



4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1956

[Docket No. OSHA- 2015-0003]

Maine State Plan for State and Local Government Employers; Notice of Submission; Proposal To Grant Initial State Plan Approval; Request for Public Comment and Opportunity To Request Public Hearing

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

ACTION: Proposed rule; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the submission by the Maine Department of Labor of a developmental State Plan for occupational safety and health, applicable only to public sector employment (employees of the State and its political subdivisions), for determination of initial approval under Section 18 of the Occupational Safety and Health Act of 1970 (the "Act"). OSHA is seeking written public comment on whether or not initial State Plan approval should be granted and offers an opportunity to interested persons to request an informal public hearing on the question of initial State Plan approval. Approval of the Maine State and Local Government Only State Plan will be contingent upon a determination that the Plan meets, or will meet within three years, OSHA's Plan approval criteria and the availability of funding as contained in the Department of Labor's Fiscal Year 2015 budget.

DATES: Comments and requests for a hearing must be submitted by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: Written comments: Submit comments, identified by docket number OSHA-2015-0003, by any of the following methods:

Electronically: Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions; or

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648; or

U.S. mail, hand delivery, express mail, messenger or courier service: Submit your comments and attachments to the OSHA Docket Office, Docket Number OSHA-2015-0003, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., EDT.

Instructions for submitting comments: All submissions must include the docket number (Docket No. OSHA-2015-0003) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express mail and messenger or courier service. All comments, including any personal information you provide, are placed in the public docket without change and will be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates.

Docket: To read or download submissions in response to this Federal Register notice, go to docket number OSHA-2015-0003, at <http://www.regulations.gov>. All submissions are listed in the <http://www.regulations.gov> index, however some information (e.g., copyrighted material) is not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Electronic copies of this Federal Register document as well as copies of the proposed Maine State and Local Government Only State Plan narrative are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, is available at OSHA's Web page at <http://www.osha.gov>. A copy of the documents referenced in this notice may also be obtained from the OSHA Docket Office, at the address above.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Francis Meilinger, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 693-1999; email meilinger.francis2@dol.gov.

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, Room N-3700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693-2200; email: kalinowski.doug@dol.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act"), 29 U.S.C. 667, provides that a State which desires to assume responsibility for the development and enforcement of standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated may submit a State Plan to the Assistant

Secretary of Labor for Occupational Safety and Health ("Assistant Secretary") documenting the proposed program in detail. Regulations promulgated pursuant to the Act at 29 CFR Part 1956 provide that a State may submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employers of the State and its political subdivisions ("public employers"). Under these regulations the Assistant Secretary will approve a State Plan for public employers 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 as standards promulgated and enforced under Section 6 of the 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. State and local government workers are excluded from Federal OSHA coverage under the Act.

B. Maine State Plan History

Since 1971, the Maine Department of Labor, Bureau of Labor Standards (Bureau), has adopted standards and performed inspections in the public sector (State, county, and municipal employers) as outlined under the provisions of the State's existing enabling legislation: Maine Revised Statutes, Title 26: Labor and Industry. Maine began working on a State and Local Government Only State Plan in 2012 and submitted a draft Plan to OSHA in February of 2013. OSHA's review findings were detailed in various memoranda and other documents. OSHA determined that the Maine statutes, as structured, and the proposed State Plan necessitated changes in order to meet the State and Local Government Only State Plan approval criteria in 29 CFR 1956. Maine formally submitted a revised Plan applicable only to public employers for Federal approval on May 2, 2013. Over the next several months, OSHA worked with Maine in identifying areas of the proposed Plan which needed to be addressed or required clarification. In

response to Federal review of the proposed State Plan, supplemental assurances, and revisions, corrections and additions to the Plan were submitted on September 4, 2013 and November 7, 2014. Further modifications were submitted by the State on December 19, 2014. Amendments to Maine Revised Statutes, Title 26 were proposed and enacted by the Maine Legislature and signed into law by the Governor in 2014. The amended legislation provides the basis for establishing a comprehensive occupational safety and health program applicable to the public employers in the State. The revised Plan has been found to be conceptually approvable as a developmental State Plan.

The Act provides for funding of up to 50% of the State Plan costs, but longstanding language in OSHA's appropriation legislation further provides that OSHA must fund "no less than 50% of the costs . . . required to be incurred" by an approved State Plan. Such Federal funds to support the State Plan must be available prior to State Plan approval. The Fiscal Year 2015 Omnibus Appropriations Act includes \$400,000 in additional OSHA State Plan grant funds to allow for Department of Labor approval of a Maine State Plan. After an opportunity for public comment and a hearing, should one be requested, the Assistant Secretary will approve the Maine State and Local Government Only State Plan if it is determined that the Plan meets the criteria set forth in the Act and applicable regulations at 29 CFR Part 1956, Subpart B. The approval of a State Plan for state and local government employers in Maine is not a significant regulatory action as defined in Executive Order 12866.

C. Description of the Maine State Plan

The Plan designates the Maine Department of Labor as the State agency responsible for administering the Plan throughout the State. Under the Plan's legislation, Title 26 of the Maine Revised Statutes, the Maine Department of Labor has full authority to adopt standards and regulations (through the Board of Occupational Safety and Health) and enforce and administer all laws and rules protecting the safety and health of employees of the State and its political

subdivisions. Maine will adopt State standards identical to Federal occupational safety and health standards (with minor exceptions) as promulgated through March 30, 2015. The Plan also provides that future OSHA standards and revisions will be adopted by the State within six months of Federal promulgation (30 days for any emergency temporary standard) in accordance with the requirements at 29 CFR 1953.5. Title 26, Chapter 6, Section 571 of the Maine Revised Statutes includes provisions for the granting of permanent and temporary variances from State standards to public employers in terms substantially similar to the variance provisions contained in the Act. Variances may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance. Title 26, Chapter 6, Section 566 and Chapter 3, Section 44 of the Maine Revised Statutes provides for inspections of covered workplaces. Title 26, Chapter 3, Subsection 50 provides for inspections in response to employee complaints. If a determination is made that an employee complaint does not warrant an inspection, the complainant will be notified in writing of such determination. Additionally, Section 44-A of Chapter 3 provides the opportunity for employer and employee representatives to accompany an inspector during an inspection for the purpose of aiding in the inspection. The Plan in Title 26, Chapter 3, Sections 42-B and 45, provides for notification to employees of their protections and obligations under the Plan by such means as a State poster, required posting of notices of violation, etc. Title 26, Chapter 6, subsection 570 provides for protection of employees against discharge or discrimination resulting from exercise of their rights under the State Acts in terms essentially identical to Section 11(c) of the Federal Act. The Plan also includes provisions for right of entry for inspection, prohibition of advance notice of inspection, and employers' obligations to maintain records and provide reports as required.

Section 46 of Title 26 contains authority for a system of first instance monetary penalties, and the State's intent is to issue monetary penalties for serious violations. The State has discretionary authority for civil penalties of up to \$1,000 per day the violation continues for

repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to \$1,000 per violation and failure-to-correct violations may be assessed a penalty of up to \$1,000 per day. In addition, criminal penalties can be issued to public employers who willfully violate any standard, rule or order. The Plan provides a scheme of enforcement for compelling compliance under which public employers are issued citations for any violation of standards. These citations must describe the nature of the violation, including reference to the standard, and fix a reasonable time for abatement. The Maine Plan includes the Board of Occupational Safety and Health (Board), which adopts standards, and also is an independent review authority for review of contested cases. The Director of the Bureau will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested. Public employers or their representatives who receive a citation or a proposed penalty may within 15 working days contest the citation, proposed penalty and/or abatement period and request a hearing before the Board. Any public employee or representative aggrieved by a citation or proposed penalty may within 15 working days request a hearing before the Board. Employers may also request informal review of penalties with the Bureau if the employer agrees to abate the cited hazard. The Board's decision is subject to appeal to the courts.

The State currently has a staff of two safety compliance officers and zero health compliance officers. The Bureau delivers OSHA's On-Site Consultation program to private sector employers throughout the State. Maine currently has a staff of three safety and two health consultants, who perform duties equivalent to OSHA's On-Site Consultation program, for state and local government employers. Currently, for these employers, if the state receives a health complaint, a consultant will accompany and assist the enforcement officer. The Plan provides assurances that within six months no staff will have dual roles, and the State will have a fully trained, adequate staff of two safety compliance officers and one health compliance officer for enforcement inspections, and three safety consultants and one health consultant to perform

consultation services in the public sector. As new staff members are hired they will perform either enforcement or consultation functions. 29 CFR 1956.10(g) requires that State Plans for public employers provide a sufficient number of adequately trained and qualified personnel necessary for the enforcement of standards. The compliance staffing requirements (or benchmarks) for State Plans covering both the private and public sectors are established based on the "fully effective" test established in AFL-CIO v. Marshall, 570 F.2d 1030 (D.C. Cir. 1978). This staffing test, and the complicated formula used to derive benchmarks for complete private/public sector Plans, is not intended, nor is it appropriate, for application to the staffing needs of public employer only Plans. However, the State has given satisfactory assurance in its Plan that it will meet the staffing requirements of 29 CFR 1956.10. The State has also given satisfactory assurances of adequate State matching funds (50%) to support the Plan and is requesting initial Federal funding of \$400,000 for a total initial program effort of \$800,000. Although the State statute sets forth the general authority and scope for implementing the Maine State and Local Government Only State Plan, the Plan is developmental under the terms of 29 CFR 1956.2(b), in that specific rules, regulations, and implementing procedures must still be adopted or revised to carry out the Plan and make it structurally "at least as effective" as Federal OSHA and fully operational. The Plan sets forth a timetable for the accomplishment of these and other developmental goals within three years of Plan approval. This timetable addresses such general areas as the minor revision of existing legislation and development of procedures for the on-site public sector consultation program. Other developmental aspects include hiring and training of staff, participation in OSHA's Information System (OIS), development of a Field Operations Manual, development of an Annual Performance Plan and a Five-Year Strategic Plan and all other implementing policies, procedures, regulations and instruction necessary for the operation of an effective program.

D. Request for Public Comment and Opportunity to Request Hearing

Public comment on the Maine State and Local Government Only State Plan is hereby requested. Interested persons are invited to submit written data, views, and comments with respect to this proposed initial State Plan approval. These comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Written submissions must clearly identify the issues that are addressed and the positions taken with respect to each issue. The State of Maine will be afforded the opportunity to respond to each submission. The Maine Department of Labor must also publish appropriate notice within the State of Maine within five days of publication of this notice, announcing OSHA's proposal to approve a Maine State and Local Government Only State Plan, contingent on the availability of appropriated funds, and giving notice of the opportunity for public comment. Pursuant to 29 CFR 1902.13(f), interested persons may request an informal hearing concerning the proposed initial State Plan approval. Such requests also must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] and may be submitted electronically, by facsimile, or by regular mail, hand delivery, express mail, messenger or courier service, as indicated under ADDRESSES above. Such requests must present particularized written objections to the proposed initial State Plan approval. Within 30 days of the close of the comment period, the Assistant Secretary will review all comments submitted; will review all hearing requests; and will schedule an informal hearing if a hearing is required to resolve substantial issues. The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish a decision in the Federal Register. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing, and all materials submitted in response to this notice and at any subsequent hearing, will be available at <http://www.regulations.gov> or the OSHA Docket Office at the address above.

E. Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the proposed initial approval of the Maine State Plan will not have a significant economic impact on a substantial number of small entities. By its own terms, the Plan will have no effect on private sector employment, but is limited to the State and its political subdivisions. Moreover, Title 26, Labor and Industry, of the Maine Revised Statutes, was enacted in 1971. This legislation established the Board, whose purpose is to formulate rules that shall, at a minimum, conform with federal standards of occupational safety and health, so the state program could eventually be approved as State and Local Government Only State Plan. Since 1971 the Maine program for public employers has been in operation under the Maine Department of Labor with State funding and all state and local government employers in the State have been subject to its terms. Compliance with State OSHA standards is required by State law; Federal approval of a State Plan imposes regulatory requirements only on the agency responsible for administering the State Plan. Accordingly, no new obligations would be placed on public sector employers as a result of Federal approval of the Plan

F. Federalism

Executive Order 13132, "Federalism," emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect state or local governments. OSHA has consulted extensively with Maine throughout the development, submission and consideration of its proposed State Plan. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to initial approval decisions under the Act, which have no effect outside the particular State receiving the approval, OSHA has reviewed the Maine initial approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, D.C., authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1-2012 (77 FR 3912), and 29 CFR Parts 1902 and 1956.

Signed in Washington, DC, on May 14, 2015.

David Michaels, Ph.D., MPH,

Assistant Secretary of Labor for Occupational Safety and Health.

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