

fibromyalgia rather than on objective loss of musculoskeletal function.

The same commenter said that more could have been said about the wide clinical spectrum of fibromyalgia and the associated stress response which may lead to clinical problems of psychopathology, inappropriate behavior, deconditioning, hormonal imbalance, and sleep disorder.

The evaluation criteria do include a broad spectrum of possible symptoms, and sleep disturbance is one of them. As discussed above, any disability, including a mental disorder, that is medically determined to be secondary to fibromyalgia, can be separately evaluated. The rating schedule is, however, a guide to the evaluation of disability for compensation, not treatment (see 38 CFR 4.1), and it is unnecessary for that purpose to include a broad discussion of the clinical aspects of fibromyalgia. We therefore make no change based on this comment.

The same commenter said that it is important to stress that fibromyalgia may co-exist with other rheumatic disorders and have an additive effect on disability.

If two conditions affecting similar functions or anatomic areas are present, and one is service-connected and one is not (a situation that is not unique to rheumatic disorders), the effects of each are separately evaluated, if feasible. When it is not possible to separate the effects of the conditions, VA regulations at 38 CFR 3.102, which require that reasonable doubt on any issue be resolved in the claimant's favor, dictate that the effects be attributed to the service-connected condition. Since there is an established method of evaluating co-existing conditions, there is no need to stress the point that other diseases may co-exist with fibromyalgia, resulting in additive effects, and we make no change based on this comment.

The commenter also stated that the correct diagnosis of fibromyalgia and the exclusion of other rheumatic conditions are of paramount importance in ensuring a successful treatment program.

The diagnosis of fibromyalgia and exclusion of other rheumatic disorders are functions of the examiner and outside the scope of the rating schedule, which, as noted earlier, is a guide for the evaluation of disability for purposes of compensation, not treatment. We therefore make no change based on this comment.

One commenter stated that claimants with fibromyalgia will present with limitation of motion of various joints of the body, and the rating agency will have to take into consideration pain on

movement and functional loss due to pain (see 38 CFR 4.40 and 4.45). The commenter felt that the proposed scheme invites separate ratings for limitation of motion of each joint.

Fibromyalgia is a "nonarticular" rheumatic disease ("The Merck Manual" (1369, 16th ed. 1992)), and objective impairment of musculoskeletal function, including limitation of motion of the joints, is not present, in contrast to the usual findings in "articular" rheumatic diseases. Joint examinations in fibromyalgia are necessary only to exclude other rheumatic diseases because physical signs other than tender points at specific locations are lacking. The pain of fibromyalgia is not joint pain, but a deep aching, or sometimes burning pain, primarily in muscles, but sometimes in fascia, ligaments, areas of tendon insertions, and other areas of connective tissue (Ball and Koopman, 315). The evaluation criteria require that the pain be widespread, and that the symptoms be assessed based on whether they are constant or episodic, or require continuous medication, but they are not based on evaluations of individual joints or other specific parts of the musculoskeletal system. We believe the evaluation criteria make clear the basis of evaluation, and we therefore make no change based on this comment.

Based on the rationale set forth in the interim final rule document and this document, we are adopting the provisions of the interim final rule as a final rule without change. We also affirm the information in the interim final rule document concerning the Regulatory Flexibility Act.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Accordingly, the interim final rule amending 38 CFR part 4 which was published at 61 FR 20438 on May 7, 1996, is adopted as a final rule without change.

Approved: March 24, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99-15342 Filed 6-16-99; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 133-40870; FRL-6354-9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on the latest revision to the Pennsylvania State Implementation Plan (SIP) consisting of the plan the Commonwealth will use to conduct the ongoing evaluation of its enhanced inspection and maintenance (I/M) program. With the submission of this program evaluation plan, Pennsylvania has remedied all conditions that EPA had placed upon approval of the Commonwealth's enhanced I/M program. Therefore, EPA is today converting its conditional approval of Pennsylvania's enhanced I/M program SIP revisions to full approval, in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 2, 1999 without further notice, unless EPA receives adverse written comment by July 19, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available 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; or at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. They may also be viewed at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814-2176, or via e-mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1997, EPA published in the **Federal Register** a final rulemaking action (62 FR 4004) granting conditional interim approval to Pennsylvania's enhanced I/M program SIP revision submitted by Pennsylvania on March 22, 1996, and formally amended on June 27, 1996 and on July 29, 1996. The interim nature of the approval was granted under authority provided by the National Highway Systems Designation Act of 1995 (NHSDA). At the end of the specified 18-month interim approval period, the Commonwealth was required to make a demonstration of the effectiveness of their I/M program network, per NHSDA requirements, based upon actual program data. The conditional nature of the approval was granted under the Clean Air Act and required Pennsylvania to remedy, within a 12-month period, certain major program deficiencies. EPA's January 28, 1997 approval also required the Commonwealth to remedy certain minor deficiencies within the 18-month interim approval period.

Pennsylvania submitted supplements to its I/M SIP to EPA on November 13, 1997; February 24, 1998; and August 21, 1998. The purpose of these supplemental submittals was to bolster the enhanced I/M SIP to include updated information and to satisfy the conditions imposed by EPA in its January 28, 1998 conditional interim approval.

On September 2, 1998, EPA published a direct final rule in the **Federal Register** (63 FR 46664) approving Pennsylvania's November 13, 1997 and February 24, 1998 SIP revisions. That approval action removed four major conditions and seven minor conditions identified in EPA's January 28, 1997 interim conditional approval of Pennsylvania's I/M SIP.

On September 16, 1998, EPA published a direct final rule in the **Federal Register** (63 FR 49436) approving Pennsylvania's August 21, 1998 SIP revision supplement consisting of the Commonwealth's network effectiveness demonstration (per requirements of section 348 of the NHSDA). However, EPA received adverse comments upon the direct final rule, and withdrew it on October 21, 1998 in accordance with federal rulemaking procedures. EPA has since issued a final rule approving the August 21, 1998 submittal of the Commonwealth's network effectiveness demonstration. In the preamble to that final rule EPA addressed the adverse comments. That final rule also removed

the remaining minor conditions identified in EPA's January 28, 1997 interim conditional approval of Pennsylvania's I/M SIP. As a result of these two rulemaking actions, EPA converted its interim conditional approval of the Commonwealth's I/M program to a conditional approval—leaving only a single condition remaining to be addressed. That one remaining condition was the submittal by Pennsylvania of a plan for conducting the required ongoing evaluation of its enhanced I/M program. On November 25, 1998, Pennsylvania submitted the required evaluation plan to fulfill this last condition. The November 25, 1998 submittal, as amended on March 3, 1999, is the subject of this rulemaking.

II. Summary of the Commonwealth's Submittal

On November 25, 1998, the Commonwealth of Pennsylvania submitted a supplement to its enhanced I/M SIP consisting of its plan for conducting the required ongoing program evaluation of its enhanced I/M program. On March 3, 1999, the Commonwealth bolstered the November 25, 1998 submittal to include documentation that public notice and hearing had been conducted on its chosen evaluation plan. The submitted plan reflects the Commonwealth's choice of an EPA-approved method for conducting an ongoing program evaluation. The purpose of the Commonwealth's November 25, 1998 and March 3, 1999 SIP submittals is to address and remedy the final condition set forth in EPA's January 28, 1997 interim conditional approval (62 FR 4004) of Pennsylvania's I/M program SIP, and codified at 40 CFR 52.2026(a)(2).

III. EPA Review of the SIP Revision

EPA conditioned its January 28, 1997 approval of the Commonwealth's SIP upon submission, by November 30, 1998, of a final plan for conducting the required enhanced I/M program evaluation, which requires the use of an EPA approved methodology to be performed on 0.1 percent of the I/M subject vehicles in the Pittsburgh and Philadelphia program areas. EPA required the Commonwealth to select a methodology that complies with Federal I/M rule requirements set forth at 40 CFR 51.353(c)(3). On October 30, 1998, EPA's Office of Mobile Sources issued a guidance memorandum entitled "Guidance on Alternative I/M Program Evaluation Methods". This document outlined three EPA accepted alternative I/M program evaluation methodologies

available to states to comply with the requirements of 40 CFR 51.353(c). The approved alternatives include: (1) the Sierra Research method; (2) the NYTEST (or VMAS) method; and (3) the RG240 method. The guidance also addressed the need to establish a baseline from which to determine I/M program emissions benefits, in order to fully evaluate enhanced I/M program effectiveness. For areas that had previously existing I/M programs prior to implementation of an enhanced I/M program, the guidance established a methodology for determining a benchmark, since a direct comparison between pre-program and post-program baselines for subsets of such vehicles would not be possible.

For its evaluation methodology, Pennsylvania chose to use the Sierra Research method, utilizing a correlation between another state's IM240 program and its own acceleration simulation mode (ASM) and idle testing programs, per EPA's October 30, 1998 guidance. These correlations will then be used to convert Pennsylvania's idle/ASM measurements to IM240-equivalent measurements for each vehicle. These will then form the basis for a modeled comparison between the Commonwealth's program and the benchmark IM240 program. For its benchmark comparison of estimating a baseline, Pennsylvania intends to correlate its idle/ASM program data to IM240 data from New Jersey's or Maryland's program.

IV. Final Action

EPA is hereby approving Pennsylvania's November 25, 1998 and March 3, 1999 SIP submittals.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment, since the Commonwealth's SIP revision complies with applicable guidance and with the requirements at 40 CFR 51.353(c). The Commonwealth has fully met the requirements of the relevant condition set by EPA in its January 28, 1997 conditional approval of the Pennsylvania I/M program SIP revision.

However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as a proposal to approve the SIP revision in the event adverse comments are filed. This rule will be effective on August 2, 1999 without further notice unless EPA receives adverse comment by July 19, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public

that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

EPA, through previous rulemaking actions, approved Pennsylvania's enhanced I/M program SIP revisions submitted prior to November 25, 1998. Those SIP revisions satisfied all but one of the major and minor conditions set forth by EPA in its January 28, 1997 (62 FR 4004) approval of Pennsylvania's enhanced I/M program. EPA also taken final action to approve the Commonwealth's I/M program network effectiveness demonstration, required under section 348 of the NHSDA. Because the Commonwealth has now addressed all of the deficiencies identified by EPA with respect to its enhanced I/M program SIP, EPA is acting today to incorporate by reference all of Pennsylvania's enhanced I/M SIP revisions into the Code of Federal Regulations, at 40 CFR 52.2020(c)(139).

Since EPA has previously taken final approval actions on all of Pennsylvania's enhanced I/M SIP revisions submitted prior to November 25, 1998, EPA is now providing opportunity for comment only upon today's approval of the Commonwealth's program evaluation plan—submitted on November 25, 1998 and amended on March 3, 1999.

By taking final, full approval upon Pennsylvania's submitted enhanced I/M program SIP revisions, the mandatory sanctions and Federal Implementation Plan obligations under the Clean Air Act have been satisfied. All sanctions and FIP clocks related to approval of Pennsylvania's I/M program are terminated upon the effective date of today's action.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget

a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has 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 E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns,

and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and

is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to fully approve Pennsylvania's enhanced I/M program SIP must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: May 27, 1999.

W. Michael McCabe,
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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(139) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(139) Revisions to the Pennsylvania State Implementation Plan adopting an enhanced motor vehicle inspection and maintenance (I/M) program, submitted on March 22, 1996, and formal amendments submitted by the Secretary of the Pennsylvania Department of Environmental Protection on June 27, 1996; July 29, 1996; November 1, 1996; October 22, 1997; November 13, 1997; February 24, 1998; August 21, 1998; November 25, 1998; and March 3, 1999.

(i) Incorporation by reference.

(A) Letter of November 13, 1997 from the Secretary of the Pennsylvania Department of Environmental Protection transmitting regulations for an enhanced motor vehicle inspection and maintenance program.

(B) Pennsylvania Department of Transportation Enhanced Motor Vehicle Inspection and Maintenance (I/M) Program regulations (contained in Title 67 of the PA Code), effective September 27, 1997.

(1) A definition for "temporary inspection approval indicator", added to section 175.2.

(2) Section 175.11

(3) Paragraph (f)(4) of section 175.29

(4) Paragraphs (a), (b), (c), and (d) of section 175.41. Paragraph (b)(3) of section 175.41. Subparagraphs (d)(2)(ii) and (d)(2)(iii), and paragraphs (e)(5) and (f)(4) of section 175.41.

(5) Sections 175.42, 175.43, 175.44, and 175.45.

(6) Sections 177.1, 177.2, 177.3, 177.21, 177.22, 177.23, 177.24, 177.51, 177.52, 177.53, 177.101, 177.102, 177.103, 177.104, 177.105, 177.106.

(7) Sections 177.201, 177.202, 177.203, 177.204, 177.231, 177.233, 177.251, 177.252, 177.253, 177.271, 177.272, 177.273, 177.274, 177.281, 177.282, 177.291, 177.292, 177.301, 177.302, 177.304, and 177.305.

(8) Sections 177.401, 177.402, 177.403, 177.404, 177.405, 177.406,

177.407, 177.408, 177.421, 177.422, 177.423, 177.424, 177.425, 177.426, 177.427, and 177.431.

(9) Sections 177.501, 177.502, 177.503, 177.504, and 177.521.

(10) Sections 177.602, 177.603, 177.605, 177.606, 177.651, 177.652, 177.671, 177.672, 177.673, and 177.691.

(11) Appendix A to Title 67 of the Pennsylvania Code.

(12) Appendix B to Title 67 of the Pennsylvania Code.

(ii) Additional Material.—Remainder of Submittals

The Commonwealth submitted materials in support of its enhanced motor vehicle inspection and maintenance (I/M) program regulation. These materials were submitted in formal SIP revisions dated: March 27, 1996; July 29, 1996; November 1, 1996; November 13, 1997; February 24, 1998; August 21, 1998; November 25, 1998; and March 3, 1999, and include:

(A) Submittal submitted under a letter dated March 22, 1996, from the Secretary of the Pennsylvania Department of Environmental Protection.

(B) Materials submitted under a letter dated June 27, 1996, from the Secretary of the Department of Environmental Protection.

(C) Materials submitted under a letter of July 29, 1996, from the Secretary of the Department of Environmental Protection.

(D) Materials submitted under a letter of November 1, 1996, from the Secretary of the Department of Environmental Protection.

(E) Materials submitted under a letter of October 27, 1997, from the Secretary of the Department of Environmental Protection.

(F) Materials submitted under a letter of February 24, 1998, from the Secretary of the Department of Environmental Protection.

(G) Documents submitted by a letter dated August 21, 1998, from the Secretary of the Department of Environmental Protection.

(H) Materials submitted by the Secretary of the Department of Environmental Protection, in a letter dated November 25, 1998, and amended by a letter dated March 3, 1999.

3. In Section 52.2026, the introductory sentence is removed and paragraph (a) and paragraph (b) are removed and reserved.

[FR Doc. 99-15163 Filed 6-16-99; 8:45 am]

BILLING CODE 6560-50-P