

boxes is other than First Class Mail) seems reasonable.

III. Ordering Paragraphs

It is Ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Further Proposed Methodology Changes for the FY 2008 ACR (Proposals Ten and Eleven), filed September 12, 2008, is granted.

2. Interested persons may submit initial comments on or before September 26, 2008. The proposals described in this order will be considered under the current procedural schedule in Docket No. RM2008-2.

3. Reply comments may be submitted on or before October 3, 2008.

4. William C. Miller is designated as the Public Representative representing the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this notice in the **Federal Register**.

Authority: 39 U.S.C. 3652.

By the Commission.

Steven W. Williams,
Secretary.

[FR Doc. E8-22639 Filed 9-24-08; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2008-0705; FRL-8720-5]

Approval and Promulgation of Implementation Plans; Nevada; Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, EPA is proposing to approve certain revisions, and to disapprove certain other revisions, of the Nevada State Implementation Plan submitted by the Nevada Division of Environmental Protection. These revisions relate to the application of the State's vehicle inspection and maintenance program to vehicles operated on Federal installations. EPA is also proposing to correct certain plan revisions related to this subject that EPA previously approved in error. The intended effect is to ensure that vehicles operated on Federal installations are subject only to those requirements of the State's vehicle inspection and maintenance program that apply in the same manner and to

the same extent to nongovernmental entities.

DATES: Any comments must arrive by October 27, 2008.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2008-0705, by one of the following methods:

- *Federal eRulemaking Portal:*

www.regulations.gov. Follow the on-line instructions.

- *E-mail:* kaplan.eleanor@epa.gov.

- *Mail or deliver:* Eleanor Kaplan (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *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 below.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 947-4147, kaplan.eleanor@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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I. Background

On January 7, 2008 (73 FR 1175), EPA proposed, under the Clean Air Act (CAA or "Act"), to approve certain submittals by the Nevada Division of Environmental Protection (NDEP) of revisions to the Nevada state implementation plan (SIP). The submittals that were the subject of our January 7, 2008 proposed rule primarily relate to attainment and maintenance of the carbon monoxide (CO) national ambient air quality standard (NAAQS) in the Truckee Meadows nonattainment area. In our January 7, 2008 proposed rule, we also proposed to approve the State's submittal of an update to the regulatory element of the State's mobile source SIP, including statutory provisions and rules related to the State's vehicle inspection and maintenance (I/M) programs administered in Truckee Meadows (located within Washoe County) and Las Vegas Valley and Boulder City (located within Clark County).

As part of our January 7, 2008 proposed rule, we proposed to approve all of the State's vehicle I/M rules with the exception of a particular subsection (subsection (2)) of a single rule, Nevada Administrative Code (NAC) section 445B.595 ("Inspections of vehicles owned by State or political subdivisions or operated on federal installations") ("NAC 445B.595(2)"), for which we proposed neither approval nor disapproval. We explained our "no action" proposal for NAC 445B.595(2) as follows:

The Federal I/M rule requires that vehicles operated on Federal installations located within an I/M program area be tested regardless of whether the vehicles are registered in the state or local I/M area. See 40 CFR 51.356(a)(4). However, we are not requiring states to implement 40 CFR 51.356(a)(4) at this time. The Department of Justice has recommended to EPA that this Federal regulation be revised since it appears to grant states authority to regulate Federal installations in circumstances where the Federal government has not waived sovereign immunity. It would not be appropriate to require compliance with this regulation if it is not constitutionally authorized. EPA will be revising this provision in the future and will review state I/M SIPs with respect to this issue when this

new rule is final. Therefore, for these reasons, EPA is neither approving nor disapproving the specific requirements which apply to Federal facilities at this time. Specifically, we are taking no action on submitted rule NAC 445B.595(2), which extends the State's I/M requirements to motor vehicles operated on Federal installations located within I/M areas.

See 73 FR 1175, at 1182. See also 73 FR 1175, at 1176 and 1194 for summaries of our proposed action in this regard. The recommendation by the Department of Justice (DOJ) referred to in the above excerpt was made in a letter from Lois J. Schiffer, Assistant Attorney General, DOJ Environment and Natural Resources Division, to Scott Fulton, Acting General Counsel, EPA, dated July 29, 1998.

In our January 7, 2008 proposed rule, we also proposed, under CAA section 110(k)(6), to rescind our previous approval of an earlier codification of NAC 445B.595(2), once again, based on sovereign immunity concerns. We had approved the earlier codification of NAC 445B.595(2) in connection with our approval of the State's vehicle I/M program as administered in Las Vegas Valley and Boulder City. See 69 FR 56351, at 56354 (September 21, 2004).

Our January 7, 2008 proposed rule provided for a 30-day public comment period, and we received comments related to our proposal from NDEP concerned about our proposed error correction related to NAC 445B.595(2). On July 3, 2008, we took final action on all aspects of the January 7, 2008 proposed rule with the exception of our proposed action on NAC 445B.595(2) for which we agreed to reconsider action in a future proposed rule. See 73 FR 38124 (July 3, 2008). We have now reconsidered the issue of sovereign immunity in relation to the State's vehicle I/M program and propose, in today's action, to approve paragraphs (a), (b) and (c) of NAC 445B.595(2) ("NAC 445B.595(2)(a), (b), and (c)"), to disapprove paragraph (d) of NAC 445B.595(2) ("NAC 445B.595(2)(d)"), to rescind our previous approval of NAC 445B.595(2)(d) and our previous approvals of another State vehicle I/M requirement, NAC 445B.461(3)(d).

II. The State's SIP Revision Submittal

A. What revisions did the State submit?

On May 11, 2007, NDEP submitted, among other provisions, rules implementing the State's vehicle I/M program in Truckee Meadows and Las Vegas Valley/Boulder City. Among the rules are NAC 445B.461 ("Compliance by Federal Government, state agencies and political subdivisions") and NAC 445B.595 ("Inspections of vehicles

owned by State or political subdivisions or operated on federal installations"). NAC 445B.461 provides in relevant part:

1. A license may be issued to the Federal Government * * * to inspect motor vehicles * * * for the purpose of compliance with NAC 445B.400 to 445B.735, inclusive.
2. * * *.
3. The holder of a license issued pursuant to subsection 1 is exempt from the requirements set forth in the following sections for the limited purposes indicated: (a) Bond, NAC 445B.465; (b) Evidence of compliance, NAC 445B.583 to 445B.586, inclusive; (c) Sign, NAC 445B.469; and (d) Use of waiver, NAC 445B.590.

NAC 445B.595 provides in relevant part:

1. * * *.
2. Motor vehicles operated on federal installations located within an area requiring a program for the inspection of exhaust emissions must be inspected and certified annually. The provisions of this subsection:
 - (a) Apply to all motor vehicles which are owned, leased or operated by an employee of, or military personnel stationed at, a federal installation;
 - (b) Apply to all motor vehicles which are owned, leased or operated by any agency of the Federal Government on a federal installation;
 - (c) Do not apply to tactical military vehicles operated on a federal installation; and
 - (d) Do not apply to motor vehicles which are owned, leased or operated on a federal installation by visiting federal employees or military personnel when the visit does not exceed 60 days within any 1 calendar year. A federal installation shall annually submit to the Department evidence showing that it has complied with the provisions of this paragraph, in a form prescribed by the Department.

We approved NAC 445B.461 in 2004 in connection with our approval of the State's I/M program in Las Vegas Valley and Boulder City (see 69 FR 56351, at 56354 (September 21, 2004)), and again on July 3, 2008 in connection with our final approval of the State's update (submitted on May 11, 2007) to the regulatory element of the State's mobile source SIP, including the rules for the State's vehicle I/M program in Truckee Meadows and Las Vegas Valley/Boulder City. We also approved NAC 445B.595 in connection with our approval of the State's I/M program in Las Vegas Valley and Boulder City but, as noted above, proposed to rescind our previous approval of NAC 445B.595(2) in our January 7, 2008 proposed rule, and have as yet taken no action on NAC 445B.595(2) as submitted to us on May 11, 2007. The versions of NAC 445B.461 and NAC 445B.595 approved by us in 2004 and those submitted to us on May 11, 2007 are identical.

B. What is our evaluation of the revisions?

CAA section 118(a) requires that each agency and employee of the Federal government comply with all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. In our evaluation of the State's I/M program as it relates to Federal installations, we also rely upon EPA's guidance document, "Interim Guidance for Federal Facility Compliance with Clean Air Act Sections 118(c) and 118(d) and Applicable Provisions of State Vehicle Inspection and Maintenance Programs," Draft, December 1999.

Generally, the State of Nevada has made the State's mobile source rules, including many such rules related to the vehicle I/M program, applicable to Federal installations by including the Federal Government in the State's rule defining "person" for the purposes of the State's mobile source regulations. See NAC 445B.443.¹ With respect to specific testing, standards, and certification requirements, the State has made the vehicle I/M program applicable to the Federal Government through adoption of NAC 445B.595(2) (including paragraphs (a) through (d)), which is set forth above. Through NAC 445B.595(2), the same types of emission tests and the same emissions standards apply to the motor vehicles owned by the Federal Government as apply to motor vehicles owned by nongovernmental entities. Thus, with the exception of the two specific provisions discussed below, we find that the State's I/M program complies with CAA section 118(a) and must be complied with by Federal installations and employees. We therefore propose to approve NAC 445B.595(2)(a), (b), and

¹ Under NAC 445B.443, "Person" includes the Federal Government, the State of Nevada, or any of its political subdivisions and any other administrative agency, public or quasi-public corporation, or other legal entity. NDEP and the Nevada Department of Motor Vehicles (DMV) interpret NAC 445B.443 in light of the "basic" definition of the term "person" as codified at NRS 0.039: "Except as otherwise expressly provided in a particular statute or required by the context, 'person' means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government." EPA approved NRS 0.039 into the Nevada SIP in 2006. See 71 FR 51766 (August 31, 2006). To clarify that NAC 445B.443 builds upon the "basic" definition of person, we understand that NDEP and Nevada DMV intend to amend NAC 445B.443 to include a specific reference to NRS 0.039.

(c), as submitted by NDEP on May 11, 2007.

Under the State's vehicle I/M program, there are only two significant requirements that apply to Federal installations and employees that do not also apply in the same manner, and to the same extent to nongovernmental entities. These requirements are found in NAC 445B.595(2)(d) and NAC 445B.461(3)(d). NAC 445B.595(2)(d) requires I/M testing and certification for non-resident Federal employees whose visits to Federal installations in I/M areas exceed 60 days. No such requirement under the State's vehicle I/M program applies to nonresident visitors who are not Federal employees. Likewise, NAC 445B.461(3)(d) disqualifies the Federal Government from eligibility for a waiver that nongovernmental entities, under the same circumstances, are eligible. Waivers are generally allowed under the I/M program for vehicles that cannot pass the emissions test but for which qualifying repairs costing over certain thresholds have been made. Both provisions discriminate against Federal installations or employees relative to the requirements for nongovernmental entities and thus are inconsistent with the limits on the waiver of sovereign immunity established in CAA section 118(a).

Therefore, we propose to approve NDEP's submittal on May 11, 2007 of NAC 445B.595(2)(a), (b), and (c) but to disapprove paragraph (d) of the same subsection. We recently approved NDEP's submittal on May 11, 2007 of NAC 445B.461 and address NAC 445B.461(3)(d) in the following section of this document.

III. Correction of Previously Approved Provisions

A. What provisions did we previously approve?

We approved NAC 445B.461, including NAC 445B.461(3)(d), and NAC 445B.595, including NAC 445B.595(2)(d), in connection with our 2004 approval of the State's vehicle I/M program in Las Vegas Valley and Boulder City. Moreover, we approved NAC 445B.461 again in our July 3, 2008 final rule.

B. What is our evaluation of the approved provisions?

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides, "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation,

redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public."

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction that (1) we clearly erred in failing to consider or in inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 57 FR 56762, at 56763 (November 30, 1992).

In this instance, we have found clear error in our 2004 approval of NAC 445B.461(3)(d) and NAC 445B.595(2)(d), and our subsequent 2008 approval of NAC 445B.461(3)(d), as a part of the Nevada SIP because at the time of our 2004 and 2008 actions such discriminatory provisions were not authorized under CAA section 118(a). Moreover, since such provisions remain unauthorized under CAA section 118(a), we believe that an error correction action under CAA section 110(k)(6) under these circumstances is appropriate. Therefore, we propose to rescind our previous approvals of NAC 445B.461(3)(d) and NAC 445B.595(2)(d) since they would otherwise set forth additional requirements under the I/M program for Federal installations and employees that do not apply to nongovernmental entities and thus would be inconsistent with the limits of sovereign immunity established in CAA section 118(a).²

IV. Public Comment and Final Action

Under section 110(k)(3) of the Clean Air Act, we propose to approve NDEP's submittal on May 11, 2007 of NAC 445B.595(2)(a), (b), and (c) as consistent with all applicable CAA requirements but to disapprove NAC 445B.595(2)(d) as inconsistent with the limits on sovereign immunity established in CAA

section 118(a). In addition, under CAA section 110(k)(6), we propose to rescind our previous approvals of NAC 445B.461(3)(d) and 445B.595(2)(d) since they would otherwise set forth additional requirements under the I/M program for Federal installations and employees that do not apply to nongovernmental entities and thus would be inconsistent with CAA section 118(a).

EPA is soliciting public comments on the issues discussed in this document and will accept comments for the next 30 days. These comments will be considered before taking final action.

V. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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

² We have discussed this issue with NDEP and Nevada DMV, and on April 30, 2008, NDEP submitted a letter to EPA expressing its agreement that the subject provisions are not consistent with CAA section 118(a) and its support for EPA's proposal to remove the provisions from the Nevada SIP. See letter from Michael Elges, Chief, NDEP Bureau of Air Quality Planning, to Jeff Wehling, Office of Regional Counsel, EPA Region IX, dated April 30, 2008.

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

List of Subjects in 40 CFR Part 52

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

Dated: September 15, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8-22557 Filed 9-24-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA-B-1007]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for

participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 24, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1007, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151, or (e-mail) bill.blanton@dhs.gov.

FOR FURTHER INFORMATION CONTACT:

William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151 or (e-mail) bill.blanton@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: