

Legal Services Division
401 SW Topeka Blvd.
Topeka, KS 66603-3182



Phone: (785) 296-5000 ext. 2596
Mobile: (785) 409-7703
Fax: (785) 296-0196
brad.burke@dol.ks.gov
www.dol.ks.gov

Lana Gordon, Secretary

Bradley R. Burke
Deputy Secretary and Chief Attorney

Sam Brownback, Governor

January 5, 2015

President of the Senate
Senator Susan Wagle
Kansas Statehouse, Room 333-E
Topeka, Kansas 66612

Speaker of the House of Representatives
Representative Ray Merrick
Kansas Statehouse, Room 370-W
Topeka, Kansas 66612

Members of the Senate Committee on Commerce
c/o Senator Julia Lynn, Chair
Senate Committee on Commerce
Kansas Statehouse, Room 445-S
Topeka, Kansas 66612

Members of the House Committee on Commerce, Labor and Economic Development
c/o Representative Mark Hutton, Chair
House Committee on Commerce, Labor and Economic Development
Kansas Statehouse, Room 352-S
Topeka, Kansas 66612

Secretary's Report

On behalf of Secretary Lana Gordon, I am pleased to submit the following report in accordance with Section 1 of Senate Substitute for House Bill No. 2616, regarding what will be required in order for Kansas to develop and operate a Kansas job safety and health programs "State plan," which will be subject to approval and monitoring by OSHA, in accordance with Section 18 of the Occupational Safety and Health Act of 1970.

Background on "State plans":

Section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (the Act) encourages States to develop and operate their own occupational safety and health programs.

OSHA approves and monitors State plans and provides up to 50 percent of an approved plan's operating costs. OSHA conducts an evaluation of the approved State plans each fiscal year.

Section 18(a) of the Act is read by OSHA as preventing any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which a Federal standard has been issued under section 6 of the Act. However, section 18(b) provides that any State that desires to assume responsibility for the development and enforcement therein of occupational safety and health standards relating to issues covered by corresponding standards promulgated under section 6 of the Act shall submit a plan for doing so to the Assistant Secretary of Labor. See 29 CFR 1902.1(a).

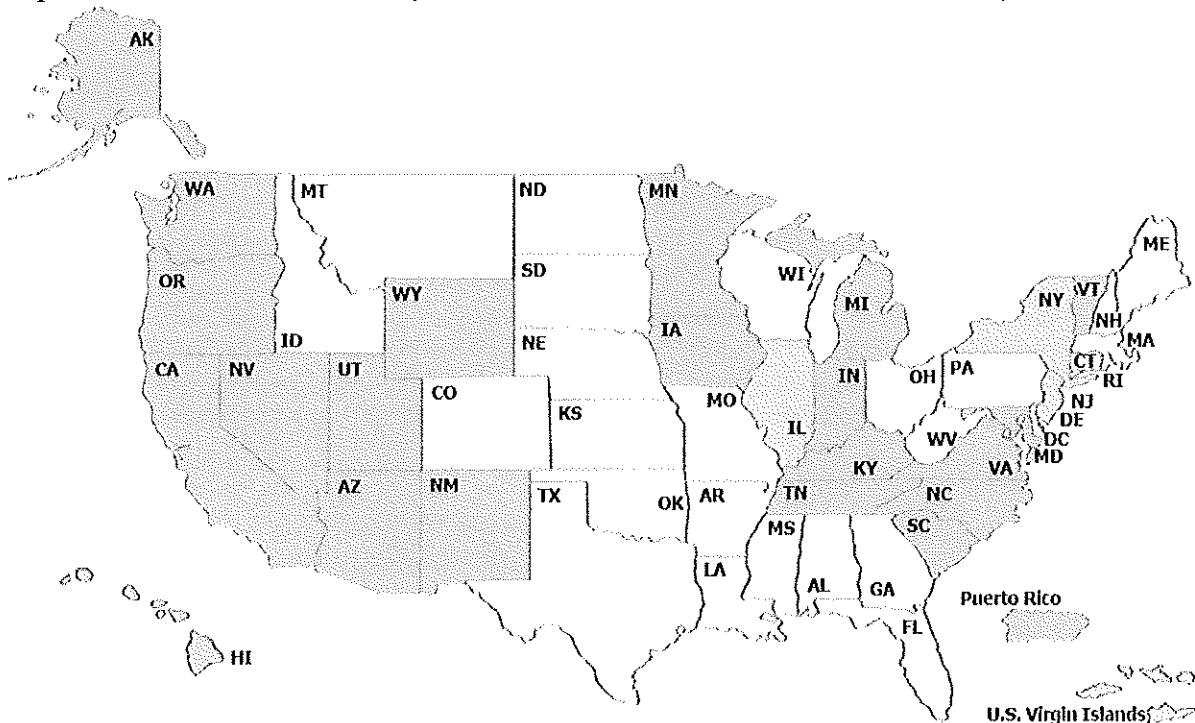
There are currently twenty-five States and two United States territories operating approved State plans. There are twenty-two States and jurisdictions operating complete State plans (covering both the private sector and State and local government employees) and five jurisdictions - Connecticut, Illinois, New Jersey, New York and the Virgin Islands - which cover public employees only:

Alaska	Indiana	Minnesota	North Carolina	Utah
Arizona	Iowa	Nevada	Oregon	Vermont
California	Kentucky	New Mexico	Puerto Rico	Virgin Islands
Connecticut	Maryland	New Jersey	South Carolina	Virginia
Hawaii	Michigan	New York	Tennessee	Washington
Illinois				Wyoming

Twenty-five states do not have OSHA-approved plans:

Alabama	Georgia	Massachusetts	New Hampshire	Rhode Island
Arkansas	Idaho	Mississippi	North Dakota	South Dakota
Colorado	Kansas	Missouri	Ohio	Texas
Delaware	Louisiana	Montana	Oklahoma	West Virginia
Florida	Maine	Nebraska	Pennsylvania	Wisconsin

Map of OSHA State Plan states (States and Territories shaded have State Plans):



Source: <https://www.osha.gov/dcspp/osp/index.html>

(1) Agreements necessary to carry out a State plan:

A State plan is a federal – state partnership in which the State of Kansas will be required to seek assistance and approval from OSHA in order to develop, implement and administer a State plan. More specific details on steps to be taken are listed in Section 5 below.

(2) Review of funding arrangements necessary for the state to finance a plan for state enforcement:

(a) Grant funding available:

OSHA does provide the opportunity for States to apply annually for a 50% federal grant match to cover operating costs of a State plan. The grant is commonly referred to as a 23(g) State Plan Grant.

(b) Fines/penalties:

State plans may have their own penalty policies and procedures that may differ from OSHA's, but they must be deemed "at least as effective" as OSHA's. All State plan policies and procedures related to penalties must be submitted and reviewed by OSHA. State plans also have their own system for review and appeal of citations, penalties, and abatement periods. The procedures should be generally similar to OSHA's, but cases are heard by a state review board or equivalent authority.

(3) Review of statutory and rule and regulation changes necessary to carry out a State plan:

K.S.A. 2013 Supp. 44-636, will need to be amended to incorporate the State plan.

New administrative regulations will need to be developed and promulgated that will incorporate the new state standards and enforcement provisions.

(4) Estimate of additional staff and positions required to implement a State plan:

State Administration of Federal OSHA Standards
Details of Anticipated Salary/Benefits Costs for additional staff and positions
*Note: *Salaries and benefits listed are based off of current OSHA positions and salaries in Kansas*

Positions	Title	Location	Salary	Benefits	Total
Management/Supervisory Staff					
1	*Area Director	Topeka	\$119,429	\$41,800	\$161,229
1	*Assistant Area Director	Kansas City	\$90,000	\$31,500	\$121,500
1	*Assistant Area Director	Wichita	\$90,000	\$31,500	\$121,500
3	Total Management/Supervisory Staff				\$404,229

Administrative Staff

1	*Management & Program Analyst	Topeka	\$48,934	\$17,127	\$66,061
1	*Safety & Health Clerk	Topeka	\$30,000	\$10,500	\$40,500
2	Total Administrative Staff				\$106,561

Outreach Staff

1	*Compliance Assistance Specialist	Topeka	\$94,108	\$32,938	\$127,046
1	Total Outreach Staff				\$127,046

Compliance Officers

1	*Safety Engineer	Topeka	\$79,138	\$27,698	\$106,836
1	*Safety Engineer	Kansas City	\$79,138	\$27,698	\$106,836
1	*Safety Engineer	Wichita	\$79,138	\$27,698	\$106,836
3	*Safety Specialists	Topeka	\$219,153	\$76,704	\$295,857
2	*Safety Specialists	Kansas City	\$146,102	\$51,136	\$197,238
2	*Safety Specialists	Wichita	\$146,102	\$51,136	\$197,238
3	*Industrial Hygienists	Topeka	\$191,703	\$67,096	\$258,799
2	*Industrial Hygienists	Kansas City	\$127,802	\$44,731	\$172,533
2	*Industrial Hygienists	Wichita	\$127,802	\$44,731	\$172,533
17	Total Compliance Officers				\$1,614,705

Agency Support Staff

1	Attorney	Topeka	\$56,118	\$19,641	\$75,759
1	Legal Assistant	Topeka	\$36,171	\$12,660	\$48,831
1	Accountant	Topeka	\$36,171	\$12,660	\$48,831
3	Total Agency Support Staff				\$173,421

Positions	Salary/Benefits			
26	Total			
	*\$2,425,962			

State Administration of Federal OSHA Standards

Summary of Anticipated Costs

*Note: *Salaries and benefits listed are based off of current OSHA positions and salaries in Kansas*

Category	Total
Salaries/Benefits	\$2,425,962
Supplies	\$19,368
Communications	\$63,776
Travel	\$203,811
Equipment	\$47,259
Premises	\$82,064
Services	\$44,926
Other	\$191
Postage	\$1,456
Total Annual Costs	\$2,888,812
Initial Start-Up Costs	\$320,500
Grand Total	\$3,209,312

State Administration of Federal OSHA Standards
Details of Anticipated Non-Personal Services (NPS) Costs

Category	Location			Total
	Topeka	Kansas City	Wichita	
Supplies	\$9,262	\$5,053	\$5,053	\$19,368
Communications	\$30,501	\$16,637	\$16,637	\$63,776
Travel	\$97,475	\$53,168	\$53,168	\$203,811
Equipment	\$22,602	\$12,329	\$12,329	\$47,259
Premises	\$20,862	\$30,601	\$30,601	\$82,064
Services	\$21,486	\$11,720	\$11,720	\$44,926
Other	\$91	\$50	\$50	\$191
Postage	\$697	\$380	\$380	\$1,456
Total	\$202,976	\$129,937	\$129,937	\$462,850

State Administration of Federal OSHA Standards
Details of Anticipated Initial Start-up Costs

Category	Location			Total
	Topeka	Kansas City	Wichita	
Vehicles (Purchase of 11 Vehicles & Associated Costs)	\$82,500	\$49,500	\$49,500	\$181,500
Work Equipment (For Industrial Hygienists)	\$30,000	\$20,000	\$20,000	\$70,000
Office Equipment (Computers, Phones, Furniture & Misc.)	\$33,000	\$18,000	\$18,000	\$69,000
Total	\$145,500	\$87,500	\$87,500	\$320,500

(5) Steps needed for interaction with the federal government in ways that are reasonably designed to implement a State plan:

In order for Kansas to operate a State plan, the state will need to seek assistance and approval from OSHA. The first step in the process is for a state to gain OSHA approval is to become a Developmental Plan. During this process, a state must assure OSHA that within three years it will have in place all the structural elements necessary to be deemed effective. These elements include: appropriate legislation; regulations and procedures for standards setting, enforcement, appeal of citations and penalties; a sufficient number of qualified enforcement personnel. Once a state has completed and documented all necessary developmental steps, it is eligible for Certification. Certification renders no judgment as to actual state performance, but merely attests to the structural completeness of the State Plan.

At any time after initial approval, when it appears that the State Plan is capable of independently enforcing standards, OSHA may enter into an Operational Status Agreement with the State Plan. This commits OSHA to suspend the exercise of discretionary federal enforcement in all or certain activities covered by the State Plan.

State Plans may additionally seek Final Approval under Section 18 (e) of the Act. After at least one year following certification, the State Plan becomes eligible for final approval if OSHA determines that it is providing, in actual operation, worker protection is "at least as effective" as the protection provided by OSHA. Under Final Approval, OSHA relinquishes its authority to cover occupational safety and health matters covered by the state.

OSHA will then monitor and evaluate the State plan annually through the Federal Annual Monitoring Evaluation (FAME) process. This process is used to: determine whether the State Plan is continuing to operate at least as effectively as OSHA, track a State Plan's progress in achieving its strategic and annual performance goals, and ensure that the State Plan is meeting its mandated responsibilities under the Act and other relevant regulations.

The procedure by which the Assistant Secretary for Occupational Safety and Health under a delegation of authority from the US Secretary of Labor (Secretary's Order No. 12-71, 36 FR 8754, May 12, 1971) approves or rejects State plans submitted to the Secretary is set forth in 29 CFR 1902.1 through 1902.53. The earliest a State plan can be approved and enforcement authority transferred to the state, is a minimum of three years after submission and approval of the completed plan.

Key factors in determining when a State plan can be approved are found in 29 CFR 1902:

- If the Assistant Secretary approves a State plan submitted under section 18(b), the Assistant Secretary may, but is not required to, exercise enforcement authority with respect to Federal standards corresponding to standards approved under the plan until the Assistant Secretary determines, in accordance with section 18(e) of the Act, on the basis of actual operations under the plan, that the State is applying the criteria of section 18(c) of the Act.
- The Assistant Secretary shall not make such determination: (i) for at least three years after initial approval of the plan; and (ii) in the case of a developmental plan approved under §1902.2(b), until the State has completed all the steps specified in its plan which are designed to make it at least as effective as the Federal program and the Assistant

Secretary has had at least 1 year in which to evaluate the program on the basis of actual operations.

- After the determination that the State is applying the criteria of section 18(c) of the Act, the Assistant Secretary's enforcement authority shall not apply with respect to any occupational safety or health issue covered by the plan.
- Notwithstanding plan approval and a determination under section 18(e) that the section 18(c) criteria are being followed, the Assistant Secretary shall make a continuing evaluation, as provided in section 18(f) of the Act, of the manner in which the State is carrying out the plan.
- Federal enforcement authority which must be retained by the Assistant Secretary until actual operations prove the State plan to be at least as effective as the Federal program, will be exercised to the degree necessary to assure occupational safety and health.
- After the Assistant Secretary has approved a plan, the Assistant Secretary may approve one or more grants under section 23(g) of the Act to assist the State in administering and enforcing its program for occupational safety and health in accordance with appropriate instructions or procedures to be promulgated by the Assistant Secretary.

Attached is an **Outline for the Submission and Review of State Plans** that is published by OSHA at: <https://www.osha.gov/desp/osp/planoutline.html#Introduction>

(See Attached Outline)

(6) Other matters:

(a) OSHA has designated the Office of State Programs to assist states in establishing and operating OSHA-approved State plans. OSHA states:

The Office of State Programs (OSP) ensures that OSHA-approved State Plans are at least as effective as OSHA in protecting workers and preventing work-related injuries, illnesses, and deaths as provided for in the OSH Act of 1970. OSP provides leadership and direction related to the establishment, operation, and oversight of OSHA-approved State Plans, and fosters and promotes a strong working relationship and open communication between OSHA and its State Plan partners.

(b) The following is information received by KDOL from USDOL regarding OSHA operations in Kansas, and may be relevant to the development of a State plan:

**Kansas State Plan Data Request
Data provided by OSHA**

Total number of full-time OSHA employees that are allocated for Kansas OSHA operations (broken down by classification ie/ Manager/compliance officer, etc.)

23 Total Staff Members:

1 Area Director (Manager)
1 Management and Program Analyst (Administrative)
1 Safety and Health Clerk (Administrative)
2 Assistant Area Directors (Supervisors)
1 Compliance Assistance Specialist (Outreach staff person)
7 Industrial Hygienists (Compliance Officer)
3 Safety Engineers (Compliance Officer)
7 Safety Specialists (Compliance Officer)

Total number of part-time OSHA employees that are allocated for Kansas OSHA operations (broken down by classification i.e. / Manager/compliance officer, etc.)

Federal OSHA does not have part-time employees.

Cost of salaries (not including benefits) for full-time OSHA employees that are allocated for Kansas OSHA operations (broken down by classification ie/ Manager/compliance officer, etc.)

3 Management/Supervisory Officials - \$299,429
2 Administrative Staff - \$78,934
1 Compliance Assistance Specialist (Outreach staff person) - \$94,108
7 Industrial Hygienists (Compliance Officer) - \$447,309
3 Safety Engineers (Compliance Officer) - \$237,414
7 Safety Specialists (Compliance Officer) - \$511,357

Cost of wages (not including benefits) for part-time OSHA employees that are allocated for Kansas OSHA operations (broken down by classification ie/ Manager/compliance officer, etc.)

Federal OSHA does not have part-time employees.

Annual training costs for all OSHA employees that are allocated for Kansas OSHA operations

\$30,000 – Please note this amount represents the travel cost for mandatory training for our compliance staff. Since this training is presented at our training institute, we do not incur direct costs for the training.

Number of office locations in Kansas

Federal OSHA has two office locations in Kansas.

Total of fines/penalties levied in Kansas per year over the last five years

FY 2009: \$1,458,004
FY 2010: \$2,955,374
FY 2011: \$4,119,847
FY 2012: \$2,777,207
FY 2013: \$3,146,471
FY 2014: \$1,720,275 (as of 9/15/2014)

Total of fines/penalties collected in Kansas per year over the last five years

FY 2009: \$ 1,012,814
FY 2010: \$ 1,818,928
FY 2011: \$2,374,574
FY 2012: \$1,671,010
FY 2013: \$2,173,504
FY 2014: \$1,310,738 (as of 9/15/2014)

Total number of inspections conducted in Kansas per year over the last five years

FY 2009: 532
FY 2010: 647
FY 2011: 635
FY 2012: 711
FY 2013: 718
FY 2014: 678 (as of 9/15/2014)

Total of businesses that are currently subject to OSHA oversight/regulation in Kansas

73,598 Private Sector establishments

3,827 Government establishments - please note that these include Federal Government workplaces which a Kansas State Plan would not have jurisdiction over.

(7) Recommendation of the Secretary:

The Secretary notes that the planning, implementation and administration of a State plan is not included in the Governor's budget and therefore the Secretary does not recommend proceeding with a State plan at this time based on the expansion of State government and the vast amount of resources that will be required to plan, implement and administer a State plan in Kansas. The Secretary does, however, commit that if the policy decision is made to proceed with a State plan, the Kansas Department of Labor will be up to the task if adequate funding and other resources are provided.



Outline for the Submission and Review of State Plans

NOTE: Although this outline is tailored to the specific requirements of State Plans submitted under 29 CFR Part 1956, State Plans submitted under 29 CFR Part 1902 should also follow this outline.

1. Introduction
2. Introductory Outline
3. Comprehensive Outline

INTRODUCTION

This outline describes the content and format of a State public employee plan as authorized under Part 1956 of Title 29 of the Code of Federal Regulations.

The legal documents reviewed for this outline included 29 CFR 1956, 29 CFR 1952, 29 CFR 2200, 29 CFR 1903, 29 CFR 1904, 29 CFR 1905, OSHA, Chapter 17 of the OSHA Field Manual, and various State plan documents previously submitted to the Directorate of Federal-State Operations.

With respect to the format of the State public employee plan, the outline directs the State to divide its responses to the required issues into two major components—the Narrative Section and the Appendices. In the Narrative Section, the State is asked to describe or identify how the State plan provides for or addresses the specific Part 1956 requirements. In addition, the outline contains the appropriate cross references to other applicable OSHA requirements so that the State may review these requirements in developing its responses. In the Appendices, the State is directed to provide documentation in support of its Narrative Section responses.

The outline is presented in the following two sections. The first section is a summary of the outline heading and is intended to serve as a brief reference or checklist. The second section contains detailed instructions for completing the various Narrative Sections and Appendices.

INTRODUCTORY OUTLINE FOR STATE PUBLIC EMPLOYEE PLANS UNDER OSHA

I. NARRATIVE

A. General Background and Legal Authority

1. History
2. Existing Legal Authority
 - a. Further executive or legislative action
 - i. copy of bill
 - ii. statement of Governor's support
 - iii. legal opinion
 - iv. timetable
3. Employee Coverage
 - a. Covered employee groups
 - b. Excluded employees
 - c. Breakdown of employment
 - d. Description of work
4. Issue Coverage

Appendix A

B. Designated State Agency

1. State Designee
2. Authority and Responsibilities
3. Extent of Delegation

Appendix B

C. Standards and Variances

1. Identical Standards
2. Identical Standard Procedures

3. Alternative Standards Procedures
 - a. Expert input
 - b. Interested persons input
 - c. Participation in hearings
4. Emergency Temporary Standards
5. Contents of Standards
 - a. Toxic materials exposure
 - i. consideration of best evidence
 - b. Employee exposure information
 - c. Personal protective equipment
 - d. Identical standards meet requirements
6. Continued Standards Effectiveness
 - a. Timing for permanent standards
 - b. Timing for emergency temporary standards
7. Procedures for Variances
 - a. Future effect
 - b. Public notice
 - c. Employer notice to employees
 - d. Interested persons input
 - e. Conduct of hearing
 - i. modification of variances
 - ii. pre-hearing conferences
 - iii. filing of exceptions
 - iv. judicial review
 - f. Temporary variances
 - i. unavailability of personnel or equipment
 - ii. implementation of all available safeguards
 - iii. effective program for compliance
 - g. Permanent variances

Appendix C

D. Enforcement

1. Regulatory Basis
2. Inspection Procedures
 - a. Authority to inspect
 - b. Right of entry
 - c. Means to compel entry
 - d. Right to question privately
 - e. Right to review records
 - f. Advance notice prohibited
 - g. Employee walk-around
 - h. Imminent danger provision
 - i. notice to employees
 - ii. steps to abate hazard
 - iii. legal restraints
3. Complaint Procedures
 - a. Filing of possible violations
 - b. Notification of no compliance action
 - c. Informal review of no compliance action
 - d. Confidentiality
 - e. Nonformal complaint procedure
4. Nondiscrimination Protections
 - a. Necessary and appropriate protections
 - b. Filing of complaint
 - c. Time frame for agency decision
 - d. Compensatory action
 - e. Mechanism for assuring no further discrimination
5. Methods for Compelling Compliance
 - a. Notice to employers and employees
 - i. posting of citations
 - ii. notice to employer of proposed sanctions
 - b. Abatement data
 - c. Alternative sanctions
 - i. administrative orders
 - ii. judicial and mandamus action
 - iii. red tag procedures

- iv. expanded employee rights
 - 1. right to contest citations
 - 2. agency self-inspection procedures
 - 3. employee complaint procedures
 - d. Proposed first instance sanctions
 - i. repeated violations
 - ii. serious violations
 - iii. other than serious violations
 - iv. failure to abate
 - v. willful violations
 - vi. willful violations resulting in death
 - vii. factors for assessment of penalty
- 6. Review System for Contested Cases
 - a. Time frame
 - b. Employer contest of citation, penalty, and abatement periods
 - c. Employee contest of abatement periods
 - d. Employee participation in review
 - e. Informal (pre-contest) review
 - f. Formal review mechanism
 - g. Judicial appeal
 - h. Compulsory process to obtain evidence
- 7. Employee Access to Information
 - a. Toxic materials exposure
 - i. employee observation
 - ii. access to records
 - iii. notice by employer
 - iv. corrective action information
 - b. Provision of protections and obligations
- 8. Other prohibited Actions and Sanctions
 - a. Advance notice
 - b. False statements
 - c. Violation of posting requirements
- 9. Inspection Scheduling System
 - a. Priorities by type of inspection
 - b. Priorities by type of hazard, etc.
- 10. Voluntary Compliance Program
 - a. Training and education
 - b. Priorities for scheduling
 - c. Public information programs
 - d. On-site consultations
 - e. Agency self-inspection programs
- 11. Laboratory Support Services
- 12. Continued Enforcement Effectiveness

Appendix D

E. Record-Keeping and Reports

- 1. Record and Report Requirements
 - a. Public sector requirements
 - i. annual summary
 - ii. retention of records
 - iii. reporting of fatality/catastrophes
 - iv. penalties
 - v. BLS activity
 - b. Annual survey
- 2. Management Information Systems
 - a. Stage in development
 - b. Use of data
- 3. Form and Content of Reports
 - a. Quarterly reports
 - b. Annual BLS survey
 - c. Inspection and compliance activities
 - d. Illness, Injury, and death statistics
 - e. Periodic reports
 - i. performance measures
 - ii. output measures
 - iii. evaluation of effectiveness

Appendix E

F. Personnel

1. Sufficient Numbers
 - a. Safety compliance officers
 - b. Health compliance officers
 - c. Other compliance officers
 - d. On-site consultants
 - e. Training/educational staff
 - f. Total staff
 - g. Justification
2. Staff Organization
3. Staff Qualifications
 - a. Minimum qualifications
 - b. Training programs
 - i. Chicago Institute on-the-job training in-house training
4. State's Merit and Hiring Systems
 - a. Merit system requirements
 - i. standards under 45 CFR Part 70
 - ii. standards under Section 208 of the IPA
 - iii. at least as effective guidelines
 - b. Affirmative action program

Appendix F

G. Budget and Funding

1. Adequate Funds Commitment
 - a. Available funds
 - b. Source of funds
 - c. 50% commitment

Appendix G

II. Comprehensive Developmental Schedule

A. Comprehensive Breakdown

1. Proposed State Actions
2. Three Years Completion
3. Intermediate and Final Action Dates

COMPREHENSIVE OUTLINE FOR STATE PUBLIC EMPLOYEE PLANS UNDER OSHA

INSTRUCTIONS

The State should address all the issues raised in the Narrative Section (Section I) in a concise narrative form and should provide documentation where appropriate according to the Appendix Instructions which follow at the end of each topic section. For developmental plans, the State must provide in the Narrative Section satisfactory assurances that the State plan will conform to the criteria established under 29 CFR Part 1956 within three (3) years from the commencement of the plan's operation, and the State should also describe the specific actions it proposes to take. A comprehensive developmental schedule describing the completion of the above actions within three (3) years and the dates within which intermediate and final action will be taken should be submitted under Section II of this Outline. As final actions are taken by the State with respect to the developmental aspects of the plan, these items should be submitted to OSHA for insertion in the appropriate State plan appendix throughout the life of the State plan. References to 29 CFR Part 1956, entitled "State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States Without Approved Private Employee Plans," and other appropriate OSHA regulations and policy directives are located in the left margin of the Outline where applicable.

I. NARRATIVE

A. General Background and Legal Authority

1. History

Describe the history of State activities relating to occupational safety and health conditions for public employees.

[29 CFR 1956.2(b)]

2. Existing Legal Basis for State Plan

Identify the existing legal basis for the State public employee plan. (Basic legislation must be in place.)

- a. If the State plan is a developmental plan, and if program changes are necessary which require further executive or legislative action to meet the requirements of OSHA and Part 1956, identify such changes and submit the following:
 - i. A copy of the appropriate order or a copy of the bill or a draft of the legislation that has been or will be proposed for enactment;
 - ii. A statement of the Governor's support of the legislation and order;
 - iii. A legal opinion that the proposed legislation or executive action will meet the requirements of OSHA and Part 1956 in a manner consistent with the State's constitution and laws; and

iv. A timetable for the adoption of the legislation or order.
[29 CFR 1956.2(c)]

3. Employee Coverage

Describe the scope of coverage with respect to public employees under the State plan, including the following:

- a. Identify those employee groups (both State and local) who are covered under the State plan;
- b. If any political subdivision employees are excluded from the State plan's scope of coverage, identify the limitation in either the State law or constitution which prohibits the State from constitutionally regulating occupational safety and health conditions in political subdivisions;
- c. Provide a breakdown of employment by agency/subdivision;
- d. Describe the types of work performed (assignment of SIC (Standard Industrial Classification Manual) to each workplace is encouraged).

[29 CFR 1956.2(c)(2)]

4. Issue Coverage

Identify any occupational, industrial, or hazard grouping excluded from coverage under the state plan and provide details as to why coverage is unnecessary in these excluded areas.

Appendix A Instructions:

Appendix A must include the following:

1. *Enacted legislation or executive order;*
2. *For developmental plans:*
 1. *A draft of any proposed supplemental legislation or order;*
 2. *A statement of the Governor's support of the proposed legislation and/or order;*
3. *A legal opinion (i.e., from the State Attorney General).*

B. Designated State Agency

[29 CFR 1956.10(b)]

1. **State Designee**

Identify the State agency or agencies responsible for administering the State plan throughout the state.

[29 CFR 1956.10(b)(2)]

2. **Concurrent Authority and Responsibilities**

Describe the concurrent authority and responsibilities of the designated agency other than regulation of occupational safety and health conditions.

[29 CFR 1956.10(b)(2)]

3. **Delegation**

If delegation to or contracts with other statewide agencies is intended by the designated State agency, describe those responsibilities subject to delegation or contracts as well as the controls over the delegated or contracted agency which the designated State agency intends to implement.

Appendix B Instructions:

Appendix B must include the following:

1. *A letter from the Governor designating the State agency;*
2. *Contracts and/or agreements with delegated agencies, or a time frame and the nature of intended contracts if in the developmental stage.*

C. Standards and Variances

[29 CFR 1956.11(A)(1)]

1. **Identical Standards**

State whether the State agency has adopted or intends to adopt the same standards established by the Assistant Secretary under OSHA or whether alternative standards will be adopted by the State.

[29 CFR 1956.11(a)(1)]

2. **Procedures for Identical Standards**

Describe the procedures for the adoption of the same permanent standard established under Section 6 of OSHA.

[29 CFR 1956.11(a)(2)]

3. **Procedures for Alternative Standards**

Describe the procedures for the development and adoption of (29 CFR 1956.11(b)(2)(iii)) alternative standards, including:

- a. Consideration of expert technical knowledge;
- b. Provision for interested persons to submit information requesting the development or promulgation of new standards, or the modification or evaluation of existing standards;

c. Provision which gives interested persons an opportunity to participate in any hearing in the development, modification, or establishment of standards.

[29 CFR 1956.11(b)(2)(v)]

4. Emergency Temporary Standards

Describe the procedures for prompt and effective standards setting actions for the protection of employees against new and unforeseen hazards, including the authority to establish emergency temporary standards. This authority should include those situations where public employees are exposed to unique hazards for which existing standards do not provide adequate protection.

5. Issues to Be Addressed by Standards

Identify how the State standards provide for the following:

[29 CFR 1956.11(b)(2)(i)]

a. In the case of any State standards dealing with toxic material or harmful physical agents, describe how the standards in this area adequately assure, to the extent feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard addressed by such standard for the period of his working life.

i. In responding to the above, also address how the development of State standards in this area considers the best available evidence through such avenues as research, demonstration, experiments, and experience under OSHA and any other safety and health laws.

b. Identify how State standards contain appropriate provision for the furnishing to employees of information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure. In addition, the procedures for furnishing this information should include labeling, posting, and where appropriate, result of medical examinations being furnished only to the appropriate State officials and, if the employee so requests, to his physician.

[29 CFR 1956.11(b)(2)(vii)]

c. Describe how the State standards contain, where appropriate, specific provision for the use of suitable protective equipment and for control or technological procedures with respect to such hazards, including the monitoring or measuring of such exposure.

d. If the State adopts identical existing OSHA standards, such standards will be deemed to meet the requirements of a, b, and c above. However, since states may also establish standards in areas not yet addressed by OSHA, the State should respond to the issues raised in a, b, and c above for those standards.

[29 CFR 1956.10(c)]

6. Assurance for Continued Effectiveness

Provide assurances that the State will continue to develop or adopt standards which are or will be at least as effective as those established under Section 6 of OSHA. In providing the above, the State should address the following issues:

a. Adoption of State permanent standards within six (6) months from the promulgation of the federal regulation establishing the standard under Section 6 of OSHA.

b. Adoption of emergency temporary standards within thirty (30) days from the promulgation of the emergency temporary standard under Section 6 of OSHA.

[29 CFR 1956.11(b)(2)(iv)]

7. Procedures for Granting Variances

Describe the procedures for the granting of variances, including how the State plan provides authority for the granting of variances from State standards upon application of a public employer which corresponds to variances authorized under OSHA (see 29 CFR Part 1905 and Section 6 of OSHA). In addition, describe how the procedures allow for the modification, revocation, and renewal of variances. In describing the variance procedures, the following issues should be addressed:

a. That any variance granted may only have future effect;

b. There must be a procedure for public notice for every action granting a variance, limitation, variation, tolerance, or exemption;

c. Employer notice procedures to the employees or authorized representative where the employer has applied for the variance including giving a copy of the application to the employees' authorized representative, posting a statement, giving a summary of the application, and specifying where a copy may be examined (at the places where notices to employees are normally posted), and by other appropriate means;

d. Procedures which allow for the consideration of view of interested parties when a variance had been applied for, including: giving affected employees both notice of and the opportunity to participate in hearings (such as procedures which allow affected public employers and employees to request a hearing while the application is pending) or other appropriate proceedings relating to the applications for variances;

e. Procedures for the conduct of a hearing, including the following:

i. Procedures which allow for the modification, revocation, and renewal of variances;

ii. Procedures which allow for the official conducting the hearing to hold pre-hearing conferences, as well as establishment of consent findings, discovery, etc.;

iii. Procedures which allow for the filing of exceptions to the decision of the hearing official, and the transmission of the hearing record to the State administrative authority for its review and decision;

iv. Procedures which allow for judicial reviews of the State administrative authority's final agency action.

[29 CFR 1956.11(b)(2)(iv)]

f. Describe the procedures for the granting of temporary variances, as well as the modification, revocation, or renewal of the variances (see Section 6 of OSHA and 29 CFR Section 1905.10), including how such procedures address the following criteria before a variance can be granted:

i. The public employer is unable to comply with a standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alterations of facilities cannot be completed by the effective date;

- ii. The public employer is taking all available steps to safeguard his employees against the hazards covered by the standard; and
 - iii. The public employer has an effective program for coming into compliance with the standard as quickly as possible.
- [29 CFR 1956.11(b)(2)(iv)]

g. Describe the procedures for the granting of permanent variances, as well as the modification, revocation, or renewal of these variances (see Section 6(d) of OSHA and 29 CFR Section 1905.11). Procedures for the granting of permanent variances should address the issue as to whether the proponent of the variance has demonstrated by a preponderance of the evidence that conditions, practices, means, methods, operations, or processes used or proposed to be used by a public employer will provide employment and places of employment to the public employees which are as safe and healthful as those which would prevail if the public employer complied with the standard.

Appendix C Instructions:

Appendix C must include the following:

1. *Standard promulgation procedures (such as the State's Administrative Procedures Act) equivalent to 29 CFR Part 1911 and/or state equivalents, or a time frame for the development of such procedures;*
2. *State standards equivalent to existing federal standards under OSHA, or a timetable for the development thereof;*
3. *Standards comparisons for alternative standards (in a specified format), or a timetable for the development and submission thereof;*
4. *Variance regulations equivalent to 29 CFR Part 1905 or a timetable for the development thereof.*

Note: As new standards are adopted over the life of the State Plan, they should be added to this Appendix.

D. Enforcement

1. Regulatory Basis for Enforcement Program

Identify how the State law and/or regulations include the provisions set forth below as well as how the State intends to implement these provisions through its enforcement program.

2. Inspection Procedures

The State should address the following issues (see Section 8 of OSHA and 29 CFR Part 1903 and the Field Operations Manual):

[29 CFR 1956.11(c)(2)(i)]

- a. Identify the State's authority to inspect covered workplaces including inspections in response to complaints where there are reasonable grounds to believe a hazard exists;
- b. Identify the State's authority to enter without delay, and at reasonable times, any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of a public employer;
- c. Describe the State's procedures for termination of inspections when a public employer refuses to permit an inspection, and appropriate action by the enforcement agency (such as obtaining compulsory process) when there has been a refusal;
- d. Describe the procedures which permit the enforcement agency to question privately any public employer, operator, agent, or employee;
- e. Describe the State's right to review records which are required to be maintained under the State program and other records which are directly related to the purpose of the inspection;
- f. Identify the prohibitions against advance notice of inspections, except in special, defined circumstances (see 29 CFR Section 1903.6);

[29 CFR 1956.11(c)(2)(ii)]

- g. Describe how the state establishes a mechanism whereby a representative of the public employer and a representative of the employee have an opportunity to accompany the inspector during the physical inspection of the workplace. If there is no authorized representative for the employees, then there should be a provision for consultation by the inspector with a reasonable number of employees;

[29 CFR 1956.11(c)(2)(vii)]

- h. Describe the procedures for the prompt restraint or elimination of any conditions or practices in covered places of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise established in the State plan. Such procedures should address the following issues:
 - i. Immediately informing employees and employers of such hazards, and that the State enforcement agency is recommending a civil action to restrain such conditions or practices;
 - ii. Taking steps to obtain immediate abatement of the hazard by the employer;
 - iii. Authority to initiate necessary legal proceedings to require such abatement, such as judicial restraint of the conditions or practices.

3. Complaint Procedures

The State should address the following issues:

[29 CFR 1956.11(c)(2)(iii)]

- a. Describe how the State plan provides for an opportunity for employees and their representatives to bring possible violations to the attention of the designated state or local agency with responsibility before, during, and after inspections;

[29 CFR 1956.11(c)(2)(iii)]

- b. Identify how the State plan provides for notification of employees (or their representatives) when the State decides not to take compliance action where violations are alleged by the employees or their representatives;
- c. When a decision not to take compliance action is made, describe the informal review process should include written notification of decisions not to take compliance action and the accompanying reasons as well as a description of the informal review process and written statements of the dispositions of such review;

[29 CFR 1956.11(c)(2)(v)]

- d. Describe how the State protects the confidentiality of the complainant employee, such as the withholding of the names of complainants from the public employer upon the request of the complainant employee;
 - e. Describe the State's nonformal complaint procedures.
- [29 CFR 1956.11(c)(2)(v)]

4. Nondiscrimination Protections

Identify those provisions in the State plan which provide for the following nondiscrimination protections and procedures (equivalent to 29 CFR 1977):

- a. Necessary and appropriate protection to an employee against discharge or discrimination with respect to terms and conditions of employment for filing a complaint, testifying, or otherwise acting to express his rights under the State program for public employees;
- b. Filing of a discrimination complaint within a specified time;
- c. A specified time frame in which agency decisions regarding a discrimination complaint will be rendered;
- d. Ability of the State agency to initiate compensatory actions including back-pay and reinstatement of the employee;
- e. An appropriate mechanism for assuring that no further discrimination will occur.

[1956.11(c)(2)(vii)]

5. Methods for Compelling Compliance

Identify those methods which the State uses or intends to use in compelling employer compliance as well as the procedures for abatement of hazards. Such methods and procedures should address the following issues:

- a. Prompt notice to public employers and employees is effected when an alleged violation of standards has occurred, including the proposed abatement requirements. Such notice should include the following requirements:
 - i. Issuance of a written citation to the public employer and posting of the citation at or near the site of the violation. Citations should describe with particularity the nature of the alleged violation, including a reference to the provision of the State law, standard, rule, regulation, or order alleged to be violated. Any citation should also fix a reasonable time or times for the abatement of the alleged violation. If the citation is a result of an employee requested inspection or employer notification of a violation, a copy should also be sent to the employee or representative of employees who made such request or notification;
- [29 CFR 1956.11(c)(2)(ix)]
- ii. Advising the public employer of any proposed sanctions, wherever appropriate, including a notice to the employer by certified mail within a reasonable time of any proposed sanctions. Such notices should be after or concurrent with the issuance of a citation, and within a reasonable time after the termination of the inspection. The employer should also be notified of his right to contest the citation or the notification of the proposed penalty;
 - b. Submission by interested persons of data relating to the abatement of a hazard and a consideration by the State agency of such data prior to the issuance or modification of an abatement order;
- [29 CFR 1956.11(c)(2)(x)]
- c. If a system of monetary penalties is not the most appropriate enforcement mechanism under the State program, describe the alternative enforcement mechanism, and address the following issues, which may include:
 - i. Administrative orders;
 - ii. Judicial orders and mandamus actions;
 - iii. Red Tag procedures;
 - iv. Expanded employee rights and participation in enforcement, including:
 - 1. the right to contest citations as well as abatement periods;
 - 2. mandatory agency self-inspection procedures;
 - 3. employee complaint procedures.

[29 CFR 1956.11(c)(2)(x)]

- d. The proposed first instance sanctions/penalties and the relationship between these penalties and the gravity of the violation including penalties or "alternative sanctions" for:
 - i. Repeated violations;
 - ii. Serious violations:

A serious violation exists if there is a substantial problem that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, processes which have been adopted or are in use in the place of employment unless the employer did not and could not with the exercise of reasonable diligence, know of the presence of the violation.
 - iii. Other than serious violations;
 - iv. Failure to abate a violation within the period permitted for its correction;
 - v. Willful violations;
 - vi. Willful violation which leads to the death of any employee;
 - vii. Factors for assessment and reduction of penalties including due consideration of the appropriateness of the penalty with respect to the size of the public employer's activity being charged, the gravity of the violation, the fault of the public employer, and the history of previous violations.

[1956.11(c)(2)(xi)]

6. Review System for Contested Cases

Identify the review system for contested cases with respect to violations alleged by the State as well as abatement periods, proposed penalties, or alternative sanctions. The review system should include the following:

- a. A time frame for the filing of contested cases;

- b. Procedures whereby an employee has a right to contest citation, penalty and abatement periods;
- c. Procedures whereby an employee has a right to question the reasonableness of abatement periods;
- d. Procedures which permit employees or their authorized representatives to have an opportunity to participate in the review proceedings;
- e. Informal (pre-contest) review procedures;
- f. Formal review proceedings (including the right of administrative appeal from the decision of the hearing examiner);
- g. Procedures for appeals of administrative decisions to a judicial body;
- h. The ability of the State agency to obtain, through the appropriate compulsory process, necessary evidence or testimony in connection with inspection and enforcement proceedings, such as discovery depositions, interrogatories, and subpoenas.

[29 CFR 1956.11(c)(2)(vi)]

7. Employee Access to Information

Describe how the State plan addresses the issue of employee access to information and posting of notices to employees. Specifically, the following issues should be addressed:

- a. Identify the provision whereby employees have access to information on their exposure to toxic materials or harmful physical agents and how employees receive prompt information when they have been or are being exposed to such materials or agents at levels in excess of those prescribed by the applicable safety and health standards. The provision should incorporate the following mechanisms:
 - i. Observation by employees of the monitoring or measuring of such materials or agents;
 - ii. Employee access to the records of such monitoring or measuring;
 - iii. Prompt notification by a public employer to any employee who has been or is being exposed to such agents or materials in excess of the applicable standards; and
 - iv. Information to such employees of corrective action being taken.

[1956.11(c)(2)(x)]

8. Other Prohibited Actions and Sanctions

Identify how the State provides penalties for the following types of prohibited actions:

- a. Penalties for any person who gives advance notice of any inspection without authority from the designated agency;
- b. Penalties for any person who makes any false statement in any application, record, plan, or other document filed or required to be maintained under the State plan;
- c. Penalties for public employers who violate any of the required posting requirements.

9. Inspection Scheduling System

Describe how the State program provides for an inspection scheduling system, including how the system addresses the following priorities:

- a. Priorities by type of inspection (i.e., complaints, general schedule, etc.);
- b. Priorities by hazard, workplace, equivalent SIC (Standard Industrial Classification Manual).

[29 CFR 1956.11(c)(2)(xii)]

10. Voluntary Compliance Program

Identify how the State will undertake programs to encourage voluntary compliance by public employees and employers, including the following:

- a. Training and education of public employers and employees, including types of courses, etc.;
- b. Priorities for the scheduling of training programs;
- c. Public information programs;
- d. On-site consultations to public employee sites;
- e. Encouragement of agency self-inspection programs.

11. Laboratory Support Services

Describe how the State enforcement program provides for and utilizes laboratory support services.

[29 CFR 1956.10(d)(1)]

12. Assurances for Continued Effectiveness

Provide assurances 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.

Appendix D Instructions:

Appendix D must include the following:

1. Regulations or procedures equivalent to 29 CFR Part 1903 or a timetable for the development thereof;
2. Regulations or procedures equivalent to 29 CFR Part 1977 or a timetable for the development thereof;
3. Inspection scheduling system (high hazard/worst first) or timetable for the development thereof;
4. Procedures for on-site consultation or a timetable for their development;
5. Regulations or procedures which are equivalent to 29 CFR Part 2200 or a timetable for their development;
6. State Field Operations Manual and Industrial Hygiene Manual or timetable for their development (this may be a separate volume if desired).

E. Record-Keeping and Reports

1. Record and Report Requirements

Describe how the State compiles injury/illness statistics under the State public employee program, and address the following requirements:

[29 CFR 1956.10(i)]

- a. Provide assurances and identify how public employers covered by the State plan will maintain records and make reports of occupational injuries and illnesses in a manner similar to those required of private employers under OSHA (see Section 24(e) of OSHA and 29 CFR Part 1904), including:
 - i. Annual summary of occupational illnesses and injuries;
 - ii. Retention of records for five (5) years;
 - iii. Reporting of fatality or multiple hospitalization accidents within forty-eight (48) hours after the occurrence of an employment accident;
 - iv. Penalties for falsification or failure to keep records and reports;
 - v. Description of the State's statistical program and BLS activity.
- b. An annual survey to establish incidence rates, etc., through participation in the BLS program.

2. Management Information System

Describe the State's management information system, and address the following issues:

- a. Stage in development (manual, automated);
- b. How data is used for managing the State public employee's program.

[29 CFR 1956.10(i)]

3. Form and Content of Reports

Provide assurances that the designated agency shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require, including the following:

- a. Quarterly reports to be submitted to the Assistant Secretary within ten (10) days from the close of the quarterly period;
- b. Participation in the annual BLS survey;
- c. Data and information on the implementation of the specific inspection and voluntary compliance activities included within the State plan;
- d. Statistical information pertaining to work related deaths, injuries, and illnesses in employment and places of employment covered by the State plan as the Assistant Secretary may from time to time require;
- e. Periodic reports to the Assistant Secretary on the extent to which the State, in the implementation of its plan, has attained those goals established for the State plan which are consistent with OSHA's goals, including:
 - i. Measures of performance;
 - ii. Measures of output;
 - iii. Results which will determine the efficiency and effectiveness of the State program for public employees.

Appendix E Instructions:

Appendix E must include the following:

1. Regulations or procedures equivalent to 29 CFR Part 1904 or a timetable for the development thereof;
2. Management Information System
3. Reporting Requirements

F. Personnel

[29 CFR 1956.10(g)]

1. Sufficient Numbers of Personnel

Provide assurances that the designated agency or agencies and all government agencies to which authority has been delegated, have, or will have a sufficient number of adequately trained and qualified personnel necessary for the enforcement and administration of the State program. With respect to sufficient numbers of personnel, the following issues should be addressed:

- a. Number of present safety compliance officers and the anticipated number of safety compliance officers over the next three (3) years;
- b. Number of present health compliance officers (industrial hygienists) and the anticipated number of health compliance officers over the next three (3) years;
- c. Number of other compliance officer at the present time (specify the different classifications) and the anticipated number of such inspectors over the next three (3) years;
- d. Number of present on-site consultants and the anticipated number of such consultants over the next three (3) years;
- e. Number of training/educational staff;
- f. Total funded staff;
- g. If under or over OSHA's benchmark, provide a justification for this result.

2. Organization of Staff

Describe the organization of the staff, including supervisors and support staff.

3. Qualified Staff Requirements

With respect to whether the staff is adequately trained and qualified, provide the following information:

- a. Minimum qualifications for state administrative and enforcement positions;
- b. Training programs for staff, including:
 - i. Attendance at Chicago Institute course;
 - ii. On-the-job training;
 - iii. In-house training programs

[29 CFR 1956.10(g)]

4. State's Merit and Hiring Systems

Describe the State's merit system and hiring system and address the following Issues:

- a. Conformance with the merit system requirements described below:
 - i. Standards for a Merit System of Personnel Administration, 45 CFR Part 70, Issued by the Secretary of Labor, including any amendment thereto;
 - ii. Any standards by the U.S. Civil Service Commission, pursuant to Section 208 of the Intergovernmental Personnel Act of 1970, modifying or superseding the above standards;
 - iii. Guidelines on "at least as effective as" staffing derived from the federal private employee program.
- b. The states commitment to affirmative action in the hiring of State employees.

Appendix F Instructions:

Appendix F must include the following:

1. *A current staffing/organizational chart (including cooperating agencies) as well as a chart which describes the State's staffing and organization as projected over a three (3) year period;*
2. *State job descriptions for all positions in the State program;*
3. *Supplemental assurances required for merit system approval or a timetable for submission of the above;*
4. *Affirmative action plan or a timetable for the development of the plan.*

G. Budget and Funding

[29 CFR 1956.10(h)]

1. Commitment of Adequate Funds

Provide satisfactory assurances that the State will devote adequate funds to the administration and enforcement of the public employee program, and include the following:

- a. Funds available for the administration and enforcement of the State public employee program;
- b. Source of the State's funding for the public employee program;
- c. Fifty percent (50%) commitment of State funds to the overall costs of the State public employee program.

Appendix G Instructions:

Appendix G must include the following:

1. *A detailed budget for the State program's first year's operations (using grant format);*
2. *Projection for the next two year's budgets for the administration and enforcement of the State public employee program.*

II. COMPREHENSIVE DEVELOPMENTAL SCHEDULE

- A. For each item addressed in the Narrative Section, which is in a developmental stage, provide a comprehensive schedule which indicates the following:
 1. Identifies the specific actions the State proposes to take;
 2. A schedule for the completion of such actions within three (3) years; and
 3. The dates within which intermediate and final action will be taken.