

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 661 Swing Bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana. The deviation is necessary to replace the wedge assemblies on the bridge. This deviation allows the bridge to remain closed during daytime hours with three approved openings and remain in the open-to-navigation position at night for the passage of vessels.

DATES: This deviation is effective from 6 a.m. on April 20, 2009 through 8 p.m. on April 30, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-0162 and are available online at <http://www.regulations.gov>. They are also available for inspection or copying at two locations: The Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130-3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 671-2128.

SUPPLEMENTARY INFORMATION: Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the State Route 661 Swing Bridge across the Houma Navigation Canal, mile 36.0, in Houma, Terrebonne Parish, Louisiana. The closure is necessary to allow for repairs to the bridge. From Monday, April 20, 2009, until Thursday, April 30, 2009, the contractor plans to work from 6 a.m. until 8 p.m. daily with three scheduled openings for the passage of vessels. From 8 p.m. until 6 a.m. daily, the bridge will remain in the open to navigation position for the passage of vessels.

The vertical clearance of the swing bridge in the closed-to-navigation position is 1.0 feet and unlimited in the open-to-navigation position. If for any reason, the contractor is not working during this period, the bridge will be returned to normal operation and must open on signal. If the maintenance work is completed prior to April 30, 2009, the bridge will be returned to normal

operation. The bridge owner will keep the Coast Guard informed as to any change in the schedule so that proper notices to mariners may be issued informing the public of changes to the operation of the bridge.

Presently, the bridge operates in accordance with 33 CFR 117.455 which requires the draw of the bridge across the Houma Navigation Canal at S661, mile 36.0 at Houma, to open on signal, except that the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m., from 11:45 a.m. to 12:15 p.m., from 12:45 p.m. to 1:15 p.m., and 4:30 p.m. to 6 p.m. This deviation will allow the bridge to remain in the closed-to-navigation position from 6 a.m. until 8 p.m. daily; except that, the draw will open on signal for the passage of vessels at 8 a.m., noon, and 4 p.m. From 8 p.m. until 6 a.m., the bridge will remain in the open-to-navigation position for the passage of vessel. The temporary deviation will begin on Monday, April 20, 2009 and continue through 8 p.m. on Thursday, April 30, 2009. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Due to prior experience and coordination with waterway users it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 16, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9-7528 Filed 4-2-09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2007-1155; FRL-8767-5]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Updated Statutory and Regulatory Provisions; Rescissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act, EPA is approving a revision to the Nevada state implementation plan involving legal authority. This revision was one of

the provisions that were the subject of a proposed rule published in the **Federal Register** on December 14, 2007. EPA is taking this action under the Clean Air Act obligation to take action on submittals of revisions to state implementation plans. The effect of this action is to update the Nevada state implementation plan.

DATES: *Effective Date:* This rule is effective on May 4, 2009.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2007-1155 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947-4115, steckel.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments, Previous Related Final Rule, and State Submittal of Public Process Documentation
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On December 14, 2007 (72 FR 71095), under the Clean Air Act (CAA or “Act”), EPA proposed approval of certain revisions, and disapproval of certain other revisions, to the Nevada State Implementation Plan (SIP) that had been submitted by the Nevada Division of Environmental Protection (NDEP) on January 12, 2006 and June 26, 2007. The provisions that were proposed for approval on December 14, 2007 included certain definitions; prohibitory rules; provisions related to legal authority and enforcement; rules establishing opacity, sulfur and volatile organic compound limits; and rescission of abbreviations. The proposed disapprovals related to rescission of a certain definition and rescission of a rule related to emission discharge information. In our proposed rule, we indicated that the approval of a certain statutory provision related to legal authority (i.e., [Nevada Revised Statutes (NRS) section 445B.310

(“Limitations on enforcement of Federal and State regulations concerning indirect sources”), which had been included in NDEP’s June 26, 2007 SIP revision submittal, would be contingent upon the receipt of necessary evidence of public process supporting the State adoption of NRS section 445B.310 as a revision to the Nevada SIP. Contingent, as noted, upon receipt of the public process documentation, we proposed approval of NRS section 445B.310 in our December 14, 2007 action because we found that it strengthens the SIP and provides the necessary legal authority to implement indirect source programs, where necessary to meet the national ambient air quality standards.

Our December 14, 2007 proposed rule and related technical support document (TSD) provide additional background information and a more detailed rationale for our proposed approval of NRS section 445B.310.

II. Public Comments, Previous Related Final Rule, and State Submittal of Public Process Documentation

EPA’s December 14, 2007 proposed rule provided a 30-day public comment period, and no comments were submitted. On April 9, 2008 (73 FR 19144), we took final action on all of the provisions that were the subject of our December 14, 2007 proposed rule except for NRS section 445B.310. As to NRS section 445B.310, we had not yet received the necessary public process documentation and indicated that we were deferring final action to a separate document. See 73 FR 19144, at 19145 (April 9, 2008).

By letter dated November 25, 2008, NDEP submitted materials documenting public notice and the opportunity for public hearing on NRS section 445B.310 as a revision to the Nevada SIP. We have reviewed these materials and find that they satisfy the public process requirements for SIP revisions under CAA section 110(l). Therefore, we take final action today to approve NRS 445B.310, as submitted by NDEP on June 26, 2007, as a revision to the Nevada SIP.

III. EPA Action

As authorized under section 110(k) of the Act, and for the reasons described above and in our proposed rule, EPA is approving NRS section 445B.310 (“Limitations on enforcement of federal and state regulations concerning indirect sources”), as submitted by NDEP on June 26, 2007, as a revision to the Nevada SIP.¹

¹ Upon the effective date of today’s final rule, the following provision will be superseded in the

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
 - Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

applicable SIP (superseding provision shown in parentheses): NRS 445.493 (NRS 445B.310).

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 12, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

- 2. Section 52.1470 is amended by adding paragraph (c)(66)(i)(A)(4) to read as follows:

§ 52.1470 Identification of plan.

* * * * *
(c) * * *

(66) * * *

(i) * * *

(A) * * *

(4) Nevada Revised Statutes (NRS) (2003), chapter 445B, section 445B.310 (“Limitations on enforcement of federal and state regulations concerning indirect sources”).

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[FR Doc. E9-7428 Filed 4-2-09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 440

[CMS-2232-F2]

RIN 0938-AP72

Medicaid Program; State Flexibility for Medicaid Benefit Packages

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; delay of effective date and reopening of comment period.

SUMMARY: This action temporarily delays the effective date of the December 3, 2008 final rule entitled, “Medicaid Program: State Flexibility for Medicaid Benefit Packages” (73 FR 73694) until December 31, 2009. In addition, this action reopens the comment period on the policies set out in the December 3, 2008 final rule, and specifically solicits comments on the effect of certain provisions of the Children’s Health Insurance Program Reauthorization Act of 2009.

DATES: *Effective Date:* This action is effective April 2, 2009. The effective date of the rule amending 42 CFR part 440 published in the December 3, 2008, **Federal Register** (73 FR 73694), delayed February 2, 2009 (74 FR 5808), is further delayed until December 31, 2009.

Comment Period: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 4, 2009.

ADDRESSES: In commenting, please refer to file code CMS-2232-F2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow

the instructions for “Comment or Submission” and enter the file code to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2232-F2, P.O. Box 8016, Baltimore, MD 21244-8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-2232-F2, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-8010.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses: a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.) b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Christine Gerhardt, (410) 786-0693.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History

On December 3, 2008, we published a final rule in the **Federal Register** entitled “Medicaid Program; State Flexibility for Medicaid Benefit” (73 FR 73694). The December 2008 final rule implements provisions of section 6044 of the Deficit Reduction Act (DRA) of 2005, (Pub. L. 109-171), enacted on February 8, 2006, which amends the

Social Security Act by adding a new section 1937 related to the coverage of medical assistance under approved State plans. The final rule also provides States increased flexibility under an approved State plan to define the scope of covered medical assistance by offering coverage of benchmark or benchmark-equivalent benefit packages to certain Medicaid recipients. In addition, the final rule responds to public comments on the February 22, 2008, proposed rule that pertain to the State Medicaid benefit package provisions.

Subsequent to the publication of the December 3, 2008 final rule, in accordance with the memorandum of January 20, 2009 from the Assistant to the President and the Chief of Staff, entitled “Regulatory Review,” we published an interim final rule with comment period in the **Federal Register** to temporarily delay for 60 days the effective date of the December 3, 2008 final rule entitled, “Medicaid Program; State Flexibility for Medicaid Benefit Packages” (February 2, 2009, 74 FR 5808). The interim final rule also reopened the comment period on the policies set out in the December 3, 2008 final rule. We received nine public comments in response to the February 2, 2009 interim final rule.

B. New Legislation

On February 4, 2009, the Children’s Health Insurance Program Reauthorization Act (CHIPRA) of 2009 (Pub. L. 111-3) was enacted. Certain provisions of the CHIPRA affect current regulations regarding State Flexibility for Medicaid Benefit Packages, including the December 3, 2008 final rule. Specifically, section 611(a)(1)(C) and section 611(a)(3) of CHIPRA amends section 1937 of the Act, to require States to assure that children under the age of 21, rather than those under 19 as specified in the DRA of 2005, who are included in benchmark or benchmark-equivalent plans, have access to the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) services. EPSDT services may be provided through a benchmark or benchmark-equivalent plan or as a wrap-around benefit to those plans.

Section 611(a)(1)(A)(i) of CHIPRA amends section 1937 of the Act by changing the language “Notwithstanding any other provision of this title * * *” to read “Notwithstanding section 1902(a)(1) (relating to statewideness), section 1902(a)(10)(B) (relating to comparability), and any other provision of this title which would be directly contrary to the authority * * *”