

(70 FR 51692). We received no public comments.

### III. Regulatory Procedures

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy \$100 million or more, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant action if it raises novel legal or policy issues.

DoD concludes that this final rule is a significant regulatory action under the Executive Order since it raises novel policy issues under section 3(f)(4). DoD concludes, however, that this final rule does not meet the significance threshold of \$100 million effect on the economy in any one year under section 3(f)(1).

The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities.

This is a not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant. This rule has been designated as significant and has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

#### *Paperwork Reduction Act*

This final rule contains a new information collection requirement that has been submitted to and approved by the Office of Management and Budget. This information collection has been assigned OMB Control #0720-0035.

#### List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ For the reasons set out in the preamble, 32 CFR part 199 is amended as follows.

### PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.13(g)(2)(ii) is revised to read as follows:

#### § 199.13 TRICARE Dental Program.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

(ii) Participating providers shall be reimbursed in accordance with the contractor's network agreements, less any cost-share amount due for authorized services.

\* \* \* \* \*

Dated: January 5, 2006.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06-219 Filed 1-10-06; 8:45 am]

**BILLING CODE 5001-06-M**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R03-OAR-2005-WV-0002; FRL-8020-4]

#### Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Emission Reductions to Meet Phase II of the Nitrogen Oxides (NO<sub>x</sub>) SIP Call

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

**ACTION:** Final rule.

**SUMMARY:** EPA is granting conditional approval of a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision establishes and requires NO<sub>x</sub> emission reductions from large, stationary internal combustion engines in the State to meet Phase II of the NO<sub>x</sub> SIP Call. Because the revision was adopted by West Virginia under its emergency rules provisions and has a sunset date, this approval is conditioned on West Virginia Department of Environmental Protection (WVDEP) adopting a permanent rule with an effective date prior to the sunset date of the emergency rule, and submitting the permanent rule as a SIP revision to EPA by July 1, 2006. WVDEP is in the process of adopting its permanent version of the rule and has submitted a written commitment to EPA stating it will meet all of these conditions. The intended effect of this action is to grant

conditional approval of West Virginia's rule to meet its remaining emission reduction obligations under the NO<sub>x</sub> SIP Call.

**DATES:** This final rule is effective on February 10, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2005-WV-0002. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, (215) 814-2308, or by e-mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 20, 2005 (70 FR 61104), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed to grant conditional approval of revisions to West Virginia emergency rule 45CSR1 titled Control and Reduction of Nitrogen Oxides from Non-Electric Generating Units as a Means to Mitigate Transport of Ozone Precursors. The formal SIP revision was submitted by WVDEP on March 31, 2005 (inadvertently noted in the NPR as being submitted on March 30, 2005).

##### **II. Summary of SIP Revision**

West Virginia's March 31, 2005 SIP submittal requires large, stationary internal combustion engines in the State to reduce NO<sub>x</sub> emissions by a total of 903 tons for the 2007 ozone season and beyond, beginning on May 1, 2007. Sources in West Virginia that are subject to the new requirements must submit a compliance plan to WVDEP by May 1, 2006.

Other specific requirements of the SIP revision and the rationale for EPA's action to grant conditional approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

### III. Final Action

EPA is granting conditional approval of West Virginia's March 31, 2005 SIP revision consisting of West Virginia emergency rule 45CSR1. For West Virginia's emergency rule 45CSR1 to become fully approvable, the State must, in accordance with its August 15, 2005 commitment, fulfill the following conditions:

(1) Adopt a permanent rule that corresponds to emergency rule 45CSR1, but with an effective date prior to the sunset date of the emergency rule, and

(2) Submit the permanent rule as a SIP revision to EPA by July 1, 2006. Once West Virginia fulfills these conditions, EPA will conduct rulemaking to convert its conditional approval to a full approval. If the conditions are not fulfilled within the specified time frame, any final conditional approval granted by EPA will convert to a disapproval.

### IV. Statutory and Executive Order Reviews

#### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### B. Submission to Congress and the Comptroller General

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**. This rule is not a

"major rule" as defined by 5 U.S.C. 804(2).

#### C. Petitions for Judicial Review

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 March 13, 2006. 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 granting conditional approval of West Virginia's SIP revision to meet Phase II of the NO<sub>x</sub> SIP Call 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 23, 2005.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 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 XX—West Virginia

■ 2. Section 52.2522 is amended by adding paragraph (i) to read as follows:

#### § 52.2522 Approval status.

\* \* \* \* \*

(i) EPA is granting conditional approval of West Virginia's March 31, 2005 SIP revision consisting of West Virginia emergency rule 45CSR1. For West Virginia's emergency rule 45CSR1 to become fully approvable, the State must, in accordance with its August 15, 2005 commitment, fulfill the following conditions:

(1) Adopt a permanent rule that corresponds to emergency rule 45CSR1, but with an effective date prior to the sunset date of the emergency rule, and

(2) Submit the permanent rule as a SIP revision to EPA by July 1, 2006.

[FR Doc. 06-196 Filed 1-10-06; 8:45 am]

BILLING CODE 6560-50-P