

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be “in accordance with” the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations “consistent with” regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal

regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 17, 2005.

**Ervin J. Barchenger,**

*Acting Regional Director, Mid-Continent Region.*

[FR Doc. 05–17337 Filed 8–30–05; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF DEFENSE****Office of the Secretary****32 CFR Part 199**

**RIN 0720-AA92**

**TRICARE; Revision of Participating Providers Reimbursement Rate; TRICARE Dental Program (TDP)**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department is publishing this proposed rule to revise the requirements and procedures for the reimbursement of TRICARE Dental Program participating providers. Participating providers will no longer be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. Specifically, the revision will require TRICARE Dental Program participating providers to be reimbursed in accordance with the contractor's network agreements, less any cost-share amount due for authorized services.

Public comments are invited and will be considered for possible revisions to the final rule.

**DATES:** Written comments received at the address indicated below by October 31, 2005 will be accepted.

**ADDRESSES:** Because of staff and resource limitations, we can only accept comments by mail or electronic bill (e-mail). We are unable to accept comments by facsimile (FAX) transmission. Send e-mail comments to [TDP.rule@tma.osd.mil](mailto:TDP.rule@tma.osd.mil). Mail written comments to the following address only: TRICARE Management Activity, TRICARE Operations/Dental Division, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206; Attention: Col. Gary C. Martin, Director. Please allow sufficient time for mailed

comments to be timely received in the event of delivery delays.

**FOR FURTHER INFORMATION CONTACT:** Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity, telephone (703) 681-0039.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Revision of Participating Providers Reimbursement Rate. Currently, 32 CFR 199.13 requires the TRICARE Dental Program contractor to reimburse participating providers at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. This provision was included in the regulation to constitute a significant financial incentive for participation of providers in the contractor's network and to ensure a network of quality providers through use of a higher reimbursement rate. This provision, however, places an unnecessary restriction on contractors that already have established, high quality provider networks with reimbursement rates below the 50th percentile that are of sufficient size to meet the access requirements of the TRICARE Dental Program. The reimbursement rates that have been negotiated over the life of the dental contract represent the general market rates for dental insurance reimbursement, and the proposed rule change would bring DoD reimbursement rates into line with the broader insurance market. Elimination of the 50th percentile requirement will afford the Government and enrollees significant cost savings through lower provider reimbursement costs by the contractor. Additionally, contractors have other methods available to ensure the TDP members receive high quality dental services. These quality assurance methods include, but are not limited to, licensing and credentialing standards, patient satisfaction assessments, and provider trend analyses.

**II. Regulatory Procedures**

The Department of Defense (DoD) has examined the economic implications of this proposed rule as required by Executive Order 12866. 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 of \$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 regulatory action if it raises novel legal or policy issues.

DoD concludes that this proposed 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 proposed rule does not meet the significance threshold of \$100 million effect on the economy in any one year under Section 3(f)(1), with an estimated annual impact on the economy of \$5 million (See attachment for details). The estimate annual impact was determined by comparing the current level of reimbursement for network dental providers in the TDP with the expected level of reimbursement under this Proposed Rule. The current rate of reimbursement was assessed by independent actuarial advisers. This rate is consistent with a market-driven level of payments that is necessary, on average, to maintain a large and stable network of dentists. The difference was multiplied by the projected level of utilization for network providers in 2006. In the aggregate, for all network TDP providers, the Proposed Rule is estimated to reduce network dental provider payments by \$0-5 million in 2006. For the approximately 70,000 network dental providers, this impact averages \$0-\$70 per year per network dentist, which is less than 0.1 percent of the net income for the dentists in the U.S. (according to the American Dental Association's 2002 Survey of Dental Practice). Although the average impact is minimal, the upper end of the range for a network dentist is estimated to be as much as \$1,700 per year. This assumes a decline of 2 percent in the reimbursement level for a network dentist whose practice consists of 15 percent TDP patients. The level of reimbursement required to have a stable network of providers is a percentile less than the current percentile of billed charges.

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 not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities for the reasons stated above. This rule has been designated and has been reviewed by the Office of Management and Budget as required under the provision of E.O. 12866.

*Paperwork Reduction Act*

This proposed rule contains a new information collection requirement. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

*Title:* Claim Form.

*Type of Request:* New requirement.

*Number of Respondents:* 56,512.

*Responses Per Respondent:* 62.

*Annual Responses:* 3,503,744.

*Average Burden Per Response:* 15 minutes.

*Annual Burden Hours:* 875,936.

*Needs and Uses:* The TRICARE Management Activity (TMA) under the authority of the Office of the Assistant Secretary of Defense (Health Affairs)/TMA Office of the Deputy Assistant Secretary of Defense has the responsibility for management of the TRICARE dental program as established in Title X, United States Code, section 1076a. The TDP claim form is required to gather information to make payment for legitimate dental claims, to assist in contractor surveillance and program integrity investigations and to audit financial transactions where the Department of Defense has a financial stake. The information from the claim form is also used to provide important cost share explanations to the beneficiary.

*Affected Public:* Business or other for-profit.

*Frequency:* 5 per month.

*Respondent's Obligation: Voluntary.*

Written comments and recommendations on the proposed information collection should be sent to the TRICARE Management Activity, Attn: Col Gary Martin, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041-3206 (703-681-0039). Comments should be received within 60 days of publication of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to TRICARE Management Activity, Attn: Col Gary Martin, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041-3206, or telephone Col Martin at 703-681-0039.

**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 proposed to be 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 proposed to be 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: August 25, 2005.

**Jeannette Owings-Ballard,**

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

[FR Doc. 05-17299 Filed 8-30-05; 8:45 am]

**BILLING CODE 5001-06-M**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 51**

[OAR-2005-0148; FRL-7963-1]

**Advance Notice To Solicit Comments, Data and Information for Determining the Emissions Reductions Achieved in Ozone Nonattainment and Maintenance Areas From the Implementation of Rules Limiting the VOC Content of AIM Coatings**

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** By this action, EPA is soliciting comments, data and information for determining how to calculate the reductions in volatile organic compounds (VOC) emissions achieved in ozone nonattainment and maintenance areas from the implementation of rules which limit the VOC content of architectural coatings (commonly referred to as architectural industrial maintenance, or AIM, coatings). In addition to submitting comments, data and information, interested parties may also request to meet with EPA to present their recommended approaches and rationales.

**DATES:** Please submit comments, data, and information on or before October 17, 2005. Requests to meet with EPA should be made on or before September 30, 2005.

**ADDRESSES:** Submit your written comments, data and information, identified by Docket ID No. OAR-2005-0148, by one of the following methods: *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*Agency Web site:* <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments. *E-mail:* Send electronic mail (e-mail) to EPA Docket Center at [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).

*Fax:* Send faxes to the EPA Docket Center at (202) 566-1741.

*Mail:* Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attn: Docket ID No. OAR-2005-0148, *Advance Notice for Information on Determining the Emissions Reductions Achieved from Limiting the VOC Content of Architectural Coating.* Please include a total of two copies.

*Hand Delivery or Courier:* EPA Docket Center (Air and Radiation Docket), U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for delivery of boxed information.

*Instructions:* Direct your comments to Docket ID No. OAR-2005-0148. The EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., 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 in EDOCKET or in hard copy during normal business hours at the Air and Radiation Docket, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave.,