

**Before the Senate Committee on Commerce**

**Neutral Testimony on SB 212**  
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Madam Chair and Honorable Members of the Committee:

Thank you for the opportunity to present testimony on SB 212, also known as the State OSHA bill. This testimony is being presented from a neutral point of view, although admittedly, the information may appear to be supporting or opposing the bill, depending on the reader’s philosophical perspective.

**I. Legal Background on OSHA State Plans**

A state OSHA plan, also known as 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 operated program to relieve the federal government of its obligations under the Occupational Safety and Health Act of 1970.

Section 18 of the Williams-Steiger Occupational Safety and Health Act of 1970 (the Act) permits States to develop and operate their own occupational safety and health programs (aka State Plans) under the guidance, approval and continued monitoring of OSHA. 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. OSHA monitors and evaluates State Plans 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.

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).

## **II. Criteria Required for an OSHA State Plan**

A state must have the legal basis for a State Plan prior to pursuing initial approval and submitting a State Plan Narrative. (9/22/2015: *State Plan Policies and Procedures Manual* p 3). OSHA regulation, 29 CFR 1902.3 is the federal regulation that sets forth the specific criteria and legal basis that must be included in a State Plan. Before a State Plan can be considered for approval, the following must be included and addressed:

### ***Designation of State agency***

The State plan shall designate a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State. The plan

shall also describe the authority and responsibilities vested in such agency or agencies. The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to administration of the plan.

A State agency or agencies must be designated with overall responsibility for administering the plan throughout the State. However, political subdivisions of the State may have the responsibility and authority for the development and enforcement of standards, provided that the State agency or agencies are given adequate authority by statute, regulation, or agreement, to insure that the commitments of the State under the plan will be fulfilled.

### *Standards*

The State plan shall include or provide for the development or adoption of, and contain assurances that the State will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under section 6 of the Act. Indices of the effectiveness of standards and procedures for the development or adoption of standards against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in §1902.4(b).

The State plan shall not include standards for products distributed or used in interstate commerce which are different from Federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision, reflecting section 18(c)(2) of the Act, is interpreted as not being applicable to customized products or parts not normally available on the open market, or to the optional parts or additions to products which are ordinarily available with such optional parts or additions. In situations where section 18(c)(2) is considered applicable, and provision is made for the adoption of product standards, the requirements of section 18(c)(2), as they relate to undue burden on interstate commerce, shall be treated as a condition subsequent in light of the facts and circumstances which may be involved.

### *Enforcement*

The State plan shall provide a program for the enforcement of the State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program. Indices of the effectiveness of a State's enforcement plan against which the Assistant Secretary will measure the State plan in determining whether it is approvable are set forth in §1902.4(c).

The State plan shall require employers to comply with all applicable State occupational safety and health standards covered by the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

### ***Right of entry and inspection***

The State plan shall contain adequate assurance that inspectors will have a right to enter and inspect covered workplaces which is, or will be, at least as effective as that provided in section 8 of the Act. Where such entry or inspection is refused, the State agency or agencies shall have the authority, through appropriate legal process, to compel such entry and inspection.

### ***Prohibition against advance notice***

The State plan shall contain a prohibition against advance notice of inspections. Any exceptions must be expressly authorized by the head of the designated agency or agencies or his representative and such exceptions may be no broader than those authorized under the Act and the rules published in part 1903 of this chapter relating to advance notice.

### ***Legal authority***

The State plan shall contain satisfactory assurances that the designated agency or agencies have, or will have, the legal authority necessary for the enforcement of its standards.

### ***Personnel***

The State plan shall provide assurance that the designated agency or agencies have, or will have, a sufficient number of adequately trained and qualified personnel necessary for the enforcement of the standards. For this purpose qualified personnel means persons employed on a merit basis, including all persons engaged in the development of standards and the administration of the State plan. Conformity with the Standards for a Merit System of Personnel Administration, 45 CFR part 70, issued by the Secretary of Labor, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648; 84 Stat. 1915) modifying or superseding such standards, will be deemed to meet this requirement.

### ***Resources***

The State plan shall contain satisfactory assurances through the use of budget, organizational description, and any other appropriate means that the State will devote adequate funds to the administration and enforcement of the program. The Assistant Secretary will make periodic evaluations of the adequacy of the State resources devoted to the plan.

### ***Employer records and reports***

The State plan shall provide assurances that employers covered by the plan will maintain records and make reports to the Assistant Secretary in the same manner and to the same extent as if the plan were not in effect.

### *State agency reports to the Assistant Secretary*

The State plan shall provide assurances that the designated agency or agencies shall make such reasonable reports to the Assistant Secretary in such form and containing such information as he may from time to time require. The agency or agencies shall establish specific goals, consistent with the goals of the Act, including measures of performance, output and results which will determine the efficiency and effectiveness of the State program, and shall make periodic reports to the Assistant Secretary on the extent to which the State, in implementation of its plan, has attained these goals. Reports will also include data and information on the implementation of the specific inspection and voluntary compliance activities included within the State plan. Further, these reports shall contain such statistical information pertaining to work-related deaths, injuries, and illnesses in employments and places of employment covered by the plan as the Assistant Secretary may from time to time require.

29 CFR 1902.3.

In addition to the criteria listed above in 29 CFR 1902.3, a state must complete the following outline provided by OSHA. OSHA instructions state:

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).*
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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.*
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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)]

- i. 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.

1. 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.
- ii. 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 Act.
- b. Adoption of emergency temporary standards within thirty (30) days from the promulgation of the emergency temporary standard under Section 6 of OSHA Act.

[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 Act). 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.*

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## **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)(ii)]

- 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).*
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## **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*

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**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.

Source: <https://www.osha.gov/dcsp/osp/planoutline.html>

## III. **Steps in OSHA's Approval Process for Establishing a State Plan**

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. The information needed to be presented to OSHA during this process includes the requirements found in 29 CFR 1902.3, stated above, and the completion of the outline above. Once that information has been compiled and organized, the State must then proceed with the submission procedure set forth in 29 CFR 1902.10.

Under 29 CFR 1902.10, the following procedure has been established for initiating the process of obtaining permission to operate a State Plan:

(a) An authorized representative of the State agency or agencies responsible for administering the plan shall submit one copy of the plan to the appropriate Assistant Regional Director of the Occupational Safety and Health Administration, U.S. Department of Labor. The State plan shall include supporting papers conforming to the requirements specified in the subpart B of this part, and the State occupational safety and health standards to be included in the plan, including a copy of any specific or enabling State laws and regulations relating to such standards. If any of the representations concerning the requirements of subpart B of this part are dependent upon any judicial or administrative interpretations of the State standards or enforcement provisions, the State shall furnish citations to any pertinent judicial decisions and the text of any pertinent administrative decisions.

(b) Upon receipt of the State plan the Assistant Regional Director shall make a preliminary examination of the plan. If his examination reveals any defect in the plan, the Assistant Regional Director shall offer assistance to the State agency and shall provide the agency an opportunity to cure such defect. After his preliminary examination, and after affording the State agency such opportunity to cure defects, the Assistant Regional Director shall submit the plan to the Assistant Secretary.

(c) Upon receipt of the plan from the Assistant Regional Director, the Assistant Secretary shall examine the plan and supporting materials. If the examination discloses no cause for rejecting the plan, the Assistant Secretary shall follow the procedure prescribed in §1902.11. If the examination discloses cause for rejection of the plan, the Assistant Secretary shall follow the procedure prescribed in §1902.17.

#### 29 CFR 1902.10.

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.

Next, assuming that the proposed plan that is submitted by the State meets all of the federal requirements in 29 CFR 1902.3, which will be a significant challenge if the deadline for submission is September 1, 2017, the next phase in the process is defined at 29 CFR 1902.11. If the proposed plan does not meet all of the State Plan requirements, then a lengthy hearing process ensues, which is codified at 29 CFR 1902.17.

29 CFR 1902.11 states that the following process must next ensue:

(a) Upon receipt of a State plan submitted by an Assistant Regional Director under §1902.10 whenever the Assistant Secretary proposes to approve the plan, or to give notice that such approval is an issue before him, he shall publish in the Federal Register a notice meeting the requirements of the remaining paragraphs of this section. No later than 5 days following the publication of the notice in the



Federal Register, the applying State agency shall publish, or cause to be published, within the State reasonable notice containing the same information.

(b) The notice shall indicate the submission of the plan and its contents, and any proposals, subjects, or issues involved.

(c) The notice shall provide that the plan, or copies thereof, shall be available for inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(d) The notice shall afford interested persons an opportunity to submit in writing, data, views, and arguments on the proposal, subjects, or issues involved within 30 days after publication of the notice in the Federal Register. Thereafter the written comments received or copies thereof shall be available for public inspection and copying at the office of the Director, Office of State Programs, Occupational Safety and Health Administration, office of the Assistant Regional Director in whose region the State is located, and an office of the State which shall be designated by the State for this purpose.

(e) Upon his own initiative, the Assistant Secretary may give notice of an informal or formal hearing affording an opportunity for oral comments concerning the plan.

(f) In the event no notice of hearing is provided under paragraph (e) of this section it shall be provided that any interested person may request an informal hearing concerning the proposed plan, or any part thereof, whenever particularized written objections thereto are filed within 30 days following publication of the notice in the Federal Register. If the Assistant Secretary finds that substantial objections have been filed, he shall afford a formal or informal hearing on the subjects and issues involved under §1902.13 or §1902.14, or shall commence a proceeding under §1902.17.

29 CFR 1902.11.

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.

Upon completion of any formal or informal hearing, a transcript of the hearing, together with written submissions, exhibits filed during the hearing, and any post-hearing

presentations shall be certified by the officer presiding at the hearing to the US Department of Labor Assistant Secretary. See, 29 CFR 1902.15. After the formal hearing, the Assistant Secretary must either approve the plan, approval part of the plan and reject the remainder of the plan, or reject the entire plan. 29 CFR 1902.20.

Section 1953.4 of this chapter sets forth the procedures for the submission and consideration of developmental changes by OSHA. Generally, whenever a State completes a developmental step, it must submit the resulting plan change as a supplement to its plan to OSHA for approval. OSHA's approval of such changes is then published in the Federal Register.

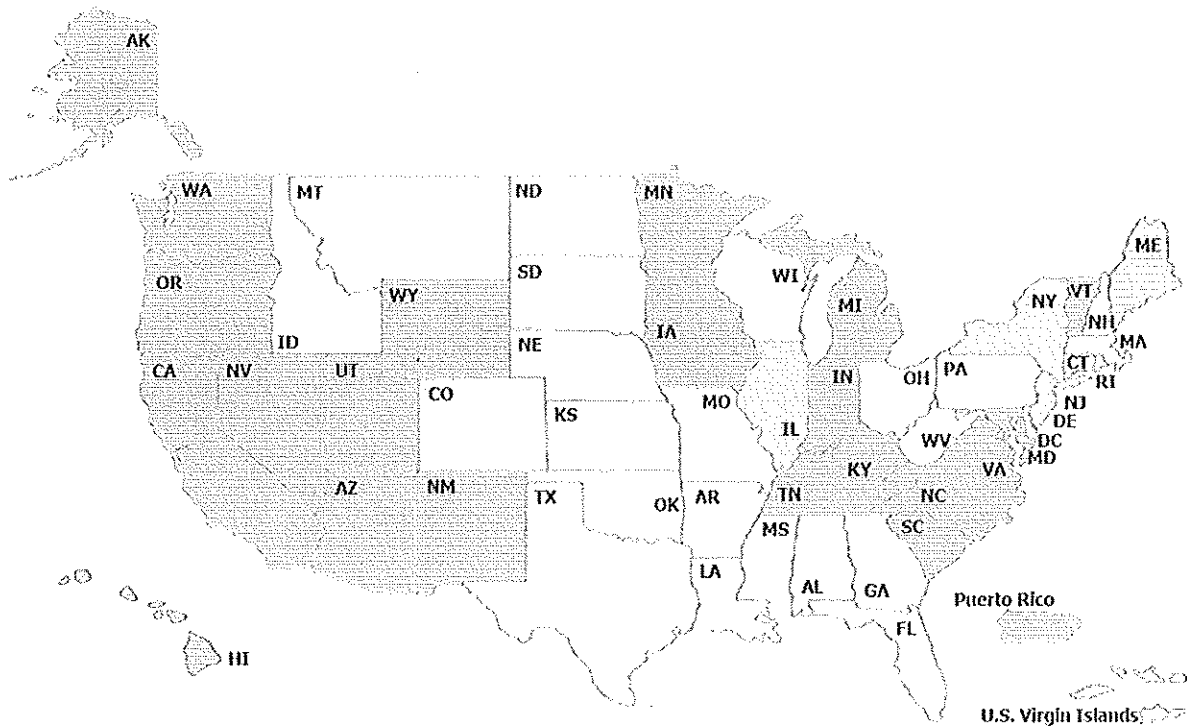
#### **IV. OSHA Coverage Among the States and Territories**

The following are excerpts taken directly from OSHA's website: (<https://www.osha.gov/dcsp/osp/index.html>)

##### **OSHA Coverage**

*The Occupational Safety and Health (OSH) Act covers most private sector employers and their workers, in addition to some public sector employers and their workers in the 50 states and certain territories and jurisdictions under federal authority. Those jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands as defined in the *Outer Continental Shelf Lands Act*.*

Map of OSHA State Plan States:



\*Note: Twenty-six states, Puerto Rico, and the Virgin Islands have OSHA-approved State Plans. **Twenty-two State Plans (21 states and one U.S. territory) cover both private and state and local government workplaces.** The remaining six State Plans (five states and one U.S. territory) cover state and local government workers only.

### **Private Sector Workers**

OSHA covers most private sector employers and workers in all 50 states, the District of Columbia, and the other United States (U.S.) jurisdictions either directly through OSHA or through an OSHA-approved State Plan. State Plans are OSHA-approved job safety and health programs operated by individual states instead of federal OSHA. Section 18 of the OSH Act encourages states to develop and operate their own job safety and health programs and precludes state enforcement of OSHA standards unless the state has an OSHA-approved State Plan.

OSHA approves and monitors all State Plans and provides as much as fifty percent of the funding for each program. State-run safety and health programs must be at least as effective (ALAE) as the federal OSHA program. OSHA provides coverage to certain workers specifically excluded from a State Plan, for example, those in some states who work in

maritime industries or on military bases. To find the contact information of the OSHA or State Plan office nearest to you, call 1-800-321-OSHA or go to [www.osha.gov](http://www.osha.gov).

The following twenty-one (21) states and 1 territory have OSHA-approved State Plans that cover both private and public sector workers:

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

Following is a sample timeline for State Plan approval for a few of the states that have private sector inspection authority:

The Oregon State plan received initial approval on December 28, 1972, and received final approval on May 12, 2005.

The Arizona State plan received initial approval on November 5, 1974, and received final approval on June 20, 1985;

The Iowa State plan received initial approval on July 20, 1973, and received final approval on July 2, 1985.

The Tennessee State plan received initial approval on July 5, 1973, and received final approval on July 22, 1985.

The South Carolina State plan received initial approval on December 6, 1972, and received final approval on December 18, 1987.

The Utah State plan received initial approval on January 10, 1973, and received final approval on July 16, 1985.

**[Side Note: All of the above listed states introduced their State Plans in the 1970's. No State has submitted a State Plan that includes private workplaces since Virginia did in 1976. (Puerto Rico was the last on the above list to submit State Plan in 1977).]**

**Twenty-four (24) states do not have OSHA-approved plans:**

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

**State and Local Government Workers**

Workers at state and local government agencies are not covered by OSHA, but have OSH Act protections if they work in those states that have an OSHA-approved State Plan. OSHA rules also permit states and territories to develop plans that cover state and local government workers only [See, K.S.A. 44-634 and 44-636]. In these cases, private sector workers and employers remain under federal OSHA jurisdiction.

**Six (6) states and one U.S. territory have OSHA-approved State Plans that cover state and local government public sector workers only:**

Connecticut	Virgin Islands
Illinois	
Maine	
New Jersey	
New York	

**V. Funding Arrangements Necessary**

Grant funding is 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. Grant funding only occurs after State Plan approval. (9/22/2015: *State Plan Policies and Procedures Manual* p 19).

The remainder of the agency funding will have to come from the State and is usually in the form of fines/penalties on employers that operate in the State. 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, and they cannot be less restrictive than the OSHA regulations. 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. The likely method in Kansas will be appeals in accordance with the Kansas Judicial Review Act, which involves an administrative hearing before the Kansas Office of Administrative Hearings, a review hearing by the Secretary of Labor and then judicial review before the local state district court, the Kansas Court of Appeals and the Kansas Supreme Court.

If an independent funding source is not secured for the State's share of the funding burden, then KDOL will be incentivized to fine Kansas employers in order to fund the state portion of the federal funding match. Failure to adequately fund the program will result in OSHA reclaiming jurisdiction.

#### **VI. Estimate of Additional Staff and Positions Required to Implement a State Plan**

Staffing benchmarks for State Plans are required under the U.S. Court of Appeals decision in *AFL-CIO v. Marshall*, 570 F. 2d 1030 (D.C. Cir. 1978). Additionally, OSHA has stated:

While the State Plan must have a sufficient number of qualified personnel to enforce the standards in accordance with the state's enabling legislation, the State Plan is not required to meet its staffing benchmarks in order to achieve operational status. However, where a State Plan lacks the qualified personnel to enforce in a particular area, the State Plan will not be considered operational in that area even though it has enabling legislation and appropriate standards.

(9/22/2015: *State Plan Policies and Procedures Manual* p 22).

Current federal staffing for the private sector OSHA operated program has been provided by OSHA:

**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 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.

In order to comply with the federal staffing requirements, the Secretary's office has complied the following anticipated staffing and support requirements under a Kansas State Plan based on current federal staffing requirements:

(see next 5 pages)



**State Administration of Federal OSHA Standards**  
**Details of Anticipated Annual Salary/Benefits Costs**

Positions	Title	Location	Salary	Benefits	Total
<b>Management/Supervisory</b>					
1	Area Director	Topeka	80,000	\$28,000	\$108,000
1	Assistant Area Director	Kansas City	65,000	\$22,750	\$87,750
1	Assistant Area Director	Wichita	65,000	\$22,750	\$87,750
3	Total Management/Supervisory				\$283,500

<b>Administrative Staff</b>					
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

<b>Outreach Staff</b>					
1	Compliance Assistance Specialist	Topeka	60,000	\$21,000	\$81,000
1	Total Outreach Staff				\$81,000

<b>Compliance Officers</b>					
1	Safety Engineer	Topeka	60,000	\$21,000	\$81,000
1	Safety Engineer	Kansas City	60,000	\$21,000	\$81,000
1	Safety Engineer	Wichita	60,000	\$21,000	\$81,000
3	Safety Specialists	Topeka	168,000	\$58,800	\$226,800
2	Safety Specialists	Kansas City	112,000	\$39,200	\$151,200
2	Safety Specialists	Wichita	112,000	\$39,200	\$151,200
3	Industrial Hygienists	Topeka	174,000	\$60,900	\$234,900
2	Industrial Hygienists	Kansas City	116,000	\$40,600	\$156,600
2	Industrial Hygienists	Wichita	116,000	\$40,600	\$156,600
17	Total Compliance Officers				\$1,320,300

Supervisor  
Supervisor  
Supervisor

<b>Agency Support Staff</b>					
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				\$1,964,782

All employees would be unclassified. The starting salary for a trainee would range from \$42,000 to \$48,000 for Safety Specialist and \$51,000 to \$56,000 for IH. Each of the 3 areas would require office space and a "pool" of vehicles.

**State Administration of Federal OSHA Standards  
Details of Anticipated Annual Salary/Benefits Costs**

Positions	Title	Location	Salary	Benefits	Total
<b>Management/Supervisory</b>					
1	Area Director	Topeka	80,000	\$28,000	\$108,000
1	Assistant Area Director	Kansas City	65,000	\$22,750	\$87,750
1	Assistant Area Director	Wichita	65,000	\$22,750	\$87,750
3	Total Management/Supervisory				\$283,500

<b>Administrative Staff</b>					
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

<b>Outreach Staff</b>					
1	Compliance Assistance Specialist	Topeka	60,000	\$21,000	\$81,000
1	Total Outreach Staff				\$81,000

<b>Compliance Officers</b>					
1	Safety Engineer	Topeka	60,000	\$21,000	\$81,000
1	Safety Engineer	Kansas City	60,000	\$21,000	\$81,000
1	Safety Engineer	Wichita	60,000	\$21,000	\$81,000
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Positions					Salary/Benefits
26	<b>Total</b>				<b>\$1,964,782</b>

All employees would be unclassified. The starting salary for a trainee would range from \$42,000 to \$48,000 for Safety Specialist and \$51,000 to \$56,000 for IH. Each of the 3 areas would require office space and a "pool" of vehicles.

## 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

Category	Overall Indirect				
	2012	2013	2014	Total	
Supplies	20,193	56,172	23,952	100,317	1.15%
Communications	46,641	37,455	46,152	130,248	1.49%
Travel	7,541	8,246	10,425	26,212	0.30%
Equipment	313,652	427,896	200,010	941,558	10.78%
Premises	68,275	59,379	46,795	174,449	2.00%
Services	199,713	337,867	283,626	821,206	9.41%
Other					
Postage	2,187	2,027	2,105	6,319	0.07%
Total	2,902,473	2,968,625	2,859,365	8,730,463	25.20%

Current OSHA Indirect Total  
 12 13 14 Avg.

78,692 94,569 68,545 80,602

Current OSHA Direct

Current OSHA Indirect Costs Addition

	2012	2013	2014	Avg.	% Avg.	Topoka	KC	Wichita
	6,987	9,153	5,628	7,256	926	443	242	242
	17,550	26,056	30,256	24,621	1,202	575	314	314
	79,967	91,560	68,772	80,100	242	116	63	63
	7,019	3,193	35,312	15,175	8,693	4,157	2,268	2,268
	17,927	10,598	21,957	16,827	1,611	409	601	601
	17,466	11,793	14,824	14,694	7,582	3,626	1,978	1,978
	0	0	224	75	0	0	0	0
	565	453	632	550	58	28	15	15
	147,481	152,806	177,605	159,297	20,314	9,354	5,480	5,480

## VII. Notable Provisions of SB 212

Section 1(a)(1) of the bill requires the Secretary of Labor to submit to the United States Secretary of Labor a plan for the state to assume responsibility for development and enforcement of occupational safety and health standards, known as a “State Plan.” Section 1(a) requires the Secretary to submit that plan “No later than September 1, 2017.” That date is simply unworkable under the federal guidelines and regulations that govern the development and approval of State Plans. Regional OSHA personnel have advised that the State Plan process takes at least three years, and more often than not, requires five years. OSHA’s 158 page, single spaced instructional manual entitled, “*State Plan Policies and Procedures Manual*,” includes a caution that: “The State Plan approval process involves much time and coordination between the state and OSHA.” (9/22/2015: *State Plan Policies and Procedures Manual* p 3). The process of presenting a draft developmental plan to OSHA is very time intensive, and requires significant collaboration between state officials, stakeholders and OSHA. A state cannot obtain final approval from OSHA for at least three years after receiving initial approval, and there is no maximum time limit for OSHA to grant final approval. (9/22/2015: *State Plan Policies and Procedures Manual* p 20). A state must have the legal basis for a State Plan prior to pursuing initial approval and submitting a State Plan Narrative. (9/22/2015: *State Plan Policies and Procedures Manual* p 3).

Section 1(a)(2) of the bill requires the Secretary of Labor to obtain approval of the United States Secretary of Labor for the plan. KDOL does not have the lawful authority to require the United States Secretary of Labor to approve the State Plan. There is a regimented and time intensive legal process that must be complied with to request approval, and there is no requirement nor time limit for the United States Secretary of Labor to approve a State Plan.

Section 1(b)(2) of the bill requires the Secretary of Labor to submit to the President of the Senate and the Speaker of the House of Representatives on or before January 8, 2018, a list of details

that must first be developed, vetted and documented as part of the plan that Section 1 (a)(1) requires to be submitted to the United States Secretary of Labor no later than September 1, 2017.

Section 2 of the bill prohibits the Secretary of Labor from entering into cooperative agreements required by section 1(a)(1) and 1(a)(2) of the bill without express approval of the legislature and enactment of a law specifically authorizing said agreements, yet those very agreements or commitments to enter into those agreements are a prerequisite to submitting the State Plan which must be done no later than September 1, 2017 under Section 1(a)(1) of the bill.

### **VIII. Executive Summary**

If SB 212 is enacted as originally written, the Kansas Department of Labor (KDOL) anticipates the following non-exclusive list of factors to consider:

- OSHA's approval process for State plans take a minimum of 3-5 years to complete;
- KDOL will be required to more than double the staffing levels of the KDOL Division of Industrial Safety & Health (ISH will go from 20 employees to 46 employees);
- A new funding source will have to be identified and committed to supporting the program, all of which will be required to be state funded until the plan is approved by OSHA, and then OSHA will provide a federal match to the approved state funding;
- KDOL will be reliant on continued federal funding to operate the program;
- KDOL will be incentivized to fine Kansas employers in order to fund the state portion of the federal funding match;
- Kansas regulations cannot be less restrictive than OSHA regulations, but they can be more restrictive;
- Even under a State Plan, a State may not grant a variance to the injury and illness recording and reporting requirements for private sector employers. Such variances may only be granted by Federal OSHA;
- Creating a State OSHA plan will create an additional jurisdiction that multi-state employers will be required to comply with;
- Having a State plan will weaken leverage against repeat offenders that work in more than one state;

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. R. Burke', with a stylized, cursive script.

Bradley R. Burke  
Deputy Secretary and Chief Attorney  
Kansas Department of Labor