

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1956**

RIN 1218-AC24

**New York State Plan for Public Employees Only; Approval of Plan Supplements and Certification of Completion of Developmental Steps****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Final rule; New York State Plan; Approval of Plan Supplements; State Plan Certification.

**SUMMARY:** The New York Department of Labor submitted timely documentation attesting to the completion of all structural and developmental aspects of its public employee (State and local government) only State plan as approved by the Occupational Safety and Health Administration (OSHA). After extensive review of the submissions and opportunity for correction, plan supplements constituting an updated and revised State plan were submitted. OSHA is approving the revised State plan, which documents the satisfactory completion of all structural and developmental aspects of New York's approved State plan, and certifying this completion. This certification attests to the fact that New York now has in place those structural components necessary for an effective public employee only program. (Enforcement of occupational safety and health standards with regard to private sector employers and employees in the State of New York remains the responsibility of the U.S. Department of Labor, Occupational Safety and Health Administration.)

**DATES:** *Effective Date:* August 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** For general information and press inquiries, contact Kevin Ropp, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-3700, Washington, DC 20210; telephone (202) 693-2244. Electronic copies of this **Federal Register** notice, as well as all OSHA **Federal Register** notices mentioned in this document, are

available on OSHA's Web site at <http://www.osha.gov>.**SUPPLEMENTARY INFORMATION:****I. Background**

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 may submit for OSHA review and approval a State plan for such development and enforcement. Regulations at 29 CFR part 1956 provide that a State may voluntarily submit a State plan for the development and enforcement of occupational safety and health standards applicable only to employers and employees of the State and its political subdivisions (hereinafter referred to as "public employers" and "public employees"). State and local government employers are excluded from Federal OSHA coverage under section 3(5) of the OSH Act.

Under these regulations, the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") may approve a State plan for public employees only, 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 by Federal OSHA 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. Following initial approval, the State may begin enforcement of its safety and health standards in the public sector and receive up to 50 percent Federal funding for the cost of plan operations.

A State plan for public employees only may receive initial approval even though at the time of submission not all essential components of the plan are in place. Pursuant to 29 CFR 1956.2(b), the Assistant Secretary may initially approve the submission as a "developmental plan," and a schedule within which the State must complete all "developmental steps" within a three year period is issued as part of the initial approval decision. 29 CFR part 1953 provides procedures for the review and approval of changes and progress in the development and implementation of the State plan.

When the Assistant Secretary has reviewed and approved all developmental submissions and finds that the State has satisfactorily completed all developmental steps specified in the initial approval decision, a notice certifying such completion is published in the **Federal Register** (see 29 CFR 1956.23 and 1902.34). Certification attests to the structural completeness of the plan but does not render judgment as to the adequacy or effectiveness of State performance.

**II. State Plan History**

The New York State plan for public employees only ("New York" or "the State") is operated by the New York Department of Labor, Public Employee Safety and Health (PESH) Program. This limited scope State plan was initially approved as a developmental plan under section 18(b) of the OSH Act, and 29 CFR part 1956, on June 1, 1984 (49 FR 22994). After the initial approval of the State plan for public employees only in 1984, New York successfully submitted all of its developmental plan change supplements within three years of the initial approval decision.

Previously, in May 1973, the New York Department of Labor had received approval from the Assistant Secretary, under 29 CFR part 1902, for a comprehensive State plan for the enforcement of occupational safety and health standards in both the private and public sectors (38 FR 13482-13485). That plan was voluntarily withdrawn when the necessary State enabling legislation failed to be enacted (40 FR 27655).

In November 2004, PESH submitted a completely revised State plan which provided updated documentation on all its developmental steps, including those previously approved, for OSHA review and consideration. After extensive review of those documents and opportunity for State correction, New York submitted further revisions in August 2005, October 2005, and April 2006.

**III. Description of the Revised State Plan**

New York submitted plan supplements constituting a revised State plan document on November 4, 2004, with subsequent revisions dated August 19, 2005, October 17, 2005, and April 28, 2006. The revised State plan updates and documents all structural components of the New York program. This includes a revised narrative description of the current program, legislation, administrative rules, standards, a compliance manual, and

current copies of all key documents relating to New York's occupational safety and health program for public employees. These documents are described below and are being approved in this notice.

#### A. The Plan Narrative and Appendices

The plan designates the Commissioner of the New York Department of Labor, through the Division of Safety and Health, Public Employee Safety and Health (PESH) program, as the State agency responsible for administering the plan throughout the State. The plan narrative provides a general overview of PESH's legal authority, standards and variances, regulations, enforcement policies and procedures (the "Field Operations Manual"), voluntary compliance activities (including consultative services and training and outreach programs), an occupational safety and health laboratory, personnel policies and procedures, recordkeeping and reporting requirements, budget, staffing and funding, all of which, together with the supporting documents contained in various appendices, have been determined to provide authority which is "at least as effective as" that of the OSH Act and to meet the criteria and indices for plan approval contained in 29 CFR part 1956.

The State plan appendices contain a variety of State statutes related to the PESH program and its authority, contest procedures, and personnel policies, including: New York Public Employee Safety and Health Act at Article 2, Section 27-a of the New York State Labor Law ("Labor Law"); Article 1, Sections 100-104, and Article 2, Sections 201-207, State Administrative Procedure Act; Article 78, Civil Practice Law; Article 2, Section 31, Labor Law, Duty to Furnish Information and Facilitate Inspections; Article 7, Section 200, Labor Law, General Duty to Protect the Health and Safety of Employees, Enforcement; Article 3, Section 101, Labor Law, Review by Industrial Board of Appeals; Article 2, Section 38, Labor Law, Oaths and Affidavits; Article 2, Section 39, Labor Law, Hearings and Subpoenas; Section 75, Civil Service Law, Removal and other Disciplinary Actions; Article 175, Section 30, Penal Law, Offering a False Instrument for Filing; Civil Service Law related to Merit and Hiring System; Executive Law, Article 5, Section 63.3, General Duties—Attorney General; and Article 28, Labor Law, Toxic Substances Act.

The appendices also contain the following regulations: 12 NYCRR Part 800, PESH Safety and Health Standards; 12 NYCRR Part 801, Recordkeeping; 12

NYCRR Part 802, Inspections of Places of Public Employment; 12 NYCRR Part 803, Variance Regulations; 12 NYCRR Part 804, Petition for Modification of Abatement Date; 12 NYCRR Part 805, Petition for Employee Contest of Abatement Period; 12 NYCRR Part 820, Toxic Substances Information, Training and Education; and 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66, Industrial Board of Appeals, "Rules of Procedure and Practice."

#### B. Legislation

The plan includes legislation, the New York Public Employee Safety and Health Act (the "PESH Act") Article 2, Section 27-a of the New York State Labor Law, as enacted in 1980 and amended on April 17, 1984; August 2, 1985; May 25 and July 22, 1990; April 10, 1992; June 28, 1993; and April 1, 1997. Pursuant to this law, the State plan provides coverage for all public employment in New York. The PESH Act defines covered employers as "the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof;" and covered employees as "persons permitted to work by an employer." No employees of any political subdivision of the State or local government, including public school employees, are excluded from the State plan. The PESH Act contains authority for standards adoption, right of entry, inspections, citations, proposed penalties for failure-to-abate violations, employee rights, variances, non-discrimination, recordkeeping and voluntary compliance programs, etc. The PESH Act contains three provisions which differ substantially from the Federal OSH Act.

1. *Penalties.* Section 6 of the PESH Act establishes a penalty structure which provides for failure-to-abate penalties of up to \$200 per day for serious violations and \$50 per day for other-than-serious violations. This authority, together with mandatory follow-up inspections and judicial enforcement, is the primary means of compelling the abatement of hazards by public employers under the New York program.

2. *Hazard Abatement Board.* Sections 15 and 16 of the PESH Act establish a "Hazard Abatement Board" (the HAB) with three primary functions: to recommend alternate occupational safety and health standards to the Commissioner of Labor after holding public hearings; to receive, review and act upon applications for funding of capital projects designed to abate occupational safety and health hazards which have been found by the

Commissioner of Labor to violate the PESH Act, or which have been identified in a report of the public employee consultation program (only local government employers are eligible for such funding); and to provide grants for programs designed to provide occupational safety and health training and education for employees. (The Hazard Abatement Board is independently funded by the State.)

3. *Removal of Personal Property Prior to Inspections.* Section 5(e) of the PESH Act requires PESH to adopt regulations specific to the conduct of inspections in locker rooms and other areas involving employee personal property and privacy rights. Accordingly, PESH has adopted a regulation on this topic, as described in paragraph F., Inspections and Enforcement, below.

#### C. Standards

The PESH Act, section 27-a(4)(a), mandates the adoption of all Federal OSHA standards as State standards. The New York plan assures the incorporation of any subsequent revisions or additions thereto in a timely manner, including in response to Federal OSHA emergency temporary standards. The procedure for adoption of Federal OSHA standards is provided in the New York State Administrative Procedures Act, which requires publication of the Commissioner of Labor's intent to adopt a standard in the *New York State Register* at least 45 days prior to such adoption. Subsequent to adoption and upon filing of the standard with the Secretary of State, a notice of final action is published in the *State Register*. The plan assures that permanent standards adopted by OSHA will be adopted by the Commissioner within 180 days of Federal promulgation.

Under the plan, the Commissioner of Labor, in consultation with the Hazard Abatement Board, or on his/her own initiative, can propose alternative or different occupational safety and health standards if a determination is made that an issue is not addressed by Federal OSHA standards in a manner that is appropriate for the protection of public employees. The New York Hazard Abatement Board (HAB) is authorized, after public hearings, to recommend such standards to the Commissioner under the PESH Act, sections 27-a.16(D)(a)-(c). The State plan provides for the development and consideration of expert technical information in the formulation of standards and allows interested persons to submit information requesting development or promulgation of any standard and to participate in any hearing for the

development, modification or establishment of standards. In addition, the State Administrative Procedures Act requires public notice and comment for all proposed rules, and provides opportunity for public participation in related hearings.

The plan includes 12 NYCRR Part 800.3, the State safety and health standards regulation, which codifies PESH's adoption by reference of all Federal OSHA safety and health standards applicable to public employees. New York standards are identical to the Federal standards with the following exceptions and additions. The State promulgated and retained the 1989 Permissible Exposure Limits in the Air Contaminants Standard, which were initially promulgated at 29 CFR 1910.1000 by Federal OSHA but subsequently withdrawn. In addition, the requirements of the PESH Hazard Communication ("HazCom") Standard, which are identical to the Federal Hazard Communication Standard (29 CFR 1910.1200), are supplemented with additional requirements, as applicable to public sector employers only, in the New York Toxic Substances Act (NYTSA) and its implementing regulations at 12 NYCRR Part 820. The NYTSA defines "toxic substances" more broadly than the HazCom standard and does not contain the same exemptions, such as those for articles or consumer products, as the HazCom standard. PESH monitors for compliance with the NYTSA in three areas: The posting of a sign; the provision of annual employee training at no-cost, during work hours, and in a convenient location; and the maintenance of employee training records. NYTSA violations are noted by PESH compliance officers during inspections and referred to the Attorney General for enforcement if not resolved. On June 7, 2006, New York enacted a new workplace violence prevention law applicable to public employees, which amends the State Labor Law and requires the Commissioner to issue implementing regulations. The law requires public employers to assess workplace violence risks and, in workplaces with 20 or more employees, develop and implement a written workplace violence prevention program. These different or additional State requirements have been reviewed and determined to be "at least as effective" as the comparable Federal standards.

#### D. Variances

Section 8 of the PESH Act and 12 NYCRR Part 803 establish proceedings for the granting of permanent and temporary variances from State standards, which are equivalent to the

Federal requirements at 29 CFR part 1905. These provisions require employee notification of variance applications and provide for employee participation 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. Under the plan, all variances granted have only future effect and temporary variances are available only prior to the effective date of a standard. The procedures allow for the modification or revocation of permanent variances at any time after six months from issuance upon application by an employer, employee, employee representative, or by the Commissioner on his/her own motion. Temporary variances may not be renewed more than twice. Procedures for variance actions can be found in the PESH Field Operations Manual, Chapter VI.

#### E. 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 "Public Employees Job Safety and Health Protection" poster (which is included in the plan documents and also available electronically on the PESH Web site) and required posting of notices of violations. Section 10 of the PESH Act provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State's Act in terms parallel to section 11(c) of the Federal Act. Complaints must be filed within thirty days after the alleged violation, and the complainant must be notified of the Commissioner of Labor's determination within ninety days of the receipt of the complaint. If the Commissioner determines that the provisions of Section 10 have been violated, the Commissioner is required to make a request to the New York Attorney General to bring an action in the New York Supreme Court. The New York Supreme Court has jurisdiction to restrain violations and to order all appropriate relief, including rehiring or reinstatement of the employee to his or her former position with back pay.

#### F. Inspections and Enforcement

Inspection and enforcement policies and procedures provided in the plan are established by the PESH Act, 12 NYCRR Part 802, "Inspections of Places of Public Employment," and the PESH Field Operations Manual. Complaints must be filed in writing and signed. The plan provides for the inspection of

covered workplaces, including inspections in response to employee complaints, right of entry for inspections, a prohibition of advance notice of inspections, a mechanism for employees of the employer and their representatives to accompany the inspector during the physical inspections, and opening, informal, and closing conferences. A copy of the "PESH Closing Conference" guide, which fully describes the employer's rights and responsibilities at the time of the closing conference, is also included in the plan.

Significant differences between Federal OSHA and PESH inspection and enforcement procedures include the following.

1. *Penalties.* The PESH Act, section 6(a), provides for the assessment of civil monetary penalties for public sector employers for failure-to-abate violations only. If the Commissioner determines that an employer has violated the PESH Act, a "Notice of Violation and Order to Comply" (also called a citation) is issued which establishes a reasonable time for compliance and the penalty to be assessed for failure to correct the violation by the time fixed for compliance. An employer who fails to correct a violation by the time fixed for compliance may be assessed a penalty of up to fifty dollars per day for a non-serious violation, and up to two hundred dollars per day for a serious violation, until the violation is corrected.

2. *No Informal Complaint Procedures.* The PESH Act, section 5(a), provides for the investigation of formal employee complaints which must be in writing and signed. If a determination is made that an employee complaint does not warrant an inspection, the complainant must be notified, in writing, of such determination and afforded an opportunity to seek informal review of the determination. New York requires all employee complaints to be formalized and does not have a program for responding to informal complaints.

3. *Citation Clearinghouse.* In addition to sending citations to employers, copies of all citations are mailed to a "clearinghouse" which provides a copy of the citation to the headquarters of any union authorized to represent employees at the affected public sector workplace.

4. *Follow-Up Inspections.* The plan provides 100% follow-up on all initial inspections with violations. Follow-up inspections are normally conducted 30 to 60 days after the latest abatement date. If a cited violation is found not to have been abated at the time of a follow-up inspection, daily failure-to-abate

penalties are proposed and a failure-to-abate notice is issued with a final inspection date (or a second follow-up inspection). If a cited violation is found not to have been abated at the time of the second follow-up inspection, the case will be referred to New York Department of Labor Counsel. If Department of Labor Counsel is not able to negotiate a compliance agreement, the case would be referred for enforcement to the Attorney General who would seek a judicial mandamus action to compel abatement. (See paragraph I., Judicial Review, below). Once an employer corrects a failure-to-abate violation a final penalty bill is sent. New York penalty data is reflected in OSHA's Integrated Management Information System at the final penalty stage. The State maintains an internal data system, to which OSHA has full access, to calculate daily penalties on an ongoing basis.

5. *Definition of "Catastrophe."* PESH defines a "catastrophe" as the hospitalization of two or more employees (rather than three, as Federal OSHA does).

6. *Alternative Compliance Agreements.* New York procedures provide public employers with the opportunity to request alternative means of compliance starting at the time of the inspection closing conference. This procedure is similar to OSHA's informal settlement agreement process. Alternative Compliance Agreement (ACA) requests are made through an application process with the Division of Safety and Health's Engineering Services Unit (ESU). If the request for an ACA agreement is filed *prior* to the abatement date, uncorrected violations are not assessed a penalty until the Department issues a decision on the alternative compliance request, and follow-up inspections are held in abeyance until the alternative compliance agreement is approved or denied. If such a request is granted, no penalty is imposed unless a reinspection reveals that the employer is not in compliance with the terms of the ACA. Requests filed after the abatement date are normally not accepted and must be accompanied by an explanation of extenuating circumstances for the delay in filing.

7. *Removal of Personal Property Prior to Inspection.* In accordance with section 5(e) of the PESH Act, State regulations at 12 NYCRR 802.7 permit employees to remove their personal property from the workplace prior to safety and health inspections and prohibit compliance officers from examining an employee's personal property without his or her permission.

The State plan narrative includes an assurance that this provision does not provide advance notice and has not affected PESH's ability to conduct full and complete inspections, but that if it ever were to become an issue, PESH will seek to amend or remove the statutory and regulatory provisions.

8. *Contest Period.* The period fixed in the plan for contesting notices of violation is 60 calendar days. (See paragraph H, "Review Procedures," below.)

9. *Universal Orders.* A universal order is defined in the PESH FOM, Chapter IV, D, as a citation issued to an employer citing a violation that exists in more than one work location under the control of that employer. Due to the structure and organization of the public sector, it is appropriate, and an effective means of gaining compliance, under certain circumstances to issue notices of violations requiring the correction of hazardous conditions at all locations under the control of that employer.

#### G. Compliance Manual

The PESH Field Operations Manual (the PESH FOM) was last revised in April 2006, and is available to the public on the New York Department of Labor's Web site. The New York compliance manual parallels Federal OSHA's revised Field Operations Manual, CPL 02-00-045 [CPL 2.45B], and incorporates other policies parallel to Federal compliance directives and unique State requirements. The PESH FOM provides guidance to PESH compliance staff concerning general staff responsibilities, pre-inspection procedures (including inspection scheduling and priorities, complaints and other unprogrammed inspections, and inspection preparation), inspection procedures (including conduct of the inspection, opening conference, closing conference, physical examination of the workplace, follow-up inspections, fatality/catastrophe investigations, imminent danger investigations, and construction inspections), inspection documentation (including types of violations, violations of the general duty clause, writing citations, and grouping/combining violations), post-inspection procedures (including abatement, citations, penalties, and post-citation processes), discrimination investigation procedures, disclosure of information under the New York State Freedom of Information Law (including policy and procedures and specific guidelines), and outreach and training programs. Although not a statutory requirement, the PESH FOM establishes New York's policy that notices of violation will normally be issued to the employer

within six months following the occurrence of the violation. New York also uses and has adopted the OSHA Technical Manual (TED 01-00-015 [TED 1-0.15A]), which replaced the former Industrial Hygiene Manual, as guidance for its staff.

#### H. Review Procedures

Under the plan, both public employers and employees may seek formal administrative review of New York Department of Labor citations and penalties, as well as the reasonableness of the abatement period, before the Industrial Board of Appeals (IBA). Prior to contest, employers and employees and their authorized representatives may seek informal review of citations, penalties and abatement dates issued by the Department of Labor, by requesting an informal conference in writing within 20 working days from the receipt of the Notice of Violation and Order to Comply. If the informal conference does not produce agreement, the affected party may then seek formal administrative review with the IBA within the 60 day contest period.

The IBA is the independent, quasi-judicial, State agency authorized by section 27-a.6(c) of the PESH Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations pursuant to the PESH Act. Pursuant to section 27-a.6(c) of the PESH Act, Section 101 of the Labor Law, and the IBA's "Rules of Procedure and Practice," 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66, any employer, employee or other person affected by a Notice of Violation and Order to Comply issued by the Commissioner of Labor may petition the IBA for review no later than 60 calendar days after issuance. A contest does not automatically stay a citation, penalty or abatement date; a stay must be requested and granted by the IBA. If the contest stems from a follow-up inspection and issuance of a failure-to-abate violation, the penalty continues to accumulate on a daily basis, but is deferred until the IBA decision, which would also address the final penalty amount. Subsequent to the Board's proceeding, any affected party may, within 60 days after the IBA's decision is issued, request judicial review of the Board's decision pursuant to section 6(c) of the PESH Act and Article 78 of the New York Civil Practice Law.

Pursuant to 12 NYCRR Part 805, public employees or their authorized representatives have the additional right to contest the abatement period prescribed in the Notice of Violation and Order to Comply by filing a petition with the Commissioner within 15

working days of the posting of the employer's citation, or later if good cause for late filing is shown. The Commissioner may grant, modify or deny the petition. If the Commissioner denies the petition, in whole or in part, the petition is automatically forwarded to the IBA for review. If the Commissioner modifies the abatement period, the employer may petition for review by the IBA under Section 101 of the Labor Law.

Employees or employee representatives who wish to participate in employer-initiated proceedings before the IBA must request intervenor party-status, and the plan includes an assurance that should an employee or employee representative request such status, the State will appropriately inform the IBA of its support for the request. Should the IBA deny an employee's or employee representative's request for intervenor status, New York has pledged to seek immediate corrective action to guarantee employees' rights to party status in employer-initiated cases.

#### *I. Judicial Review*

Under section 6(d) of the PESH Act, if the time for compliance with an order of the Commissioner has elapsed without compliance, the Commissioner of Labor may seek judicial enforcement by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law. The Commissioner would seek such judicial enforcement, via the New York Attorney General, if there was a continuing failure-to-abate violation at the time of the second follow-up inspection and New York Department of Labor Counsel has been unable to obtain compliance. If the only noncompliance is the failure to pay a penalty, the Commissioner may file a duly enforceable collection action with the appropriate County Clerk.

Further, in light of the fact that the length of the contest period (60 calendar days) is significantly longer than the 15 working day period allowed under the Federal program, the plan includes a March 3, 1984, Counsel's opinion and assurance that New York has the authority under Article 78 of the New York Civil Practice Law to obtain judicial enforcement of an uncontested order to comply upon expiration of the abatement period, regardless of whether the 60 day contest period has expired. New York has also assured that should the State Labor Department's interpretation be successfully challenged, appropriate legislative correction would be sought.

The State plan's authority for response to imminent danger includes

"red tag" authority which is contained in Article 7, Section 200.2 of the New York State Labor Law. The Commissioner has the authority to prohibit the use of any machinery, equipment or device in a dangerous condition, and to prohibit work in, or occupancy of, areas found in a dangerous condition, until the condition is corrected and the notice is removed by the Commissioner. These orders are subject to review by the IBA. Section 200.3 authorizes the New York Attorney General to institute a proceeding to enjoin the use of dangerous machinery, equipment, devices, or areas that have been "tagged" under Section 200.2. The filing of a petition for review with the IBA does not stay the Attorney General's proceedings.

#### *J. Budget and Personnel*

The plan includes the FY 2006 grant application under section 23(g) of the OSH Act, which includes a current organizational chart and detailed information on staffing and funding. The State has given satisfactory assurances of adequate funding to support the plan. In FY 2006, the State plan was funded at \$3,100,000 in Federal section 23(g) funds, \$3,100,000 in matching State funds, and \$992,000 in 100% State funds, for a total Federal and State contribution of \$7,192,000. The program's total staffing level is 101, including 29 safety and 21 health compliance officers, and 11 safety and 9 health public sector consultants funded under the State plan grant. OSHA considers PESH's current staffing and funding levels to be adequate and appropriate. PESH personnel are employed under a merit system in compliance with New York law and personnel rules. The plan includes the Civil Service Law Related to Merit and Hiring System, and job descriptions and minimum qualifications, by position.

#### *K. Records and Reports*

The plan provides that public employers in New York will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to and "at least as effective as" that required for private sector employers under Federal OSHA. New York participates and has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses in the public sector. 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 York will continue to participate in OSHA's

Integrated Management Information System.

In response to OSHA's 2001 revision of its recordkeeping rules (29 CFR part 1904; 66 FR 5916-6135), on December 21, 2001, New York revised its recordkeeping regulation, 12 NYCRR Part 801, and issued supplemental instructions, SH 901, which provide clarification and interpretation of the basic rule requirements. In response to OSHA's review, the State has modified its regulations and instructions, and provided several clarifications and supplemental assurances in order to make its requirements "at least as effective as" those of Federal OSHA. The State assures that recordkeeping activity by employees constitutes protected activity under the PESH Act's anti-discrimination provisions (February 21, 2003, letter from New York Department of Labor Counsel); that any administrative changes made to the SH 901 Instructions will be published in the New York *State Register* for public comment and simultaneously shared with OSHA for review and comment (May 27, 2003, letter from PESH); and that the employer is required to provide a copy of the Annual Summary to any employee or authorized employee representative requesting it in accordance with 801.35 and applicable OSHA interpretations (August 30, 2004, letter from PESH). Revisions to the State's recordkeeping requirements were adopted on May 17, 2006 and provide for the reporting of fatalities and multiple hospitalization incidents after working hours and on weekends to a designated after-hours PESH contact person and for the required reporting of delayed multiple hospitalizations.

#### *L. Voluntary Compliance Programs*

The public employee consultation program makes available both safety consultants and industrial hygienists to public employers who request such service for the purpose of apprising them of existing hazards and the best means of abatement. The PESH public sector consultation manual parallels OSHA's Consultation Policies and Procedures Manual, TED 3.5B. The consultation program also provides outreach and training in support of PESH's activities. Under the plan, training is provided to public employers and employees, and seminars are conducted to familiarize affected individuals with applicable safety and health standards and requirements and safe work practices. PESH has a variety of public information programs to disseminate information and publications on important safety and health concerns. Policies and

procedures for Area Office outreach programs, including training, educational and informational services, as well as voluntary compliance programs, are described in the PESH Field Operations Manual.

Through contractual agreements, the Governor's Office of Employee Relations requires joint management and labor health and safety committees in all State agencies. This requirement is independent of the State plan.

#### IV. Completion of Developmental Steps

With the approval of the revised State plan in today's action, all developmental steps specified in the June 1, 1984, notice of initial approval of the New York public employee only State plan, and other relevant steps, have been successfully completed and approved as follows:

A. In accordance with 29 CFR 1956.51(a), the State of New York promulgated standards identical to all Federal OSHA standards as of July 1, 1983. A supplement to the State plan documenting this accomplishment was initially approved by the Assistant Secretary on August 26, 1986 (51 FR 30449). Subsequently all OSHA standards promulgated through April 28, 2006, have been adopted as New York State standards applicable to public employees. These identical standards; the State's different Air Contaminants Standard (1910.1000); the additional hazard communication requirements in the New York Toxic Substances Act, as applicable to public sector employers only; and the State's independent *Workplace Violence Prevention* law are approved by the Assistant Secretary in today's notice.

B. In accordance with 29 CFR 1956.51(b), New York has promulgated regulations for inspections, citations and abatement equivalent to 29 CFR part 1903 at 12 NYCRR Part 802, as supplemented by the State Field Operations Manual, both of which are approved by the Assistant Secretary in today's notice.

C. In accordance with 29 CFR 1956.51(c), the New York safety and health poster for public employees only, which was originally approved by the Assistant Secretary on May 16, 1985 (50 FR 21046), is approved, as revised, in today's notice.

D. In accordance with 29 CFR 1956.51(d), the State extended its participation in the Bureau of Labor Statistics (BLS) Survey of Injuries and Illnesses to the public sector. This supplement was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204), and the State's continued participation is documented

in the April 28, 2006, revised State plan, which is approved in today's notice.

E. In accordance with 29 CFR 1956.51(e), the State promulgated regulations for granting variances equivalent to 29 CFR part 1905, at 12 NYCRR Part 803, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). These regulations are contained in the April 28, 2006, revised State plan and are supplemented by the State's Field Operations Manual. These regulations and implementing procedures for variances are approved in today's notice.

F. In accordance with 29 CFR 1956.51(f), the State initially promulgated regulations for injury/illness recordkeeping equivalent to 29 CFR part 1904, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). In response to revisions to the Federal recordkeeping rule, the State's revised recordkeeping regulations at 12 NYCRR Part 801; supplemental instructions at SH 901; and supplemental assurances concerning amendments to the SH 901 Instructions, after-hours reporting of fatalities and catastrophes, required reporting of delayed hospitalizations, protected activity, and employee rights to receive a copy of the Annual Summary of workplace injuries and illnesses, are approved in today's notice.

G. In accordance with 29 CFR 1956.51(g), the State developed and adopted employee non-discrimination procedures equivalent to 29 CFR Part 1977, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). Updated procedures, as contained in the April 28, 2006, revised plan, are approved in today's notice.

H. In accordance with 29 CFR 1956.51(h), the State adopted procedures for the review of contested cases equivalent to 29 CFR Part 2200, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's updated contested case procedures as found at Article 3, Section 101 of the Labor Law, and the "Rules of Procedure and Practice" of the Industrial Board of Appeals, 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66, are approved in today's notice.

I. In accordance with 29 CFR 1956.51(i), the State revised its plan to reflect procedures for the development and adoption of alternative standards. At the time of initial approval, the State Plan provided for the adoption of identical OSHA safety and health standards, which procedures were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The

State's current procedures for adoption of alternative standards provide that the Commissioner of Labor, in consultation with the Hazard Abatement Board, or on his/her own initiative, under the State Administrative Procedures Act, can propose alternative or different occupational safety and health standards if a determination is made that an issue is not properly addressed by Federal OSHA standards and is necessary for the protection of public employees. The procedures for adoption of alternative standards provide for consideration of expert technical information and allow interested persons to request the development of a standard and to participate in any hearings for the development or modification of standards. These procedures are approved in today's notice.

J. In accordance with 29 CFR 1956.51(j), the State has developed a Field Operations Manual which parallels the OSHA revised Field Operations Manual, CPL 02-00-045 [CPL 2.45B], and incorporates other Federal compliance policy directives and unique State requirements. The State's Field Operations Manual is approved in today's notice.

K. In accordance with 29 CFR 1956.51(k), the State adopted the Federal Industrial Hygiene Manual, including changes one (1) and two (2), through April 7, 1987, a developmental step that was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State subsequently replaced this manual with the OSHA Technical Manual. This action is approved in today's notice.

L. In accordance with 29 CFR 1956.51(l), the State issued a directive implementing an on-site consultation program in the public sector which was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's current Consultation Policy and Procedures Manual and its description of New York's public sector on-site consultation program and other compliance assistance efforts as contained in the April 28, 2006, revised State plan are approved in today's notice.

M. In accordance with 29 CFR 1956.51(m), the State has developed and implemented a public employer and employee training and education program with procedures described in the Field Operations Manual which are approved in today's notice.

## V. Decision

### A. Approval of Plan Supplements

After careful review, opportunity for State correction, and subsequent revision, the plan supplements constituting a New York revised State plan for public employees only and its components described above are found to be in substantial conformance with comparable Federal provisions and the requirements of 29 CFR part 1956 and are hereby approved under 29 CFR part 1953 as providing a revised State plan for the development and enforcement of standards which is "at least as effective as" the Federal program, as required by section 18 of the OSH Act and 29 CFR part 1956. Subpart F of 29 CFR part 1956 is amended to reflect the approval of the revised plan supplements and the satisfactory completion of all developmental steps. The right to reconsider this approval of the revised State plan supplements is reserved should substantial objections or other information become available to the Assistant Secretary regarding any components of the plan changes.

### B. Certification

With the approval of a revised State plan as noted above, all developmental steps have now been successfully completed, documented and approved. In accordance with 29 CFR 1956.23, the New York public employee only State plan is certified as having successfully completed all developmental steps. Subpart F of 29 CFR part 1956 is amended to reflect this certification. This certification attests to the structural completeness of the State plan and that it has all the necessary authorities and procedures to provide "at least as effective" standards, enforcement, and compliance assistance to the employees of New York State and its political subdivisions. This action renders no judgment as to the effectiveness of the State plan in actual operations.

## VI. Location of Basic State Plan Documentation

Copies of the revised New York State plan for public employees are maintained at the following locations; specific documents are available on the State's website or upon request. Contact the Directorate of Cooperative and State Programs, Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N-3700, Washington, DC 20210; the Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York,

New York 10014; or the New York Public Employee Safety and Health Program, State Office Campus Building 12, Room 158, Albany, New York 12240.

Components of the New York State plan, including the Field Operation Manual, recordkeeping regulations and instructions, complaint forms, and other program information are posted on the New York Department of Labor, Public Employee Safety and Health Web site at: [http://www.labor.state.ny.us/workerprotection/safetyhealth/DOSH\\_PESH.shtm](http://www.labor.state.ny.us/workerprotection/safetyhealth/DOSH_PESH.shtm).

The PESH Act and other New York statutes can be found on the New York State Legislature's Web site at: <http://public.leginfo.state.ny.us>. The New York Industrial Board of Appeals, Rules of Procedure and Practice, can be found on the New York Department of Labor Web site at: <http://www.labor.state.ny.us/iba/toc.htm>. The State Administrative Procedures Act can be found on the Governor's Web site at: <http://www.gorr.state.ny.us/SAPA-Text.htm>.

Electronic copies of this **Federal Register** notice and the related press release are available on OSHA's Web site, <http://www.osha.gov>.

## VII. Public Participation

Under 29 CFR 1953.6(c), OSHA generally "will seek public comment if a State program component differs significantly from the comparable Federal program component and OSHA needs additional information in order to determine its compliance with the criteria in section 18(c) of the Act, including whether it is at least as effective as the Federal program. \* \* \* Based on OSHA's review of the State laws, regulations and procedures that comprise the revised State plan and written assurances provided by the State, the Assistant Secretary finds that the New York revised State plan for public employees described above is at least as effective as Federal requirements and is consistent with commitments contained in the plan. Public participation for the purpose of providing additional information about the effectiveness of the structural components of the New York public employee only State plan is therefore unnecessary. Moreover, all legislative and regulatory components of the revised plan were adopted under procedural requirements of State law, which included appropriate opportunity for public participation. Good cause is therefore found for approval of these supplements (which constitute the revised State plan); further public participation would be repetitious and unnecessary.

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health. It is issued under section 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1956; Secretary of Labor's Order No. 5-2002 (67 FR 65008, October 22, 2002).

### List of Subjects in 29 CFR Part 1956

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

Signed in Washington, DC, this 9th day of August, 2006.

**Edwin G. Foulke, Jr.**,  
Assistant Secretary of Labor.

■ Part 1956 of 29 CFR is hereby amended as follows:

### PART 1956—[AMENDED]

■ 1. Revise the authority citation of part 1956 to read as follows:

**Authority:** Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1956, and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

■ 2. Revise § 1956.50 to read as follows:

#### § 1956.50 Description of the plan as certified.

(a) *Authority and scope.* The New York State Plan for Public Employee Occupational Safety and Health received initial OSHA approval on June 1, 1984, and was certified as having successfully completed its developmental steps on August 16, 2006. The plan designates the New York Department of Labor as the State agency responsible for administering the plan throughout the State. The plan includes legislation, the New York Act (Public Employee Safety and Health Act, Chapter 729 of the Laws of 1980/Article 2, Section 27-a of the New York State Labor Law), enacted in 1980, and amended on April 17, 1984; August 2, 1985; May 25 and July 22, 1990; April 10, 1992; June 28, 1993; and April 1, 1997. Under this legislation, the 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. In response to OSHA's concern that language in section 27-a.2 of the New York Act, regarding the Commissioner of Education's authority with respect to school buildings, raised questions about the coverage under the plan of public school employees, in 1984 New York submitted amendments to its plan consisting of Counsel's opinion and an

assurance that public school employees are fully covered under the terms of the PESH Act.

(b) *Standards.* The New York plan, as of revisions dated April 28, 2006, provides for the adoption of all Federal OSHA standards promulgated as of that date, and for the incorporation of any subsequent revisions or additions thereto in a timely manner, including in response to Federal OSHA emergency temporary standards. The procedure for adoption of Federal OSHA standards calls for publication of the Commissioner of Labor's intent to adopt a standard in the New York State Register 45 days prior to such adoption. Subsequent to adoption and upon filing of the standard with the Secretary of State, a notice of final action will be published as soon as is practicable in the *State Register*. The plan also provides for the adoption of alternative or different occupational safety and health standards if a determination is made by the State that an issue is not properly addressed by OSHA standards and is relevant to the safety and health of public employees. In such cases, the Commissioner of Labor will develop an alternative standard to protect the safety and health of public employees in consultation with the Hazard Abatement Board, or on his/her own initiative. The procedures for adoption of alternative standards contain criteria for consideration of expert technical advice and allow interested persons to request development of any standard and to participate in any hearing for the development or modification of standards.

(c) *Variances.* The plan includes provisions for the granting of permanent and temporary variances from State standards in terms substantially similar to the variance provisions contained in the Federal program. The State provisions require employee notification of variance applications and provide for employee participation 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, and variances may have only future effect.

(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 essentially identical to section 11(c) of the OSH Act.

(e) *Inspections and enforcement.* The plan provides for inspection of covered workplaces, including inspections in response to employee complaints. 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. The plan also provides for right of entry for inspection and a prohibition of advance notice of inspection. In lieu of first-instance monetary sanctions for violations, the plan establishes a system for compelling compliance under which public employers are issued notices of violation and orders to comply. Such notices fix a reasonable period of time for compliance. If compliance is not achieved by the time of a follow-up inspection, daily failure-to-abate penalties of up to \$50 for non-serious violations and up to \$200 for serious violations, will be proposed. The Commissioner of Labor may seek judicial enforcement of orders to comply by commencing a proceeding pursuant to Article 78 of the New York Civil Practice Law. In addition, the plan provides for expedited judicial enforcement when non-compliance is limited to non-payment of penalties.

(f) *Review procedures.* Under the plan, public employers and employees may seek formal administrative review of New York Department of Labor citations, including penalties and the reasonableness of the abatement periods, by petitioning the New York Industrial Board of Appeals (IBA) no later than 60 days after the issuance of the citation. The IBA is the independent State agency authorized by section 27-a(6)(c) of the New York Act to consider petitions from affected parties for review of the Commissioner of Labor's determinations. A contest does not automatically stay a notice of violation, penalty or abatement date; a stay must be granted from the IBA. Judicial review of any decision of the IBA may be sought pursuant to Article 78 of the New York Civil Practice Law. Prior to contest, employers, employees and other affected parties may seek informal review of citations, penalties and abatement dates by the Department of Labor by requesting an informal conference in writing within 20 working days from the receipt of citation. If the informal conference does not produce agreement, the affected party may seek

formal administrative review with the IBA. Public employees or their authorized representatives have the additional right under 12 NYCRR Part 805 to contest the abatement period by filing a petition with the Commissioner within 15 working days of the posting of the citation by filing a petition with the Department of Labor, or later if good cause for late filing is shown. If the Commissioner denies the employee contest of abatement period under Part 805 in whole or in part, the complaint will automatically be forwarded to the IBA for review. Under the IBA rules, public employees or their representatives may request permission to participate in an employer-initiated review process as "intervenor." The plan includes an April 28, 2006, assurance that should an employee or employee representative request intervenor status in an employer-initiated case, the State will appropriately inform the IBA of its support for the request. Should an employee's or employee representative's request for participation be denied, the State will seek immediate corrective action to guarantee the right to employee party status in employer-initiated cases. The period fixed in the plan for contesting notices of violation is 60 calendar days, which is significantly longer than the 15 working day period allowed under the Federal OSHA program. However, New York has provided assurance, by Counsel's opinion of March 3, 1984, that it has the authority under Article 78 of the New York Civil Practice Law to obtain judicial enforcement of an uncontested order to comply upon expiration of the abatement period, regardless of whether the 60 day contest period has expired. New York has also assured that should the State Labor Department's interpretation be successfully challenged, appropriate legislative correction would be sought.

(g) *Staffing and resources.* The plan as revised April 28, 2006, provides assurances of a fully trained, adequate staff, including 29 safety and 21 health compliance officers for enforcement inspections and 11 safety and 9 health consultants to perform consultation services in the public sector. The State has also given satisfactory assurances of continued adequate funding to support the plan.

(h) *Records and reports.* The plan provides that public employers in New York 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 York has



assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses in the public sector. 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 York will participate in OSHA's Integrated Management Information System.

(i) *Voluntary compliance programs.* The plan provides for training for public employers and employees; seminars to familiarize affected public employers and employees with applicable standards, requirements and safe work practices; and an on-site consultation program in the public sector to provide services to public employers upon request.

■ 3. Revise § 1956.52 to read as follows:

**§ 1956.52 Completed developmental steps and certification.**

(a) In accordance with 29 CFR 1956.51(a), the State of New York promulgated standards identical to all Federal OSHA standards as of July 1, 1983. A supplement to the State plan documenting this accomplishment was initially approved by the Assistant Secretary on August 26, 1986 (51 FR 30449). Subsequently, all OSHA standards promulgated through April 28, 2006, have been adopted as New York State standards applicable to public employees. These identical standards; the State's different Air Contaminants Standard (1910.1000); the additional hazard communication requirements, as applicable to public sector employers only, in the New York Toxic Substances Act; and the State's independent *Workplace Violence Prevention* law, were approved by the Assistant Secretary on August 16, 2006.

(b) In accordance with 29 CFR 1956.51(b), New York has promulgated regulations for inspections, citations and abatement equivalent to 29 CFR part 1903 at 12 NYCRR Part 802 and implementing procedures in the State compliance manual, as contained in the State's April 28, 2006, revised plan, which were approved by the Assistant Secretary on August 16, 2006.

(c) In accordance with 29 CFR 1956.51(c), the New York safety and health poster for public employees only, which was originally approved by the Assistant Secretary on May 16, 1985 (50 FR 21046), was approved, as contained in the State's April 28, 2006, revised plan, by the Assistant Secretary on August 16, 2006.

(d) In accordance with 29 CFR 1956.51(d), the State extended its participation in the Bureau of Labor

Statistics (BLS) Survey of Injuries and Illnesses to the public sector. A supplement documenting this action was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204) and is contained in the State's April 28, 2006, revised plan, which was approved by the Assistant Secretary on August 16, 2006.

(e) In accordance with 29 CFR 1956.51(e), the State promulgated regulations for granting variances equivalent to 29 CFR part 1905 at 12 NYCRR Part 803, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). These regulations, as revised and supplemented by implementing procedures in the State's Field Operations Manual, are contained in the April 28, 2006, revised State plan, and were approved by the Assistant Secretary on August 16, 2006.

(f) In accordance with 29 CFR 1956.51(f), the State initially promulgated regulations for injury/illness recordkeeping, equivalent to 29 CFR part 1904, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's revised recordkeeping regulation, 12 NYCRR Part 801; corresponding instructions (SH 901); and supplemental assurances concerning amendments to the SH 901 Instructions, after-hours reporting of fatalities and catastrophes, required reporting of delayed hospitalizations, protected activity, and employee rights to receive a copy of the Annual Summary of workplace injuries and illnesses, are contained in the April 28, 2006, revised plan, and were approved by the Assistant Secretary on August 16, 2006.

(g) In accordance with 29 CFR 1956.51(g), the State developed and adopted employee non-discrimination procedures equivalent to 29 CFR part 1977, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). Updated procedures, as contained in the April 28, 2006, revised plan, were approved by the Assistant Secretary on August 16, 2006.

(h) In accordance with 29 CFR 1956.51(h), the State adopted procedures for the review of contested cases equivalent to 29 CFR part 2200, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's contested case procedures at Section 101 of the Labor Law; the "Rules of Procedure and Practice" of the Industrial Board of Appeals, 12 NYCRR Chapter 1, Subchapter B, Parts 65 and 66; and 12 NYCRR 805, as contained in the April 28, 2006, revised plan, were approved

by the Assistant Secretary on August 16, 2006.

(i) In accordance with 29 CFR 1956.51(i), the State revised its plan to reflect its procedures for the adoption of State standards identical to OSHA safety and health standards, which were approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). Subsequently, the State's procedures were revised to provide that the Commissioner of Labor, in consultation with the Hazard Abatement Board, or on his/her own initiative, can propose alternative or different occupational safety and health standards if a determination is made that an issue is not properly addressed by Federal OSHA standards and is necessary for the protection of public employees. The procedures for adoption of alternative standards contain criteria for development and consideration of expert technical knowledge in the field to be addressed by the standard and allow interested persons to submit information requesting development or promulgation of any standard and to participate in any hearing for the development, modification or establishment of standards. These procedures are contained in the April 28, 2006, revised plan, and were approved by the Assistant Secretary on August 16, 2006.

(j) In accordance with 29 CFR 1956.51(j), the State has developed a Field Operations Manual which parallels Federal OSHA's Field Operations Manual, CPL 02-00-045 [CPL 2.45B], incorporates other Federal compliance policy directives, and contains procedures for unique State requirements. This manual is contained in the April 28, 2006, revised plan, and was approved by the Assistant Secretary on August 16, 2006.

(k) In accordance with 29 CFR 1956.51(k), the State adopted the Federal Industrial Hygiene Manual, including changes one (1) and two (2), through April 7, 1987, which was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's subsequent adoption of the OSHA Technical Manual is documented in the April 28, 2006, revised State plan and was approved by the Assistant Secretary on August 16, 2006.

(l) In accordance with 29 CFR 1956.51(l), the State issued a directive implementing an on-site consultation program in the public sector, which was approved by the Assistant Secretary on December 29, 1989 (55 FR 1204). The State's current Consultation Policy and Procedures Manual and its description of New York's on-site consultation program and other compliance

assistance efforts, as contained in the April 28, 2006, revised plan, were approved by the Assistant Secretary on August 16, 2006.

(m) In accordance with 29 CFR 1956.51(m), the State has developed and implemented a public employer and employee training and education program with procedures described in the Field Operations Manual, which, as contained in the April 28, 2006, revised plan, was approved by the Assistant Secretary on August 16, 2006.

(n) A revised State plan as submitted on April 28, 2006, was approved and in accordance with 29 CFR 1956.23 of this chapter, the New York occupational safety and health State plan for public employees only was certified on August 16, 2006 as having successfully completed all developmental steps specified in the plan as initially approved on June 1, 1984. This certification attests to the structural completeness of the plan, but does not render judgment as to adequacy of performance.

**§ 1956.53 [Removed and reserved]**

■ 4. Remove the section heading and reserve § 1956.53.

■ 5. Revise § 1956.54 to read as follows:

**§ 1956.54 Location of basic State plan documentation.**

Copies of basic State plan documentation are maintained at the following locations. Specific documents are available upon request, and will also be provided in electronic format, to the extent possible. Contact the Directorate of Cooperative and State Programs, Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N-3700, Washington, DC 20210; Office of the 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 York Department of Labor, Public Employee Safety and Health Program, State Office Campus Building 12, Room 158, Albany, New York 12240. Current contact information for these offices (including telephone numbers and mailing addresses) is available on OSHA's Web site, <http://www.osha.gov>.

**§ 1956.55 [Removed and reserved]**

■ 6. Remove and reserve § 1956.55.

[FR Doc. E6-13504 Filed 8-15-06; 8:45 am]

BILLING CODE 4510-26-P

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4022 and 4044**

**Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in September 2006. Interest assumptions are also published on the PBGC's Web site (<http://www.pbgc.gov>).

**DATES:** Effective September 1, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Catherine B. Klion, Manger, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with

valuation dates during September 2006, (2) adds to Appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during September 2006, and (3) adds to Appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during September 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 6.20 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent a decrease (from those in effect for August 2006) of 0.20 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at <http://www.pbgc.gov/docs/05-23554.pdf>. Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for August 2006) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during September 2006, the PBGC finds that good cause exists for making the assumptions set forth in