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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 21, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E5–8221 Filed 1–4–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2005–MI–0001; FRL–8019–4]

Approval and Promulgation of Air Quality Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Michigan's request for a revision to its Clean Air Act State Implementation Plan which provides for exemptions for major sources of nitrogen oxides (NO_X) from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for NO_X. The review is for sources in eleven counties located in six of Michigan's eight-hour ozone non-attainment areas. Section 182(f) of the Clean Air Act allows this exemption for areas where additional reductions in NO_X will not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. We are proposing approval of the exemption for each of the six non-attainment areas.

DATES: Comments must be received on or before February 6, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2005–MI–0001, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2005–MI–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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 *www.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 this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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

II. What Is EPA's Analysis of the Supporting Materials?
III. What Are the Environmental Effects of These Actions?
IV. What Action Is EPA Taking Today?
V. Statutory and Executive Order Reviews

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

A. Submitting CBI

Do not submit this information to EPA through *www.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.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. What Is EPA's Analysis of the Supporting Materials?

EPA's document, ''Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation'' gives the requirements for demonstrating that further NO_X reduction in an ozone non-attainment area will not contribute to ozone attainment. The guidance provides that monitoring data showing three consecutive years of ozone levels below the NAAQS in areas in which the state has not implemented NO_X controls is adequate to demonstrate that additional NO_X reductions will not aid in attainment. As described in the guidance document, approval of the SIP revision is granted on a contingent basis. Michigan must continue to monitor the ozone levels in the areas. If finalized, each of the six areas will receive its own exemption. If an area violates the 8-hour ozone standard, as defined at 62 FR 38855, EPA will remove the exemption for that area and publish a **Federal Register** notice. Upon removal of its waiver, an area will once again be subject to NO_X control requirements under section 182(f) of the Clean Air Act.

Michigan submitted the 2002–04 monitoring data for the six areas. The eight-hour ozone concentrations for these areas were all below the National Ambient Air Quality Standard for ozone for the entire period covered by the monitoring. Michigan has not implemented the NO_X controls required under section 182(f) in the areas yet. So, adding NO_X controls in these areas would not help the areas attain the 8-hour ozone standard.

III. What Are the Environmental Effects of These Actions?

Ozone decreases lung function, causing chest pain and coughing. It can aggravate asthma, reduce lung capacity, and increase risk of respiratory diseases like pneumonia and bronchitis. Children playing outside and healthy adults who work or exercise outside also may be harmed by elevated ozone levels. Ozone also reduces vegetation growth in economically important agricultural crops and wild plants.

Nitrogen oxides and volatile organic compounds (VOC) are precursors in ozone formation. The photochemical reactions that form ozone are complex. Reducing NO_X (NO and NO_2) emissions will not always reduce ozone levels. When the ratio of NO to VOC emissions is high, the NO will react with ozone (O_3) to form NO_2 and oxygen (O_2). In this environment, the NO_2 will react with hydroxyl (OH) radicals instead of forming ozone. Therefore, a decrease in NO_X emissions would cause an increase in ozone formation when these conditions exist. This effect is usually localized.

The section 182(f) exemptions should not interfere with attaining the ozone standard in the six Michigan ozone non-attainment areas. The six areas have three consecutive years of monitoring data showing the areas in attainment of the 8-hour ozone standard. The section 182(f) NO_X provisions have not been implemented in these areas. It is clear that Michigan has demonstrated that additional NO_X reductions would not contribute to attainment of the ozone standard in the six areas.

Ozone levels are expected to remain below the standard which will protect human health. However, if quality assured monitoring data shows that a violation of the ozone standard has occurred in one of the areas, the exemption for that area will be removed and additional control measures will be enacted. Upon receipt of quality-assured data demonstrating a violation of the ozone standard, EPA will notify the State and the public that the exemption no longer applies by publishing a rule in the **Federal Register**. The section 182(f) exemption will no longer apply as of the effective date of EPA's rule. Michigan will be required to submit the RACT SIP for the violating area by September 2006 or by the date specified in the withdrawal notice for violations after the SIP deadline. Major sources of NO_X will then be expected to comply with the part 182(f) requirements no later than the first ozone season which occurs 30 months after the SIP due date. If EPA redesignates the area to attainment prior to the violation, the NO_X sources will be required to follow the maintenance plan provisions instead of the part 182(f) requirements.

IV. What Action Is EPA Taking Today?

EPA is proposing to approve a Michigan SIP revision request for exemptions from the RACT and NSR NO_X requirements for major NO_X sources in six of the state's eight-hour ozone non-attainment areas. Section 182(f) of the Clean Air Act allows this exemption for areas where the state demonstrates that additional reductions in NO_X will not contribute to attainment of the ozone standard. Monitoring data shows the ozone levels are now below the standard in the six areas without utilizing NO_X controls. If made final, these exemptions from the NO_X requirements in section 182(f) will be made on a contingent basis. The state used monitoring data to demonstrate it meets the requirements for the exemption. If an area's monitored level of ozone violates the standard in the future, its exemption will be removed. If quality assured monitoring data indicates that an area has violated the standard, the EPA will notify the State that the exemption no longer applies in that area and will inform the public with a **Federal Register** rule. The section 182(f) exemption will not apply as of the effective date of EPA's rule. Michigan will be required to submit the RACT SIP for the violating area by

September 2006 or by the date specified in the withdrawal notice for violations after the SIP deadline. Major sources of NO_X will then be expected to comply with the part 182(f) requirements as expeditiously as practical but no later than the first ozone season which occurs 30 months after the SIP due date. In an area designated as attainment prior to a violation, the NO_X sources will follow the maintenance plan requirements.

V. Statutory and Executive Order Reviews

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 That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' 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).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed 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 (59 FR 22951, 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 proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This proposed 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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA 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).

Paperwork Reduction Act

This proposed 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.).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 27, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E5–8316 Filed 1–4–06; 8:45 am]

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