

than \$15 and is, therefore, subsidiary remuneration.

(2) A claimant worked three hours per day, at \$5 per hour, in the family insurance business. He was marked up for work as an extra board trainman and worked whenever he was called. When called, he skipped work in the family insurance business. His insurance earnings of \$15 per day were subsidiary remuneration.

(3) While unemployed from her railroad job, a claimant took a job as a school bus driver. She worked from 7 a.m. to 9 a.m., and 2:30 p.m. to 5:30 p.m. Her regular railroad job was a daytime job from 8 a.m. to 4:30 p.m. Her pay as a school bus driver was not subsidiary remuneration because the job was not compatible with the holding of full time work in her regular railroad occupation.

Dated: November 4, 1999.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 99-29655 Filed 11-15-99; 8:45 am]

BILLING CODE 7905-01-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1952

[Docket No. T-033]

#### **Nevada State Plan; Eligibility for Final Approval Determination; Proposal to Grant an Affirmative Final Approval Determination; Comment Period and Opportunity To Request Public Hearing**

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

**ACTION:** Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

**SUMMARY:** This document gives notice of the eligibility of the Nevada State occupational safety and health plan, as administered by the Nevada Division of Industrial Relations, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the Nevada plan. This document announces that OSHA is soliciting written public

comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

**DATES:** Written comments or requests for a hearing should must be received by December 16, 1999.

**ADDRESSES:** Written comments or requests for a hearing should be submitted, in duplicate, to the Docket Officer, Docket No. T-033, U.S. Department of Labor, Room N2625 200 Constitution Avenue N.W., Washington, DC 20210, (202) 693-2350. Comments limited to 10 pages or fewer may also be transmitted by FAX to: (202) 693-1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter. Electronic comments may be submitted on the Internet at: <http://www.osha-slc.gov/e-comments/e-comments-nevada.html>.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693-1999.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.* (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of a State plan. Procedures for State Plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and .4, finds that the plan provides or will provide for State standards and enforcement which are at least as effective as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4, if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a three-year

period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied and whether final approval should be granted.

An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found at 29 CFR Part 1902, Subpart D. In general, in order to be granted final approval, actual performance by the State must be "at least as effective" overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO v. Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

The last requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

### History of the Nevada Plan and of Its Compliance Staffing Benchmarks

#### *Nevada Plan*

On December 12, 1972, Nevada submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on March 16, 1973 a notice was published in the **Federal Register** (38 FR 7157) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan.

Written comments concerning the plan were submitted on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). No other written comments were received, and no request for an informal hearing was received. In response to concerns raised by the AFL-CIO, as well as issues noted by OSHA, the State made clarifications and revisions to its plan, particularly in the areas of employee rights. Thereafter, on January 4, 1974, the Assistant Secretary published a **Federal Register** notice (39 FR 1008) granting initial approval of the Nevada plan as a developmental plan and adopting Subpart W of Part 1952 containing the decision and describing the plan.

The Nevada Division of Industrial Relations in the State Department of Business and Industry is designated as the agency having responsibility for administering the plan throughout the State under the authority of the Nevada Occupational Safety and Health Act (Nevada Revised Statutes, Chapter 618). The plan covers all private sector employers with the exception of private employers on Indian land, Federal employers and, to the extent that any exist in Nevada, employers engaged in longshoring and maritime operations upon any navigable waters in the State. Such employers remain subject to Federal OSHA jurisdiction. Federal OSHA also retains authority for coverage of the United States Postal Service (USPS), including USPS employees, contract employees, and

contractor-operated facilities engaged in USPS mail operations. The State's coverage extends to all State and local government employers. The plan provides for the automatic adoption by Nevada of standards which are identical to Federal occupational safety and health standards, on the effective date of the Federal standard, unless the State adopts an alternate standard which is as effective as the Federal standard. The plan requires employers to furnish employment and place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the State agency. Employees are required to comply with all standards and regulations applicable to their conduct.

The plan contains provisions similar to Federal procedures governing: inspection and citation procedures; emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Notices of contest of citations and penalties are heard by the Occupational Safety and Health Review Board, an independent administrative board. Decisions of the Review Board may be appealed to the appropriate State District Court.

The Assistant Secretary's initial approval of the Nevada developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for the exercise of discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart W, 39 FR 1008, January 4, 1974).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before January 1, 1977. These "developmental steps" included enactment of amendments to the Nevada Occupational Safety and Health Act, promulgation of State occupational safety and health standards identical to Federal standards and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things: regulations for inspections, citations

and proposed penalties; recordkeeping and reporting regulations; variance regulations; compliance procedures; and, rules of procedure for the Nevada Occupational Safety and Health Review Board.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Nevada Subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.292).

On August 13, 1981, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Nevada had satisfactorily completed all developmental steps (46 FR 42844; August 25, 1981). In certifying the plan, the Assistant Secretary found the structural features of the program—the statutes, standards, regulations, and written procedures for administering the Nevada plan—to be as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory or regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On December 9, 1981, OSHA and the State of Nevada entered into an Operational Status Agreement which suspended the exercise of Federal concurrent enforcement authority in Nevada in all except specifically identified areas. (See 47 FR 25323).

The State has submitted plan supplements describing changes to its program since plan approval. OSHA's approval of major plan changes has been announced in **Federal Register** notices published periodically. Approval of more recent change submissions will be published in the **Federal Register** as appropriate.

#### *Nevada Benchmarks*

Under the terms of a 1978 Court Order in *AFL-CIO v. Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In 1980, in response to the Court Order, OSHA established

benchmarks for all approved State plans, including benchmarks of 7 safety and 9 health compliance officers for Nevada. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In July 1986, Nevada, in conjunction with OSHA, completed a reassessment of the levels resulting in proposed revised compliance staffing benchmarks of 11 safety and 5 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on September 11, 1987 (52 FR 34381).

#### Determination of Eligibility

This **Federal Register** notice announces the eligibility of the Nevada plan for final approval determination under section 18(e). (29 CFR 1902.39(c) requires that notice of this determination of eligibility be published in order to seek public input prior to the Assistant Secretary's decision.) The determination of eligibility is based upon OSHA's findings that:

(1) The Nevada plan has been monitored in actual operation for at least one year following certification. The results of OSHA's monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are made available to the State and to the public. The results of OSHA's most recent post-certification monitoring are set forth in a comprehensive evaluation report covering the period of July 1, 1995 through March 31, 1999, with special attention to the period from October 1, 1997 to March 31, 1999, which has been made part of the record of the present proceedings and is available in Docket T-033, together with all previous evaluation reports since 1981.

(2) The plan meets the State's revised benchmarks for enforcement staffing. On September 11, 1987, pursuant to the terms of the Court Order and the 1980 Report to the Court in *AFL-CIO v. Marshall*, OSHA approved revised fully effective benchmarks of 11 safety and 5 health compliance officers for Nevada based on an assessment of State-specific characteristics and historical experiences. Nevada has allocated positions well in excess of these numbers, as evidenced by the FY 1999 Application for Federal Assistance in which the State has committed itself to funding the State share of salaries for 22 safety and 9 health compliance officers. The FY 1999 grant application has been made part of the record in the present proceeding.

Nevada provides State funds for its program well in excess of the 50% match of Federal funding required. The additional funds have allowed the State to expand staffing and activities in both its enforcement and voluntary compliance programs.

(3) Nevada participates and has assured its continued participation in the Integrated Management Information System (IMIS) developed by OSHA.

Like other States with approved plans, Nevada has developed a five-year Strategic Plan to guide its efforts to improve occupational safety and health in the State. The State's strategic goals are similar to those of Federal OSHA (improve workplace safety and health, change workplace culture, and assure public confidence). The Strategic Plan and the FY 1999 Annual Performance Plan are available in Docket T-033.

#### *Issues for Determination in the 18(e) Proceedings*

The Nevada plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation in a manner at least as effective as the Federal program. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the Nevada program as described in the most recent evaluation report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that the regulatory indices and criteria are being met. The Assistant Secretary accordingly has made an initial determination that the Nevada plan is eligible for an affirmative section 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative section 18(e) determination to Nevada. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) *Standards and Variances.* Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate State standards and amendments at least as

effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). The Nevada plan provides for the automatic adoption of standards which are identical to Federal standards. A new standard becomes effective in Nevada on the effective date of the Federal standard. The State may adopt alternative standards and has adopted some standards which do not have Federal counterparts, such as standards concerning ammonium perchlorate and tower cranes. Nevada also has regulations requiring pre-construction safety conferences with the Division of Industrial Relations for certain types of construction projects.

The State also requires employers with more than 10 employees to implement safety and health programs, including a safety and health committee for employers with more than 25 employees. For issues where OSHA is considering issuing a rule, as in the case of safety and health programs, the agency does not take action to decide whether the State plan requirements are at least as effective until the Federal action is complete. Nor can OSHA review this requirement for compliance with the National Labor Relations Act (NLRA), which is independently administered by the National Labor Relations Board. The Board's General Counsel has noted in a written opinion that committee requirements under State law do not amount to a per se violation of the NLRA; however, the General Counsel has pointed out that employers must comply with State laws in a manner which does not constitute an unfair labor practice under the NLRA. Nevada's standards adoption process continued to meet the six-month time frame for adoption of OSHA standards requiring State action during the section 18(e) evaluation period. [18(e) Evaluation Report, page 16]

Where a State adopts Federal standards, the State's interpretation and application of such standards must be consistent with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure protection at least as effective as comparable Federal standards and enforcement procedures. While acknowledging the effectiveness of individual standards, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902(c)(1), 1902.3(d)(1), 1903.4(a), and 1902.4(b)(2). As already noted, the Nevada plan provides for adoption of standards identical to Federal standards. Nevada also generally adopts Federal interpretations

and thus assures at least as effective worker protection.

The State is required to take the necessary administrative, judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is identical to the Federal standards or developed by the State. See § 1902.37(b)(5). No such challenge to State standards has ever occurred in Nevada.

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). Nevada had five requests for permanent variances during the 18(e) evaluation period. Two requests were approved, two were denied, and one was canceled. The granted variances were processed in accordance with State procedures. [18(e) Evaluation Report, p. 16.] Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The Nevada temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the section 18(e) evaluation period, no temporary variance requests were received. [18(e) Evaluation Report, p.16].

**(b) Enforcement.** Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA. Section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in section 8 of the Act.

**Inspection Targeting.** The State inspection program must provide for sufficient resources to be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Nevada uses a list of high hazard industries provided by OSHA to schedule programmed general industry inspections and uses Dodge Reports and local knowledge to schedule construction inspections. The State's strategic plan is focusing on three industries with high rates of injuries and illnesses: manufacturing, construction and hotel/casinos. During

the period from October 1997 through March 1999, 53% of the State's safety inspections and 11% of health inspections were programmed. During this period the 68% of programmed safety inspections and 71% of programmed health inspections uncovered violations. This exceeds the percentage of Federal programmed inspections with violations and indicates that the State's targeting system is effective. [18(e) Evaluation Report, p. 7]

**Denials of Entry.** In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3(e) and (f), and 1902.4(c)(2)(i) and (ix). Section 618.325 of the Nevada Occupational Safety and Health Act provides for an inspector's right of entry during regular hours to any place of employment. During the evaluation period, there were 14 denials of entry. Entry was achieved in 11 of these cases. This exceeds the Federal experience during the period. [18(e) Evaluation Report, p. 9]

**Inspection Procedures.** Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See §§ 1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2). Procedures for the Nevada occupational safety and health compliance program are set out in the Nevada Operations Manual, which is patterned after Federal compliance documents, and the State follows inspection procedures, including documentation procedures, which are similar to Federal procedures. The Evaluation Report notes overall adherence by Nevada to these procedures.

**Identifying and Citing Hazards:** Nevada cited an average of 2.7 violations per safety inspection and 3.3 violations per health inspection. In addition to issuing citations, the State issues "Notices of Violation" for other-than-serious violations that do not carry a penalty, when the employer agrees to abate the violation and not to contest. During the evaluation period, 27% of both safety and health violations were cited as serious. The percentage of serious safety and health violations was lower than the comparable Federal percentages. While OSHA has disagreed with the State on the classification of some violations in the past, no systemic problems relating to violation classification have been found. The State continues to provide compliance officers with specific training and

direction to ensure the proper classification of violations of standards. [18(e) Evaluation Report, pp.10-12]

**Advance Notice:** State plans must include a prohibition on advance notice of inspections, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). Nevada has adopted approved procedures for advance notice similar to the Federal procedures. During the evaluation period, Nevada did not grant any advance notice of inspections.

**Employee Participation:** State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 1902.4(c)(i) through (iii). Nevada has procedures similar to Federal OSHA for processing and responding to complaints. The data indicate that during the evaluation period the State was timely in responding to employee complaints, responding to 92% of serious safety and health complaints within the prescribed time frame of 30 days. During the period from October 1997 through March 1999, 25% of State inspections were in response to employee complaints. In 89.8% of cases during the period, complainants were informed of inspection results within 20 working days of citation issuance or, where no citations were issued, within 30 working days of the closing conference. The State also responds to non-formal complaints by letter and utilizes a phone/fax system to expedite response to non-serious complaints. [18(e) Evaluation Report, p. 10] The State also has procedures similar to those of Federal OSHA which require that an opportunity be provided for employee participation be provided, either through representation on the walkaround or the conduct of interviews with a reasonable number of employees. No problems have been noted concerning employee participation in Nevada inspections.

**Nondiscrimination.** State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). Section 618.445 of the Nevada Occupational Safety and Health Act provides for discrimination protection equivalent to that provided by Federal OSHA. A total of 136 investigations of complaints alleging discrimination were completed during the evaluation period, of which 14 were found to be meritorious. The State takes appropriate action in the courts on merit cases where the employer does not voluntarily comply

with the State's proposed remedy. During the evaluation period, Nevada experienced difficulty in meeting the 90-day time limit for completion of discrimination investigations. The State is taking action to ensure timely processing of complaints by training additional discrimination investigators, and one of its strategic goals is the completion of 75% of discrimination cases within 90 days. [18(e) Evaluation Report, p. 15]

**Citations and Proposed Penalties.** The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2) (x) and (xi). The State's lapse time from last day of inspection to issuance of citation averaged 40 days for safety and 53 days for health. Both of the lapse times are comparable to Federal OSHA's time lapse. [18 (e) Evaluation Report, p. 12]

The State must propose penalties in manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of factors comparable to those required in the Federal program in calculating penalties. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c) (x) and (xi). Nevada's procedures for penalty calculation are similar to the Federal procedures. During the evaluation period, Nevada proposed higher penalties for serious violations than Federal OSHA. The average penalty for serious safety violations was \$1844 and the average serious health penalty was \$1336. [18(e) Evaluation Report, p. 12]

**Abatement.** The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c)(vii) and (xi). Eighty-eight percent (88%) of serious safety violations had abatement periods of less than 30 days and 97% of serious health violations had abatement periods of less than 60 days. This compares favorably to Federal performance. The Notice of Violation policy has been successful in assuring prompt abatement of other-than-serious violations without litigation. [18(e) Evaluation Report, p. 12]

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). Nevada has taken action when

appropriate to appeal adverse decisions. The Nevada section 18(e) Evaluation Report noted that a case involving egregious citations was appealed to the Nevada Supreme Court by the State. The case was settled before hearing. [18(e) Evaluation Report, p. 7]

(c) **Staffing and Resources.** The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1), 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(l). As discussed above, the Nevada plan provides for 22 safety compliance officers and 9 industrial hygienists as set forth in the Nevada FY 1999 grant. This staffing level exceeds the approved, revised "fully effective" benchmarks for Nevada for health and safety staffing, as discussed elsewhere in this notice. At the close of the evaluation period the State had 20 safety and 9 health compliance officers positions filled. [18(e) Evaluation Report, p. 21] The State maintains offices in Carson City, Reno, Elko and Las Vegas.

Since 1991, the State has consistently provided State matching funds in excess of Federal funding. In Fiscal Year 1999, the State provided 76% of the total budget for its occupational safety and health program. State program funding in Fiscal Year 1999 is \$4,917,275 total (\$1,163,000 Federal, \$3,754,275 State). [18(e) Evaluation Report, pp. 1, 22]

Nevada utilizes the OSHA Training Institute for most of its staff training. The State also conducts internal training through staff meetings regarding any new issues or standards. In addition, enforcement and consultation staffs conduct joint regional meetings to discuss standards and other issues to ensure that enforcement and consultation have the same understanding of the requirements of the standards.

(d) **Other Requirements.** Public Employees: States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). The Nevada plan provides a program in the public sector which is similar to that in the private sector, including inspections, citations and proposal of penalties for serious violations. During this evaluation period, the State conducted 4.4% of its total inspections in the public sector. The results of these inspections were

comparable to those in the private sector. [18(e) Evaluation Report, pp. 14–15]

**Injury/Illness Rates:** As a factor of its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). Nevada's lost workday case rate for private industry declined from 4.2 in 1994 to 3.3 in 1997. The lost workday case rate for construction decreased from 7.5 to 5.6, while there was substantial growth in the construction industry particularly in the southern part of the State. The rate for manufacturing increased slightly from 5.0 to 5.2. The rate for State and local government decreased from 3.6 to 3.4. [18(e) Evaluation Report, p. 18] Nevada also participates in the OSHA Data Initiative for gathering employer-specific injury and illness rates.

**Required Reports:** State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(1). Nevada employer recordkeeping requirements are identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries and the OSHA Data Initiative. As noted above, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA and submits other information and reports as required.

**Voluntary Compliance:** Section 1902.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. The Nevada consultation program, which until July 1, 1999 operated its private sector component under the State plan rather than OSHA's section 21(d) consultation program, includes 14 consultants and 4 trainers. The State provides consultation services to both the private and public sectors. During the evaluation period, Nevada

conducted 1781 consultation visits, primarily in smaller high hazard private sector establishments. From Fiscal Year 1996 through Fiscal Year 1999, the State conducted 739 safety and health classes, reaching a total of 6,737 employers and 8,551 employees. Training covered such issues as developing safety and health programs, lockout/tagout, fall protection, hazard communication and bloodborne pathogens. In addition, the Safety Consultation and Training Section has carried out substantial promotion and outreach efforts through a multi-media campaign, including television and newspaper public service announcements, funded by the State.

#### **Effect of Section 18(e) Determination**

If the Assistant Secretary, after review of the written comments received and the results of any informal hearing if requested and held, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the Nevada plan, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). Nevada has excluded private sector maritime employment and private employers on Indian land from its plan. In addition, the plan does not have jurisdiction over Federal agencies. Thus, Federal coverage of these areas would be unaffected by an affirmative section 18(e) determination. Federal OSHA will also retain authority for coverage of the United States Postal Service (USPS), including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations and all Federal employers in Nevada.

In the event an affirmative section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the **Federal Register** in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal standards and enforcement authority is withdrawn and provide notice that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in effect. The notice would state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as

required by 29 CFR Part 1953, the Assistant Secretary may revoke or suspend final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart W of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the Nevada plan, would be amended to reflect the section 18(e) determination if an affirmative determination is made.

#### **Documents of Record**

All information and data presently available to OSHA relating to the Nevada section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations: Docket Office, Room N-2625, Docket No. T-033, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, Suite 420, San Francisco, California 94105; and Nevada Division of Industrial Relations, 400 West King Street, Carson City, Nevada 89703. To date, the record on final approval determination includes copies of all **Federal Register** documents regarding the plan, including notices of plan submission, initial Federal approval, certification of completion of developmental steps, codification of the State's operational status agreement, and other plan supplements. The record also includes: the State plan document (as amended through June 29, 1999), which includes a plan narrative, the State legislation, regulations and procedures, and an organizational chart for State staffing; the State's FY 1999 Federal grant; and the July 1, 1995 through March 31, 1999 18(e) Evaluation Report and all previous, post-certification reports.

#### **Public Participation**

##### *Request for Public Comment and Opportunity to Request Hearing*

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative section 18(e) determination is warranted. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by Nevada of the requirements of section 18(c) of the Act and all specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and

indices must be considered in light of the factors in 29 CFR 1902.37(b) (1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they apply to Nevada's State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and comments with respect to this proposed section 18(e) determination. These comments must be received on or before December 16, 1999, and submitted in duplicate to the Docket Officer, Docket No. T-033, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. Comments limited to 10 pages or fewer may also be transmitted by FAX to: (202) 693-1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter. Electronic comments may be submitted on the Internet at: <http://www.osha-slc.gov/e-comments/e-comments-nevada.html>. The State of Nevada will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed section 18(e) determination. Such requests also must be received on or before December 16, 1999, and should be submitted in duplicate to the Docket Officer, Docket T-033, at the address noted above. Such requests must present particularized written objections to the proposed section 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

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 his decisions 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 for inspection and copying in the Docket Office, Room N-2625, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

### 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. This Executive Order does not take effect until November 2, 1999, but will be in effect when OSHA renders its decision on final approval of the Nevada state plan. OSHA has included in the Background section of today's request for public comments a detailed explanation of the relationship between Federal OSHA and the State plan States under the Occupational Safety and Health Act. Although it appears that the specific consultation procedures provided in section 6 of Ex.Ord. 13132 are not mandatory for final approval decisions under the OSH Act, which neither impose a burden upon the State nor involve preemption of any State law, OSHA has nonetheless consulted extensively with Nevada throughout the period of 18(e) evaluation. OSHA has reviewed the Nevada final approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

### Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in Nevada under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

### List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (43 FR 35736)).

Signed at Washington, DC, this 5th day of November, 1999.

**Charles N. Jeffress,**

*Assistant Secretary of Labor.*

[FR Doc. 99-29723 Filed 11-15-99; 8:45 am]

BILLING CODE 4510-26-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[FRL-6475-9]

### Additional Flexibility Amendments to Vehicle Inspection Maintenance Program Requirements; Reopening of Comment Period

**AGENCY:** Environmental Protection Agency.

**ACTION:** Reopening of comment period.

**SUMMARY:** This document reopens the public comment period for above-named notice of proposed rulemaking, published Friday, August 20, 1999, at 64 FR 45491-45500. The deadline for public comments is being reopened from the deadline for public comments, September 20, 1999, to November 23, 1999. This reopening is in response to a request received prior to the close of the original comment period.

**DATES:** Written comments must be received no later than November 23, 1999.

**ADDRESSES:** Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-99-19. It is requested that a duplicate copy be submitted to David Sosnowski at the address in the **FOR FURTHER INFORMATION CONTACT** section below. The docket is located at the Air Docket, Room M-1500 (6102), Waterside Mall S.W., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 p.m. until 3:30 p.m. on weekdays. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** David Sosnowski, Office of Mobile Sources, Regional and State Programs Division, 2000 Traverwood, Ann Arbor, Michigan, 48105. Telephone (734) 214-4823.

### List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Transportation.

Dated: November 2, 1999.

**Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 99-29894 Filed 11-15-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[NE 086-1086b; FRL-6473-7]

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators (HMIWIs); State of Nebraska

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the state of Nebraska's section 111(d) plan for controlling emissions from existing HMIWIs. The plan was submitted to fulfill the requirements of sections 111 and 129 of the Clean Air Act. The state plan establishes emission limits and controls for sources constructed on or before June 20, 1996.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated, and the direct final rule will become effective. If EPA receives relevant adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments must be received in writing by December 16, 1999.

**ADDRESSES:** Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.