potentially suspicious activity. In the November 2003 edition of its ''SAR Activity Review,'' [7] FinCEN instructed financial institutions to file suspicious activity reports on verified matches of persons designated by OFAC. While this guidance ensured that the relevant information would be available to law enforcement, it also resulted in financial institutions being required to make two separate filings with the Department of the Treasury—one with OFAC pursuant to its Reporting, Procedures and Penalties Regulations, and one with FinCEN pursuant to its suspicious activity reporting rules.

Revised Guidance

FinCEN is hereby revising its prior guidance to eliminate the need for duplicative reporting in cases where a financial institution identifies a verified match with individuals or entities designated by OFAC. As of the date of publication of this interpretation, FinCEN will deem its rules requiring the filing of suspicious activity reports to be satisfied by the filing of a blocking report with OFAC in accordance with OFAC's Reporting, Penalties and Procedures Regulations. OFAC will then provide the information to FinCEN for inclusion in the suspicious activity reporting database where it will be made available to law enforcement. This construction of the suspicious activity reporting rules will serve the public interest by enabling FinCEN to obtain and provide potentially important information about terrorists and major drug traffickers to law enforcement on an expedited basis without imposing duplicative reporting burdens on the regulated industry.

Accordingly, a financial institution that files a blocking report with OFAC due to the involvement in a transaction or account of a person designated as a Specially Designated Global Terrorist, a Specially Designated Terrorist, a Foreign Terrorist Organization, a Specially Designated Narcotics Trafficker Kingpin, or a Specially Designated Narcotics Trafficker, shall be deemed to have simultaneously filed a suspicious activity report on the fact of the match with FinCEN, in satisfaction of the requirements of the applicable suspicious activity reporting rule. This interpretation does not affect a financial institution's obligation to identify and report suspicious activity beyond the fact of the OFAC match. To the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information. This interpretation also does not affect a financial institution's obligation to file a suspicious activity report even if it has filed a blocking report with OFAC, to the extent that the facts and circumstances surrounding the OFAC match are independently suspicious—and are otherwise required to be reported under existing FinCEN regulations. In those cases, the OFAC blocking report would not satisfy a financial institution's suspicious activity report filing obligation.

Further, nothing in this interpretation is intended to preclude a financial institution from filing a suspicious activity report to disclose additional information concerning the OFAC match,[8] nor does it preclude a financial institution from filing a suspicious activity report if the financial institution has reason to believe that terrorism or drug trafficking is taking place, even though there is no OFAC match. Finally, this interpretation does not apply to blocking reports filed to report transactions and accounts involving persons owned by, or who are nationals of, countries subject to OFAC-administered sanctions programs. Such transactions should be reported on suspicious activity reports under the suspicious activity reporting rules if, and only, if, the activity itself appears to be suspicious under the criteria established by the suspicious activity reporting rules.

William J. Fox,

Director.

[FR Doc. 04–27739 Filed 12–22–04; 8:45 am]

BILLING CODE 4810–02–P

[7] Issue 6 (Nov. 2003).

[8] Such a report would be a voluntary report under the statute and regulations. *See* 31 U.S.C. 5318(g)(3) (extending safe harbor protection from civil liability to voluntary filings).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095–AB41

Records Management; Unscheduled Records; Correction

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: NARA published in the **Federal Register** of December 15, 2004, a final rule allowing the transfer of unscheduled records to records storage facilities. Inadvertently, a word was deleted from the preamble, changing the meaning of a sentence. This document corrects that deletion.

DATES: This rule is effective January 14, 2005.

FOR FURTHER INFORMATION CONTACT: Cheryl Stadel-Bevans at telephone number (301) 837–3021 or fax number (301) 837–0319.

SUPPLEMENTARY INFORMATION: NARA published a final rule on December 15, 2004, at 69 FR 74976. The second sentence in the **SUPPLEMENTARY INFORMATION** contains an error. This correction inserts the missing word.

In the final rule published at 69 FR 74976, make the following correction. On page 74977, in the first column, insert the word ''not'' in line 6 so that the line reads ''* * * Executive Order 12866 and has not been * * *''.

Dated: December 17, 2004.

Nancy Y. Allard,

Federal Register Liaison Officer.

[FR Doc. 04–28048 Filed 12–22–04; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–MI–0002; FRL–7849–1]

Approval and Promulgation of Implementation Plans: Michigan: Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the plan prepared by Michigan that will limit the emissions of oxides of nitrogen (NO_X) from large stationary sources (*i.e.* power plants, industrial boilers and cement kilns). This plan meets all of the requirements contained in an EPA rule that was published in the **Federal Register** on April 16, 2004. This rule, otherwise known as the NO_X SIP Call Phase I provides for NO_X reductions from sources in 20 States in the eastern half of the country. The effect of this approval is to ensure federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved State Implementation Plan (SIP).

DATES: This ''direct final'' rule is effective February 22, 2005, unless EPA receives written adverse comment by January 24, 2005. If written adverse comment is received, EPA 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: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2004–MI–0002, 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://docket.epa.gov/rmepub/. Regional Material in EDocket (RME), EPA's electronic public docket and comments system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-

line instructions for submitting comments.

E-mail: bortzer.jay@epa.gov.

Fax: (312)886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R05–OAR–2004–MI–0002. EPA's policy is that all comments received will be included in the public docket without change, 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 Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website 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 RME 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. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353–6960 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6960, *aburano.douglas@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

I. General Information.

A. Does This Action Apply to Me?

This action applies to large stationary sources of NO_X (such as electric generating units that produce electricity for sale, other large boilers that produce steam and/or electricity but do not sell electricity, and cement kilns) in the southern counties (Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Mecosta, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ottawa, Saginaw, Saint Clair, Saint Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne) of Michigan. This action also applies to the unit at DTE Energy's Harbor Beach facility in Huron County.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

(a) Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

(b) Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

(c) Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

(d) Describe any assumptions and provide any technical information and/or data that you used.

(e) If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

II. What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state must submit these regulations and control strategies to us for approval

and incorporation into the federally-enforceable SIP. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive and contain state regulations or other enforceable documents, as well as supporting elements such as emission inventories, monitoring networks, and modeling demonstrations.

III. What Is the Federal Approval Process For a SIP?

For state regulations to be incorporated into the federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body. Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the federal action on the state submission. If adverse comments are received, they must be addressed prior to any final federal action. All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the federally-approved SIP. EPA has codified its actions on state SIP submittals in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR, but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

IV. Background

A. What Are the Phase I NO_X SIP Call Requirements?

On October 27, 1998, EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' See 63 FR 57356 (October 27, 1998). The NO_X SIP Call requires 22 states and the District of Columbia to meet NO_X emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States. EPA discussed the history of the SIP Call extensively as part of the conditional approval of Michigan's NO_X trading program (see 69 FR 8905).

B. Conditional Approval of Michigan's Phase I NO_X SIP

On April 3, 2003, MDEQ submitted to EPA for approval a SIP to address the Phase I NO_X SIP Call requirements. While the rules submitted by MDEQ generally met the requirements for approval, we identified a number of deficiencies preventing full approval of the NO_X SIP at that time. EPA published a proposed conditional approval of Michigan's submittal on February 26, 2004 (69 FR 8905), and finalized the conditional approval on April 16, 2004 (69 FR 20548). EPA required that MDEQ address these deficiencies and submit revised approvable regulations by May 31, 2004, or the conditional approval would automatically convert to a disapproval.

C. What Deficiencies Were Identified and How Did MDEQ Address Them?

In the review of Michigan's April 3, 2003 NO_X SIP submittal, EPA identified six deficiencies that MDEQ had to correct before EPA could fully approve Michigan's submittal. EPA communicated these deficiencies to MDEQ, and, in most cases, EPA suggested language that Michigan could adopt to address each concern. On May 27, 2004, MDEQ submitted revised regulations to address the deficiencies.

Following is a list of the identified deficiencies and a description of how MDEQ addressed them:

1. *Deficiency:* Rule 802(5) states, ''An oxides of nitrogen budget unit that is subject to a rule promulgated under section 126 of the Clean Air Act shall not be subject to this rule until the section 126 requirements no longer apply.'' Under this language, those oxides of nitrogen budget units that are subject to the Section 126 Rule and that would be subject to controls under the Michigan SIP are not covered by the SIP. The Section 126 Rule remains in place and will remain effective until EPA approves the Michigan SIP. The EPA cannot approve the Michigan SIP, and move forward to remove the Section 126 requirements, unless the SIP has in place regulations to achieve the necessary emissions reductions to meet the Phase I budget. In evaluating the SIP, EPA cannot take into consideration the emissions reductions required by the Section 126 Rule. Because the Section 126 Rule would still be in place at the time EPA takes action on the Michigan SIP, oxides of nitrogen budget units that would otherwise be subject to controls under the Michigan SIP would not be covered at that time. Therefore, the SIP would not be providing sufficient emissions reductions to meet the Phase I budget and would not be approvable. This language must be removed from the State's rules. EPA will then take action to ensure that no unit is subject to both trading programs.

Correction: MDEQ has removed this language.

2. *Deficiency:* The applicability of these rules is based on named counties in the southern portion of Michigan. While this applicability is sufficient to meet the requirements found in the SIP Call, it is not enough to remove all of the Section 126 requirements from the State. This is because there is one source, DTE's Harbor Beach unit, that is affected by Section 126 requirements, but is not in one of the counties affected by Michigan's NO_X SIP call rule. Michigan has indicated a desire to include the Harbor Beach unit in the trading program in order to satisfy the Section 126 requirements for this source. To address this situation and enable EPA to remove all of the Section 126 requirements from Michigan after the Michigan NO_X SIP has been approved, MDEQ must extend the applicability of the Michigan NO_X SIP to that one source.

Correction: The applicability section of this rule now includes the unit at DTE's Harbor Beach facility in Huron County.

3. *Deficiency:* Twenty-five ton exemption—States may develop alternative 25-ton NO_X exemptions to the one included in the model rule provided they are based on permit restrictions that limit a unit's potential to emit during an ozone season to 25 tons or less and are not inconsistent with 40 CFR part 75 monitoring requirements. Michigan's regulation, Part 8. Emissions Limitations and Prohibitions—Oxides of Nitrogen, includes in Rule 802(2) the 25-ton exemption. The rule language is based on the model rule but provides additional options for qualifying for the exemption that involve emission monitoring or testing that is inconsistent with Part 75.

In addition, when a unit receives a 25-ton exemption, the unit's potential emissions (reflected as an equivalent number of allowances) must be removed from the trading budget to avoid double counting. An exempt unit's emissions are included in the state's large Electric Generating Unit (EGU) or large non-EGU emissions budget and therefore as allowances in the state's trading budget. EPA is concerned that Michigan's rule does not account for potential emissions from the exempt units. Neither the rule

nor the SIP submittal specifies a procedure for removing from the trading budget the allowances reflecting the exempt unit's potential emissions. To address the deficiencies related to the 25 ton exemption provisions including the related budget adjustments, Michigan must modify its regulations to ensure an exempt source's emissions are less than 25 tons in each ozone season and provide a process for adjusting the trading budget accordingly. EPA provided MDEQ suggested language modifying the regulations.

Correction: Language has been added to require monitoring in accordance with 40 CFR part 75, subpart H. Also, MDEQ has adopted the language suggested by EPA to address EPA's other concerns.

4. *Deficiency:* New source set-aside—The new source set-aside provisions of section 811(1)(a) specify the set-aside pool allocation. The rule contains a typographical error regarding the number of allowances to be set-aside after 2006. A footnote in the Michigan SIP submittal highlights this error and indicates the correct number. This error should be corrected since the official regulations are the basis for all allocations.

Also, section 811(2) appears to address the issue of adjusting a new source's allowances to account for reduced utilization, but is incomplete and, for example, lacks the adjustment formula. This section also appears to specify how remaining set-aside allowances are determined, but that matter is also addressed in section 811(3). Michigan must clarify these provisions. EPA provided MDEQ suggested language to clarify these provisions.

Correction: The typographical error has been corrected and MDEQ has adopted the language suggested by EPA to address EPA's other concerns.

5. *Deficiency:* Language in section 802(1)(a) appears to allow the State to exempt an EGU for which applicability has not been determined. EPA cannot approve any exemption that is solely at the discretion of the State and does not include EPA approval as well. The language relating to exemptions based solely on the State's discretion must be removed as a condition of final approval.

Correction: This language has been removed in the version submitted by MDEQ for approval.

6. *Deficiency:* Language in section 804 relating to retired unit exemptions must be modified to include the requirement that a unit that qualifies for this exemption, is not required to have a permit, and subsequently resumes operation will lose the exemption at the time of resumption of operation. EPA provided MDEQ suggested language modifying this section of the regulations.

Correction: The ''loss of exemption'' language suggested by EPA has been adopted and submitted by MDEQ.

V. Michigan's Control of NO_X Emissions

A. When Did Michigan Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On April 3, 2003, MDEQ submitted a final revision to its SIP to meet the requirements of the Phase I NO_X SIP Call. EPA found that the initial submittal generally complied with section 110 of the Act and the Phase I NO_X SIP Call but that it had several minor deficiencies. Therefore, EPA conditionally approved the submittal. On May 27, 2004, MDEQ submitted another SIP revision that addressed all of the issues raised in EPA's April 16, 2004 conditional approval.

B. When Did Michigan Hold Public Hearings and What Were the Results?

Public hearings were held on December 3, 2001 and January 22, 2003 for the April 3, 2003 submittal. A public hearing was held on March 11, 2004 for the May 27, 2004 submittal. MDEQ holds public hearings on rules at the end of a 30-day public comment period. MDEQ either modified its rules to accommodate the comments received or explained why the rules were not changed in light of the comments.

C. What Is Included in Michigan's NO_X SIP Call Revision?

Michigan allows, as in the model rule, EGUs and non-EGUs to participate in the multi-state cap and trade program. Cement kilns are not included in the trading program, but will be required to install low NO_X burners, mid-kiln firing system or technology that achieves the same emission decreases (a 30% reduction). Michigan's SIP revision to meet the requirements of the NO_X SIP Call consists of the revision of Michigan Rules 802 through 817. The regulations 802 through 816 affect EGUs and non-EGUs. Rule 817 applies requirements to cement manufacturing facilities.

Michigan's SIP revision to meet the requirements of the NO_X SIP Call consists of the following Michigan Rules:

- 802 Applicability under oxides of nitrogen budget trading program
- 803 Definitions for oxides of nitrogen budget trading program
- 804 Retired unit exemption from oxides of nitrogen budget trading program
- 805 Standard requirements of oxides of nitrogen budget trading program
- 806 Computation of time under oxides of nitrogen budget trading program
- 807 Authorized account representative under oxides of nitrogen budget trading program
- 808 Permit requirements under oxides of nitrogen budget trading program
- 809 Compliance certification under oxides of nitrogen budget trading program
- 810 Allowance allocations under oxides of nitrogen budget trading program
- 811 New source set-aside under oxides of nitrogen budget trading program
- 812 Allowance tracking system and transfers under oxides of nitrogen budget trading program
- 813 Monitoring and reporting requirements under oxides of nitrogen budget trading program
- 814 Individual opt-ins under oxides of nitrogen budget trading program
- 815 Allowance banking under oxides of nitrogen budget trading program
- 816 Compliance supplement pool under oxides of nitrogen budget trading program
- 817 Emission limitations and restrictions for Portland cement kilns

Michigan's Oxides of Nitrogen Budget Trading Program (Rules 802 through 816) establishes and requires participation in a NO_X allowance trading program for large EGUs and non-EGUs. These rules establish a NO_X cap and allowance trading program for the ozone control seasons beginning May 31, 2004. Michigan Rule 817, not part of the trading program, applies to cement kilns and also requires control during the ozone season starting on May 31, 2004. Beginning in 2005, the ozone control period is May 1 through September 30.

The State of Michigan chose to follow EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_X emissions trading program for EGUs and non-EGUs. Michigan's Oxides of Nitrogen Budget Trading Program is based upon EPA's model rule, therefore, Michigan sources are allowed to participate in the interstate NO_X allowance trading program that EPA is administering for the participating states. Under Rule 810, Michigan allocates NO_X allowances to the EGU and non-EGU units that are affected by these requirements. The NO_X trading program applies to EGUs (fossil fuel fired boilers and turbines

serving a generator with a nameplate capacity greater than 25 MW that sell any amount of electricity) as well as non-EGUs (fossil fuel fired industrial boilers and turbines that have a maximum design heat input greater than 250 mmBtu per hour). Each NO_X allowance permits a source to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations.

Source owners will monitor and report their NO_X emissions by using methodologies that meet the requirements of 40 CFR part 75, subpart H, and report resulting data to EPA electronically. Each budget source complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or State limits, for example, reasonably available control technology (RACT), new source performance standards, or Title IV (the Federal Acid Rain program).

Michigan's Oxides of Nitrogen Budget Trading Program establishes requirements for cement manufacturing facilities. These sources are subject to NO_X reduction requirements but do not participate in the NO_X trading program. Michigan's submittal does not rely on any additional reductions beyond the anticipated federal measures in the mobile and area source categories.

Michigan's submittal demonstrates that the Phase I NO_X emission budgets established by EPA will be met because MDEQ agrees with all of the assumptions, projections, etc. used by EPA to determine the 2007 budgets. Because Michigan has adopted all of the same controls assumed by EPA in developing the State's NO_X budget, the actual emissions in 2007 should be the same as those EPA has projected to be the State's 2007 budget.

D. What Is the Compliance Supplement Pool?

To provide additional flexibility for complying with emission control requirements associated with the NO_X SIP Call, the final NO_X SIP Call rule provided each affected state with a ''compliance supplement pool.'' The compliance supplement pool is a quantity of NO_X allowances that may be used to cover excess emissions from sources that are unable otherwise to meet control requirements during the 2004 and 2005 ozone season. Allowances from the compliance supplement pool will not be valid for compliance past the 2005 ozone season. The NO_X SIP Call included these voluntary provisions in order to address commenters' concerns about the possible adverse effect that the control requirements might have on the reliability of the electricity supply or on other industries required to install controls as the result of a state's response to the NO_X SIP Call.

A state may issue some or all of the compliance supplement pool via two mechanisms. First, a state may issue some or all of the pool to sources with credits from implementing NO_X reductions beyond all applicable requirements after September 30, 1999, but before May 31, 2004 (*i.e.*, early reductions). This allows sources that cannot install controls prior to May 31, 2004, to purchase other sources' allowances reflecting early reduction credits in order to comply. Second, a state may issue some or all of the pool to sources that demonstrate a need for an extension of the May 31, 2004 compliance deadline due to undue risk to the electricity supply or other industrial sectors, and where allowances reflecting early reductions are not available (See 40 CFR 51.121(e)(3)). Michigan has opted to issue the State's compliance supplement pool through the Early Reduction Credit program only.

E. How Does Michigan's NO_X SIP Affect Sources Subject to EPA's Section 126 Rule in the SIP Call Area?

All of the existing sources in the SIP Call area that are subject to EPA's Section 126 Rule are also subject to Michigan's NO_X rules.

VI. EPA Action

EPA is fully approving the NO_X SIP submitted on April 3, 2003 as modified on May 27, 2004. EPA finds that Michigan's submittals are fully approvable because the initial April 3, 2003 submittal was conditionally approved and the conditions for full approvability were met in the May 27, 2004 submittal. In combination, these two submittals meet the requirements of the Phase I NO_X SIP Call.

We are approving: Michigan's revision of the ozone SIP that responds to EPA's Phase I NO_X SIP Call. This revision consists of Michigan Air Pollution Control Rules 803, 805–810, and 812–817 as submitted on April 3, 2003 and Michigan Air Pollution Control Rules 802, 804 and 811 as submitted May 27, 2004. A combined package of these rules 802–817 as submitted on April 3, 2003 and May 27, 2004 was submitted as a supplement to the May 27, 2004 submittal for ease of incorporation by reference. This supplemental submittal was sent by MDEQ to EPA on August 5, 2004.

By this action, we are also vacating our April 16, 2004 (69 FR 20548) conditional approval of Michigan's earlier NO_X SIP submittal.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective February 22, 2005 without further notice unless we receive relevant adverse written comments by January 24, 2005. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective February 22, 2005.

VII. What Are the Statutory and Executive Order Review Requirements?

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because this action does not significantly affect energy supply, distribution or use, it is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. 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.** 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 22, 2005. 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, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 3, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 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 X—Michigan

■ 2. Section 52.1170 is amended by adding paragraph (c)(121) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(121) On April 3, 2003, the Michigan Department of Environmental Quality (MDEQ) submitted a revision to the Michigan State Implementation Plan (SIP). This SIP revision was made to address EPA requirements placed on a number of States in the eastern half of the country to reduce emissions of oxides of nitrogen (NO_X) that are contributing to the ozone transport phenomenon. The rulemaking that contains the requirements the States must meet is called the Phase I NO_X SIP Call. Michigan's April 3, 2003 SIP revision was conditionally approved on April 16, 2004. Subsequent SIP revisions to address the requirements found in EPA's conditional approval were made on May 27, 2004 and August 5, 2004. These additional submittals, in combination with the original SIP revision, fulfill the Phase I NO_X SIP Call requirements. In its August 5, 2004 supplemental SIP revision, MDEQ requests that the following rules are incorporated by reference: R336.1802 Applicability under oxides of nitrogen budget trading program, R336.1803 Definitions for oxides of nitrogen budget trading program, R336.1804 Retired unit exemption from oxides of nitrogen budget trading program, R336.1805 Standard requirements of oxides of nitrogen budget trading program, R336.1806 Computation of time under oxides of nitrogen budget trading program, R336.1807 Authorized account representative under oxides of nitrogen budget trading program, R336.1808 Permit requirements under oxides of nitrogen budget trading program, R336.1809 Compliance certification under oxides of nitrogen budget trading program, R336.1810 Allowance allocations under oxides of nitrogen budget trading program, R336.1811 New source set-aside under oxides of nitrogen budget trading program, R336.1812 Allowance tracking system and transfers under oxides of nitrogen budget trading program, R336.1813 Monitoring and reporting requirements under oxides of nitrogen budget trading, R336.1814 Individual opt-ins under oxides of nitrogen budget trading program, R336.1815 Allowance banking under oxides of nitrogen budget trading program, R336.1816 Compliance supplement pool under oxides of nitrogen budget trading program,

R336.1817 Emission limitations and restrictions for Portland cement kilns.

(i) *Incorporation by reference.* The following sections of the Michigan Administrative Code are incorporated by reference.

(A) R336.1802 Applicability under oxides of nitrogen budget trading program, effective May 20, 2004.

(B) R336.1803 Definitions for oxides of nitrogen budget trading program, effective December 4, 2002.

(C) R336.1804 Retired unit exemption from oxides of nitrogen budget trading program, effective May 20, 2004.

(D) R336.1805 Standard requirements of oxides of nitrogen budget trading program, effective December 4, 2002.

(E) R336.1806 Computation of time under oxides of nitrogen budget trading program, effective December 4, 2002.

(F) R336.1807 Authorized account representative under oxides of nitrogen budget trading program, effective December 4, 2002.

(G) R336.1808 Permit requirements under oxides of nitrogen budget trading program, effective December 4, 2002.

(H) R336.1809 Compliance certification under oxides of nitrogen budget trading program, effective December 4, 2002.

(I) R336.1810 Allowance allocations under oxides of nitrogen budget trading program, effective December 4, 2002.

(J) R336.1811 New source set-aside under oxides of nitrogen budget trading program, effective May 20, 2004.

(K) R336.1812 Allowance tracking system and transfers under oxides of nitrogen budget trading program, effective December 4, 2002.

(L) R336.1813 Monitoring and reporting requirements under oxides of nitrogen budget trading program, effective December 4, 2002.

(M) R336.1814 Individual opt-ins under oxides of nitrogen budget trading program, effective December 4, 2002.

(N) R336.1815 Allowance banking under oxides of nitrogen budget trading program, effective December 4, 2002.

(O) R336.1816 Compliance supplement pool under oxides of nitrogen budget trading program, effective December 4, 2002.

(P) R336.1817 Emission limitations and restrictions for Portland cement kilns, effective December 4, 2002.

§ 52.1218 [Amended]

■ 3. Section 52.1218 is amended by removing and reserving paragraph (a).

[FR Doc. 04–27983 Filed 12–22–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD170–3113a; FRL–7851–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions From Yeast Manufacturing; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: EPA is correcting the format in the Identification of plan section of a State Implementation Plan (SIP) revision for control of volatile organic compound (VOC) emissions from yeast manufacturing which EPA approved as part of the Maryland SIP on October 27, 2004. This document corrects an error in the rule format of a final rule pertaining to the State of Maryland.

DATES: Effective December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' or ''our'' are used we mean EPA.

On October 27, 2004 (69 FR 62589), we published a final rulemaking action announcing approval of a revision to the Maryland State Implementation Plan (SIP) pertaining to control of volatile organic compounds (VOC) emissions from yeast manufacturing operations (COMAR 26.11.19.17). In our approval action, EPA incorporated by reference (IBR'd) the State rule and codified this IBR action at § 52.1070(c)(189).The effective date of the action is December 27, 2004. Subsequently, on November 29, 2004 (69 FR 69304), we published an administrative rulemaking action announcing format revisions to the Identification of plan section in 40 CFR part 52, subpart V (Maryland), as well as changes to the format for materials which are incorporated by reference (IBR). This administrative rulemaking action both recodified the existing § 52.1070 as § 52.1100 entitled ''Original Identification of plan section,'' and created a new § 52.1070 entitled ''Identification of plan.'' We are revising the entry for COMAR 26.11.19.17 in § 52.1070(c), effective December 27, 2004, so that it reflects EPA's October 27, 2004 approval action of the revised COMAR 26.11.19.17.

In rule document 04–23948 published in the **Federal Register** on October 27, 2004 (69 FR 62589), on page 62591 in the second column, Amendatory Instruction Number 2 is withdrawn.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.