in an agreed upon format.

(l) Illinois will coordinate with the Illinois Department of Public Health and the Bureau of Labor Statistics to expand the current Illinois survey to provide more detailed injury/illness/fatality rates on State and local government, within two years of plan approval.

(m) Illinois will revise and submit a State poster for posting at all public sector workplaces in the State within one year of plan approval.

**§ 1956.82 [Reserved]**

**§ 1956.83 [Reserved]**

**§ 1956.84 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, NW., Room N-3700, Washington, DC 20210; OSHA's Regional Office in Chicago, Illinois, at 230 South Dearborn Street, 32nd Floor, Room 3244, Chicago, IL 60604; and at the Offices of the Illinois Department of Labor, Safety Inspection and Education Division at 1 West Old State Capitol Plaza, 3rd floor, Springfield, IL 62701; 160 North LaSalle Street, Suite C-1300, Chicago, IL 60601; or 2309 West Main Street, Suite 115, Marion, IL 62959.

[FR Doc. E9-21044 Filed 8-31-09; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 944**

[SATS No. UT-045-FOR; Docket ID No. OSM-2008-0011]

**Utah Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We are approving an amendment to the Utah regulatory program (the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or "the Act"). Utah proposed revisions to and additions of rules about the sealing of wells and boreholes, Division of Oil, Gas and Mining ("Division" or "DOGM") responsibilities when requesting additional information during permit reviews, and the definition of intermittent stream. Utah is revising its program to be consistent with the corresponding Federal regulations, to achieve greater scientific accuracy, and to improve operational efficiency.

**DATES:** *Effective Date:* September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** James F. Fulton, Chief, Denver Field Division, (303) 293-5015, [jfulton@OSMRE.gov](mailto:jfulton@OSMRE.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Utah Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

**I. Background on the Utah Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act \* \* \* and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

**II. Submission of the Proposed Amendment**

By letter dated May 28, 2008 Utah sent us an amendment to its program (Document ID No. OSM-2008-0011-0001) under SMCRA (30 U.S.C. 1201 *et*

*seq.*). Utah sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the June 24, 2008, **Federal Register** (73 FR 35607). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Document ID No. OSM-2008-0011-0001). We did not hold a public hearing or meeting because no one requested one. We received comments from two industry groups and one Federal agency.

**III. OSM's Findings**

The following are our findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

**A. The Casing and Sealing of Underground Openings**

Utah is amending R645-301-551 to read:

Casing and Sealing of Underground Openings. When no longer needed for monitoring or other use approved by the Division upon a finding of no adverse environmental or health and safety effects, each shaft, drift, adit, tunnel, drill hole, or other opening to the surface from underground will be capped, sealed and backfilled, or otherwise properly managed, as required by the Division and consistent with MSHA, 30 CFR 75.1711 and all other applicable state and federal regulations as soon as practical. Permanent closure measures will be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters. With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements.

This amendment adds "drill holes" to the list of underground openings specified in R645-301-551. The amendment also adds a requirement that the casing and sealing of underground openings be consistent with "all other applicable State and Federal regulations as soon as practical." Finally, the amendment adds the following sentence to the end of the regulatory provision: "With respect to drill holes, unless otherwise approved by the Division, compliance with the requirements of 43 CFR 3484.1(a)(3) or R649-3-24 will satisfy these requirements."

"Drill hole" is defined by the Dictionary of Mining, Minerals, and Related Terms (2nd ed. 1997.) as "a hole in rock or coal made with an auger or a drill". Drill holes, unlike other types of openings to underground mines, such