

deadline for the filing of DART claims. See, *United States v. Locke*, 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by March 1, 2004.

Waiver of an agency's rules is "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest." *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the continuing delays in the receipt of the mail constitutes a special circumstance which has led the Office to deviate from its usual mail processing procedures. Thus, given the delays in the receipt of mail, the Office believes that the public interest will best be served by waiving, for this filing period, the requirement that DART claims bear the original signature of the claimant or of a duly authorized representative of the claimant, when, and only when, such claim is filed online through the Office's Web site. See 67 FR at 5214.

The Office cannot waive the statutory deadline set forth in 17 U.S.C. 1007 and accept claims filed after March 1, 2004. See *Locke, supra*. Therefore, in order to serve the public interest the Office is providing claimants with alternative methods of filing, in addition to those set forth in the regulations, in order to assist them in timely filing their claims. By allowing claims to be filed online and by facsimile transmission, the

Office is affording to all claimants an equal opportunity to meet the statutory deadline.

Dated: December 19, 2003.
Marybeth Peters,
Register of Copyrights.
 [FR Doc. 03-31774 Filed 12-23-03; 8:45 am]
BILLING CODE 1410-33-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-7601-5]

RIN 2060-AK28

Approval and Promulgation of Implementation Plans; Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final action revises implementation plans concerning the Prevention of Significant Deterioration (PSD) program mandated by part C of title I of the Clean Air Act (CAA or Act). These revisions include changes to incorporate newly promulgated paragraphs in the Federal PSD rule into the Federal Implementation Plan (FIP) portion of the State plan where a State agency does not have an approved PSD State Implementation Plan (SIP) in place. Specifically, the revisions provide a category of equipment replacement activities that are not subject to Major New Source Review (NSR) requirements under the routine

maintenance, repair and replacement (RMRR) exclusion. The changes are intended to provide greater regulatory certainty without sacrificing the current level of environmental protection and benefit derived from the NSR program, and to ensure comprehensive and consistent implementation of the Federal PSD program by State, local, and tribal agencies where EPA has determined that they have the responsibility to implement the Federal PSD program.

EFFECTIVE DATE: This final rule is effective on December 26, 2003.

ADDRESSES: *Docket.* Docket No. A-2002-04 is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), 1301 Constitution Avenue, NW, Room B-102, Washington, DC 20460. The E-docket OAR-2002-0068 for this rulemaking is available electronically at <http://www.epa.gov/edocket>.

FOR FURTHER INFORMATION CONTACT: Mrs. Pamela S. Long, Information Transfer and Program Integration Division (C339-03), U.S. EPA Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0641, facsimile number (919) 541-5509, electronic mail address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this final action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC ^a	NAICS ^b
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	32411
Industrial Inorganic Chemicals	281	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	48621, 22121
Pulp and Paper Mills	261	322110, 322121, 322122, 32213
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213
Pharmaceuticals	283	325411, 325412, 325413, 325414

^a Standard Industrial Classification
^b North American Industry Classification System.

Entities potentially affected by this final action also include State, local, and tribal governments that are delegated authority to implement these regulations.

The EPA has established an official public docket for this action under E-docket OAR-2002-0068 (Legacy Docket

No. A-2002-04). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or

other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West, Room B-102, 1301 Constitution Avenue, NW, Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30

p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Docket is (202) 566-1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgrstr/>.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

Judicial Review

Under section 307(b) of the CAA, judicial review of the final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit February 23, 2004. Under section 307(d)(7)(B) of the CAA, only an objection to the rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline

The information presented in this preamble is organized as follows:

- I. Today's Final Action
 - A. Background
 - B. Revisions to Part 52
 - C. Effective Date for Today's Final Action
- II. Statutory and Executive Order Reviews
 - A. Executive Order 12866—Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Analysis (RFA)
 - D. Unfunded Mandates Reform Act of 1995
 - E. Executive Order 13132—Federalism
 - F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
 - H. Executive Order 13211—Actions Concerning Regulations That

- Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act of 1995
- J. Congressional Review Act

I. Today's Final Action

A. Background

The 1970 CAA at section 110 required States to submit plans to provide for the implementation and maintenance of the national ambient air quality standards (NAAQS). While the 1970 CAA established requirements for protecting the NAAQS through SIP's, it did not address prevention of significant deterioration of air quality. On May 31, 1972 (37 FR 10842), the Administrator published initial approvals and disapprovals of SIP's submitted pursuant to section 110 of the CAA. On November 9, 1972 (37 FR 23836), all SIP's were disapproved insofar as they failed to provide for significant deterioration of air quality. This action was taken in response to a preliminary injunction issued by the District Court for the District of Columbia, which also required the Administrator to promulgate regulations as to any State plan that either permits the significant deterioration of air quality in any portion of any State, or fails to take the measures necessary to prevent significant deterioration.

On July 16, 1973 (38 FR 18986), "we"¹ proposed several alternative plans for prevention of significant deterioration. On December 5, 1974 (39 FR 42510), we promulgated the Federal PSD program, 40 CFR 52.21. These regulations established a Federal program under section 101(b)(1) of the 1970 CAA to conduct preconstruction review of specified source categories where State agencies fail to provide for prevention of significant deterioration of air quality. This final action also disapproved all State plans as lacking procedures or regulations for preventing significant deterioration of air quality and incorporated the Federal PSD regulations by reference into all State plans. Specifically, it incorporated the provisions of section 52.21 by reference into the SIP's in subparts B through DDD of part 52. (See 39 FR 42514 concerning section 52.21(a), plan disapproval.)

On June 19, 1978 (43 FR 26388), we amended our PSD regulations to implement the new requirements of the Clean Air Act Amendments of 1977 (Pub. L. 95-95). These regulations built on the previous ones, but provided a more comprehensive program pursuant to part C (sections 160-165) of title I, which was added in the 1977 CAA Amendments. The 1977 CAA Amendments also added the specific requirement that the PSD program be implemented through SIP's submitted pursuant to CAA section 110. Our final rules in 1978 also amended section 52.21 to incorporate all of the new requirements of CAA sections 160-165 into the Federal PSD program. This final rule

¹ In this preamble the term "we" refers to EPA and the term "you" refers to major stationary sources of air pollution and their owners and operators. All other entities are referred to by their respective names (for example, reviewing authorities.)

contained the same language concerning plan disapprovals that is contained in section 52.21(a)(1) as promulgated on December 31, 2002, as follows:

Section 52.21(a) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable in subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal government and Indian reservations located in such State. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligation of States, emission sources, or other persons with respect to all portions of these plans approved or promulgated under this part (46 FR 26403).

The 1978 final rule also incorporated section 52.21 by reference into the SIP's for 54 programs (50 States, Puerto Rico, Virgin Islands, American Samoa, and Guam) as follows:

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan does not include approvable procedures for preventing the significant deterioration of air quality.

(b) The provisions of section 52.21 (b) through (v) are hereby incorporated and made part of the applicable State plan for the State of _____ (see 43 FR 26410).

On August 7, 1980 (43 FR 52676), we amended our PSD regulations in response to the decision by the U.S. Court of Appeals for the D.C. Circuit in *Alabama Power Company v. Costle*, 636 F.2d. 323 (D.C. Cir. 1979). In addition to revising the PSD rules to respond to the court, this final rule disapproved a number of SIP's for PSD purposes and incorporated section 52.21 by reference into the Federal implementation plan portions of the SIP's for those programs. It also contained the same language concerning plan disapprovals that is contained in the December 31, 2002 provisions at section 52.21(a)(1), as well as the same language concerning incorporation by reference in the relevant subparts of part 52 (see 45 FR 52741).

B. Revisions to Part 52

Today, we are making administrative amendments to the Federal implementation plan portions of State plans to update the reference to the PSD FIP that is already incorporated into these plans. When we proposed the

RMRR regulation, we indicated that the rule would impact State and local authorities implementing the Federal PSD program through delegations. In the rule that was published in the **Federal Register** on October 27, 2003 (68 FR 61248), consistent with the proposal, we unambiguously announced our intent to finalize an update to the State plans that had delegated FIPs for PSD. Today's final rule makes administrative amendments to these delegated programs to incorporate the provisions published in the **Federal Register** on October 27, 2003. This rule is similar in effect to the amendments published in the **Federal Register** on March 10, 2003 (68 FR 11316). In that action, EPA adjusted the citations incorporated into the Federal implementation plan portions of State plans so that all of the substantive amendments as of December 31, 2002 to the PSD regulations would become part of the Federal implementation plan portions of State plans. In today's action, we are further revising references for each FIP to incorporate the equipment replacement provision amendments into the Federal implementation plan portions of State plans.

Today's rule differs in one respect from the previous action to revise the Federal implementation portions of State plans. In the previous rule, we incorporated the relevant subsection 52.21 by referring to the paragraphs as "(a)(2) and (b) to (bb)." The purpose of that reference was to incorporate all the substantive provisions of 52.21. Today's rule adopts a different cross-referencing format—"40 CFR 52.21 except paragraph (a)(1)." Using this format, the Agency intends for the Federal implementation plan portions of State plans to automatically update whenever new sections are added to 52.21.

No tribal government currently has an approved tribal implementation plan (TIP) under the CAA to implement the NSR program. The Federal government is currently the NSR reviewing authority in Indian country. Pursuant to section 52.21(a)(1), the provisions of section 52.21 are applicable to all lands owned by the Federal Government and Indian Reservations located in each State. Therefore, we are incorporating the PSD regulations in section 52.21 by reference into the FIP portion of SIP's where the requirements of CAA sections 160–165 are not met for federally designated Indian lands. By this final action, we are not changing the authority for implementing and enforcing the Federal PSD permitting program for any sources located in Indian country. This incorporation by reference only applies to those sections of subparts B through

DDD of part 52 that currently incorporate the PSD FIP program for Indian lands.

C. Effective Date for Today's Final Action

Today's final regulations are effective on December 26, 2003. This is consistent with the December 26, 2003 effective date for the changes to the Federal PSD program in section 52.21 that were published in the **Federal Register** on October 27, 2003. (See 68 FR 61248.)

II. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to EO 12866 review.

B. Paperwork Reduction Act

The information collection requirements for the final rule published October 27, 2003 (68 FR 61248) has been submitted for approval to OMB under the requirements of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 1230.14), and a copy may be obtained from Susan Auby, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–

0001, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>. The information requirements included in ICR No. 1230.14 are not enforceable until OMB approves them.

The information that ICR No. 1230.14 covers is required for the submittal of a complete permit application for the construction or modification of all major new stationary sources of pollutants in attainment and nonattainment areas, as well as for applicable minor stationary sources of pollutants. This information collection is necessary for the proper performance of EPA's functions, has practical utility, and is not unnecessarily duplicative of information we otherwise can reasonably access. We have reduced, to the extent practicable and appropriate, the burden on persons providing the information to or for EPA. In fact, we expect that this rule will result in less burden on industry and reviewing authorities since it streamlines the process of determining whether a replacement activity is RMRR.

However, as we articulated in ICR No. 1230.14, we do anticipate an initial increase in burden for reviewing authorities as a result of the rule changes, to account for revising state implementation plans to incorporate these rule changes. As discussed above, we expect those one-time expenditures to be no more than \$580,000 for the estimated 112 affected reviewing authorities. For the number of respondent reviewing authorities, the analysis uses the 112 reviewing authorities count used by other permitting ICR's for the one-time tasks (for example, SIP revisions).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of responding to the information collection; adjust existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the *Paperwork Reduction Act* (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Analysis (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) Any small business employing fewer than 500 employees (based on Small Business Administration's size definition); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities" (5 U.S.C. sections 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule.

Today's rule will not have a significant economic impact on a substantial number of small entities because it will decrease the regulatory burden of the existing regulations and have a positive effect on all small

entities subject to the rule. This rule improves operational flexibility for owners or operators of major stationary sources and clarifies applicable requirements for determining if a change qualifies as a major modification. We have therefore concluded that today's rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There is no burden for State, local, and tribal agencies in order for this rule to be included in the SIP, as this final action

directly incorporates the changes into the SIP. Moreover, these revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. In addition, we believe the rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners and operators and improving the clarity of requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reasons stated above, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This final rule does not have federalism implications. It will 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. We do not expect this final rule to result in expenditures by the States. Today's final rules only apply in States that have been delegated the authority to implement the Federal PSD rules. Therefore, reviewing authorities will not incur a burden to revise their SIP's. Moreover, these revisions provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. Thus, Executive Order 13132 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications

between EPA and State and local governments, we specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” We believe that this final rule does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The EPA began considering potential revisions to the NSR rules in the early 1990’s and proposed changes in 1996. The purpose of today’s final rule is to add greater flexibility to the existing major NSR regulations. These changes will benefit both reviewing authorities and the regulated community by providing increased certainty as to when the requirements apply, and by providing alternative ways to comply with the requirements. Taken as a whole, today’s final rule should result in no added burden or compliance costs and should not substantially change the level of environmental performance achieved under the previous rules.

No tribal government currently has an approved tribal implementation plan (TIP) under the CAA to implement the NSR program. The Federal government is currently the NSR reviewing authority in Indian country, thus tribal governments should not experience added burden, nor should their laws be affected with respect to implementation of this rule. Additionally, although major stationary sources affected by today’s final rule could be located in or near Indian country and/or be owned or operated by tribal governments, such sources would not incur additional costs or compliance burdens as a result of this rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by the rule.

We recognize the importance of including tribal consultation as part of the rulemaking process. Although we did not include specific consultation with tribal officials as part of our outreach process on this final rule, which was developed largely prior to issuance of Executive Order 13175 and which does not have tribal implications under Executive Order 13175, we will continue to consult with tribes on future

rulemakings to assess and address tribal implications, and will work with tribes interested in seeking TIP approval to implement the NSR program to ensure consistency of tribal plans with this rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because we believe that this package as a whole will result in equal or better environmental protection than currently provided by the existing regulations, and do so in a more streamlined and effective manner.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example,

materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. This final rule does not create new requirements but, rather, revises an existing permitting program by providing a series of program options that affected facilities may choose to adopt. These options will reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners and operators, improving the clarity of requirements, and providing alternatives that sources may take advantage of to further improve their operational flexibility. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

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. The EPA submitted 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. 804(2). Therefore, this rule will be effective on December 26, 2003.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Particular matter, Sulfur oxides.

Dated: December 16, 2003.

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, title 40, chapter I 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 C—[Amended]

■ 2. Section 52.96 is amended by revising paragraph (b) to read as follows:

§ 52.96 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing the significant deterioration of air quality on Indian reservations and, therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable reservation in the State of Alaska.

Subpart D—[Amended]

■ 3. Section 52.144 is amended by revising paragraph (b) to read as follows:

§ 52.144 Significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Arizona for that portion applicable to the Pima County Health Department and the Maricopa County Department of Health Services and sources locating on Indian lands.

Subpart E—[Amended]

■ 4. Section 52.181 is amended by revising paragraph (b) to read as follows:

§ 52.181 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for federally designated Indian lands. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

Subpart F—[Amended]

■ 5. Section 52.270 is amended by revising paragraphs (a)(3), (b)(1) introductory text, (b)(2) introductory text, (b)(3) introductory text, and (b)(4) introductory text to read as follows:

§ 52.270 Significant deterioration of air quality.

(a) * * *

(3) The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of California.

(b) * * *

(1) The PSD rules for Sacramento County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Sacramento County Air Pollution Control District for:

* * * * *

(2) The PSD rules for North Coast Unified Air Quality Management District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the North Coast Unified Air Quality Management District for:

* * * * *

(3) The PSD rules for Mendocino County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Mendocino County Air Pollution Control District for:

* * * * *

(4) The PSD rules for Northern Sonoma County Air Pollution Control District are approved under Part C, Subpart 1, of the Clean Air Act. However, EPA is retaining authority to apply § 52.21 in certain cases. The provisions of § 52.21 except paragraph (a)(1) are therefore incorporated and made a part of the State plan for California for the Northern Sonoma County Air Pollution Control District for:

* * * * *

Subpart G—[Amended]

■ 6. Section 52.343 is amended by revising paragraph (b) to read as follows:

§ 52.343 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except

paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Colorado for the sources identified in paragraph (a) of this section as not meeting the requirements of sections 160–165 of the Clean Air Act.

* * * * *

Subpart H—[Amended]

■ 7. Section 52.382 is amended by revising paragraph (b) to read as follows:

§ 52.382 Significant deterioration of air quality.

* * * * *

(b) The increments for nitrogen dioxide promulgated on October 17, 1988 (53 FR 40671), and related requirements in 40 CFR 52.21 except paragraph (a)(1), are hereby incorporated and made part of the applicable implementation plan for the State of Connecticut.

Subpart J—[Amended]

■ 8. Section 52.499 is amended by revising paragraph (b) to read as follows:

§ 52.499 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the District of Columbia.

Subpart K—[Amended]

■ 9. Section 52.530 is amended by revising paragraph (d) introductory text to read as follows:

§ 52.530 Significant deterioration of air quality.

* * * * *

(d) The requirements of sections 160 through 165 of the Clean Air Act are not met since the Florida plan, as submitted, does not apply to certain sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated by reference and made a part of the Florida plan for:

* * * * *

Subpart M—[Amended]

■ 10. Section 52.632 is amended by revising paragraph (b) to read as follows:

§ 52.632 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except

paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Hawaii.

Subpart N—[Amended]

■ 11. Section 52.683 is amended by revising paragraphs (b) and (c) to read as follows:

§ 52.683 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing significant deterioration of air quality on Indian reservations. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Idaho.

(c) The requirements of section 165 of the Clean Air Act are not met for sources subject to prevention of significant deterioration requirements prior to August 22, 1986, the effective date of EPA's approval of the rules cited in paragraph (a) of this section. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable plan for sources subject to § 52.21 prior to August 22, 1986.

Subpart O—[Amended]

■ 12. Section 52.738 is amended by revising paragraph (b) to read as follows:

§ 52.738 Significant deterioration of air quality.

* * * * *

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Illinois.

* * * * *

Subpart Q—[Amended]

■ 14. Section 52.833 is amended by revising paragraph (b) to read as follows:

§ 52.833 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Iowa for sources wishing to locate on Indian lands; sources constructed under permits issued by EPA; and certain sources as

identified in Iowa's April 22, 1987, letter.

Subpart T—[Amended]

■ 15. Section 52.986 is amended by revising paragraph (b) to read as follows:

§ 52.986 Significant deterioration of air quality.

* * * * *

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for federally designated Indian lands since the plan (specifically LAC: 33:III:509.A.1) excludes all federally recognized Indian lands from the provisions of this regulation. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

Subpart W—[Amended]

■ 16. Section 52.1165 is amended by revising paragraph (b) to read as follows:

§ 52.1165 Significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Massachusetts.

Subpart X—[Amended]

■ 17. Section 52.1180 is amended by revising paragraph (b) to read as follows:

§ 52.1180 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Michigan.

* * * * *

Subpart Y—[Amended]

■ 18. Section 52.1234 is amended by revising paragraph (b) to read as follows:

§ 52.1234 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Minnesota.

* * * * *

Subpart BB—[Amended]

■ 19. Section 52.1382 is amended by revising paragraph (b) to read as follows:

§ 52.1382 Prevention of significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the Montana State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

* * * * *

Subpart CC—[Amended]

■ 20. Section 52.1436 is amended by revising the introductory text to read as follows:

§ 52.1436 Significant deterioration of air quality.

The requirements of sections 160 through 165 of the Clean Air Act are met except as noted in paragraphs (a) and (b) of this section. The EPA is retaining § 52.21 except paragraph (a)(1) as part of the Nebraska SIP for the following types of sources:

* * * * *

Subpart DD—[Amended]

■ 21. Section 52.1485 is amended by revising paragraph (b) to read as follows:

§ 52.1485 Significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are incorporated and made a part of the applicable State plan for the State of Nevada except for that portion applicable to the Clark County Health District.

* * * * *

Subpart FF—[Amended]

■ 22. Section 52.1603 is amended by revising paragraph (b) to read as follows:

§ 52.1603 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of New Jersey.

Subpart GG—[Amended]

■ 23. Section 52.1634 is amended by revising paragraph (b) to read as follows:

§ 52.1634 Significant deterioration of air quality.

* * * * *

(b) The requirements of section 160 through 165 of the Clean Air Act are not met for federally designated Indian lands. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable implementation plan, and are applicable to sources located on land under the control of Indian governing bodies.

* * * * *

Subpart HH—[Amended]

■ 24. Section 52.1689 is amended by revising paragraph (b) to read as follows:

§ 52.1689 Significant deterioration of air quality.

* * * * *

(b) *Regulations for preventing significant deterioration of air quality.* The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable state plan for the State of New York.

Subpart JJ—[Amended]

■ 25. Section 52.1829 is amended by revising paragraph (b) to read as follows:

§ 52.1829 Prevention of significant deterioration of air quality.

* * * * *

(b) Regulation for preventing of significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the North Dakota State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

Subpart LL—[Amended]

■ 26. Section 52.1929 is amended by revising paragraph (a) introductory text to read as follows:

§ 52.1929 Significant deterioration of air quality.

(a) Regulation for preventing significant deterioration of air quality. The Oklahoma plan, as submitted, does not apply to certain sources in the State. Therefore the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated, and made part of the Oklahoma State implementation plan, and are applicable to the following

major stationary sources or major modifications:

* * * * *

Subpart MM—[Amended]

■ 27. Section 52.1987 is amended by revising paragraph (c) to read as follows:

§ 52.1987 Significant deterioration of air quality.

* * * * *

(c) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing the significant deterioration of air quality on Indian reservations and, therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Oregon.

Subpart QQ—[Amended]

■ 28. Section 52.2178 is amended by revising paragraph (b) to read as follows:

§ 52.2178 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of South Dakota.

Subpart RR—[Amended]

■ 29. Section 22.2233 is amended by revising paragraph (b) introductory text to read as follows:

§ 52.2233 Significant deterioration of air quality.

* * * * *

(b) The requirements of § 52.21 except paragraph (a)(1) are hereby incorporated and made part of the applicable SIP for the State of Tennessee for the following purposes:

* * * * *

Subpart SS—[Amended]

■ 30. Section 52.2303 is amended by revising paragraphs (c) and (d) to read as follows:

§ 52.2303 Significant deterioration of air quality.

* * * * *

(c) The requirements of section 160 through 165 of the Clean Air Act are not met for federally designated Indian lands. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby adopted and made a part of the

applicable implementation plan and are applicable to sources located on land under the control of Indian governing bodies.

(d) The requirements of section 160 through 165 of the Clean Air Act are not met for new major sources or major modifications to existing stationary sources for which applicability determinations would be affected by dockside emissions of vessels. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby adopted and made a part of the applicable implementation plan and are applicable to such sources.

Subpart TT—[Amended]

■ 31. Section 52.2346 is amended by revising paragraph (b) to read as follows:

§ 52.2346 Significant deterioration of air quality.

* * * * *

(b) *Regulation for prevention of significant deterioration of air quality.* The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the Utah State implementation plan and are applicable to proposed major stationary sources or major modifications to be located on Indian Reservations.

* * * * *

Subpart WW—[Amended]

■ 32. Section 52.2497 is amended by revising paragraph (b) to read as follows:

§ 52.2497 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Washington.

* * * * *

Subpart YY—[Amended]

■ 33. Section 52.2581 is amended by revising paragraph (e) to read as follows:

§ 52.2581 Significant deterioration of air quality.

* * * * *

(e) Regulations for the prevention of the significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Wisconsin for sources wishing to locate in Indian country; and sources constructed under permits issued by EPA.

Subpart ZZ—[Amended]

■ 34. Section 52.2630 is amended by revising paragraph (b) introductory text to read as follows:

§ 52.2630 Prevention of significant deterioration of air quality.

* * * * *

(b) Regulation for preventing significant deterioration of air quality. The Wyoming plan, as submitted, does not apply to certain sources in the State. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the State implementation plan for the State of Wyoming and are applicable to the following proposed major stationary sources or major modifications:

* * * * *

Subpart AAA—[Amended]

■ 35. Section 52.2676 is amended by revising paragraph (b) to read as follows:

§ 52.2676 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Guam.

Subpart BBB—[Amended]

■ 36. Section 52.2729 is amended by revising paragraph (b) to read as follows:

§ 52.2729 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the State of Puerto Rico.

Subpart CCC—[Amended]

■ 37. Section 52.2779 is amended by revising paragraph (b) to read as follows:

§ 52.2779 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for the Virgin Islands.

Subpart DDD—[Amended]

■ 38. Section 52.2827 is amended by revising paragraph (b) to read as follows:

§ 52.2827 Significant deterioration of air quality.

* * * * *

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraph (a)(1) are hereby incorporated and made a part of the applicable State plan for American Samoa.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 411**

[CMS-1809-F4]

RIN 0938-AM21

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

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

ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 6 months, until July 7, 2004, the effective date of the last sentence of 42 CFR 411.354(d)(1). This section was promulgated in the final rule entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the *Federal Register* on January 4, 2001. A 1-year delay of the effective date of the last sentence in this section was published in the *Federal Register* on December 3, 2001. A 6-month delay, until July 7, 2003, was published in the *Federal Register* on November 22, 2002. An additional 6-month delay, until January 7, 2004, was published on April 25, 2003. This further extension of the delay in the effective date of that sentence will give us additional time to reconsider the definition of compensation that is "set in advance" as it relates to percentage compensation methodologies in order to avoid unnecessarily disrupting existing contractual arrangements for physician services. Accordingly, the last sentence of § 411.354(d)(1), which would have become effective January 7, 2004, will not become effective until July 7, 2004. We expect that the definition of "set in advance" will be addressed definitively before July 7, 2004 in a final rule with

comment period, entitled "Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships" (Phase II).

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the *Federal Register* on January 4, 2001 (66 FR 856), is delayed to July 7, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Raschke, (410) 786-0016.

SUPPLEMENTARY INFORMATION: This *Federal Register* document is available from the *Federal Register* online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: <http://www.access.gpo.gov/nara/index.html>.

In addition, the information in this final rule will be available soon after publication in the *Federal Register* on our MEDLEARN Web site: <http://cms.hhs.gov/medlearn/refphys.asp>.

I. Background

The final rule, entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the *Federal Register* on January 4, 2001 (66 FR 856), interpreted certain provisions of section 1877 of the Social Security Act (the Act). Under section 1877, if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and the entity may not bill for the services, unless an exception applies. Many of the statutory and new regulatory exceptions that apply to compensation relationships require that the amount of compensation be "set in advance." Section 411.354(d)(1) of the final rule defines the term "set in advance."

The last sentence of § 411.354(d)(1) reads: "Percentage compensation arrangements do not constitute compensation that is 'set in advance' in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser." Many of the comments we received regarding the January 4, 2001 physician self-referral final rule indicated that physicians are commonly paid for their professional services using a formula that takes into account a percentage of a fluctuating or indeterminate measure (for example, revenues billed or collected for physician services). According to the