clear the intention to preserve the right in aggravation cases as was done in Public [Law] No. [73–]141.'' S. Rep. No. 403, at 2. Public Law 73–141, referenced as the model for the Senate amendment, provided for restoration of service-connected disability awards that had been severed under depression-era statutes, and provided that:

> The provisions of this section shall not apply * * * to persons as to whom clear and unmistakable evidence discloses that the disease, injury, or disability had inception before or after the period of active military or naval service, unless such disease, injury, or disability is shown to have been aggravated during service * * * and as to all such cases enumerated in this proviso, all reasonable doubts shall be resolved in favor of the veteran, the burden of proof being on the Government.

Act of March 27, 1943, ch. 100, § 27, 48 Stat. 508, 524. This statute appears to have placed the burden on the government to show by clear and unmistakable evidence both that the disability existed prior to service and that it was not aggravated by service. It is thus consistent with the view that the presumption of soundness enacted in 1943 was intended to place the burden of proof on VA with respect to both issues. That purpose is also reflected in other statements made during the debate on the 1943 legislation. *See* 89 Cong. Rec. 7463 (daily ed. July 7, 1943) (statement of Rep. Rankin) (''It places the burden of proof on the Veterans' Administration to show by unmistakable evidence that the injury or disease existed prior to acceptance and enrollment and was not aggravated by such active military or naval service.'')

Based on the foregoing authorities, VA is revising its regulations at 38 CFR 3.304(b) to provide that, in order to rebut the presumption of sound condition, VA must establish by clear and convincing evidence both that the disability existed prior to service and that it was not aggravated by service. To accomplish this, VA is amending § 3.304(b) by adding, at the end of the first sentence, ''and was not aggravated by such service.''

The effect of this new interpretation is to establish different standards to govern for disabilities that were noted at entry into service and those that were not. If a disability was not noted at entry into service, VA will apply the presumption of sound condition under 38 U.S.C. 1111. If VA fails to establish either that the disability existed prior to service or that it was not aggravated by service, the presumption of sound condition will govern and the disability will be considered to have been incurred in service if all other requirements for service connection are established. In such cases, the presumption of aggravation in 38 U.S.C. 1153 will not apply because VA will presume that the veteran entered service in sound condition. On the other hand, if a condition was noted at entry into service, VA will consider the claim with respect to the presumption of aggravation in section 1153.

This final rule is an interpretative rule explaining how VA construes 38 U.S.C. 1111, and it merely reflects the holding in the Federal Circuit's decision in *Wagner*. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

The Catalog of Federal Domestic Assistance program numbers are 64.102, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: April 4, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.304 [Amended]

■ 2. In § 3.304, paragraph (b) introductory text, remove ''thereto.'' and add, in its place, ''thereto and was not aggravated by such service.''

[FR Doc. 05–8899 Filed 5–3–05; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–MI–0002; FRL–7904–4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving as a revision to Michigan's Clean Air Act State Implementation Plan (SIP) prepared by Michigan that will limit the emissions of oxides of nitrogen (NO_X) from large stationary sources (i.e., electric generating units, industrial boilers and cement kilns). This SIP, which the Michigan Department of Environmental Quality (MDEQ) submitted for EPA approval on August 5, 2004, meets all of the requirements contained in an EPA rule that was published in the **Federal Register** on October 27, 1998. The federal rule, otherwise known as the Phase I NO_X SIP Call, requires NO_X reductions from sources in 19 States in the eastern half of the country and the District of Columbia. MDEQ's August 5, 2004, submittal also satisfies the conditions described in EPA's conditional approval notice published in the **Federal Register** on April 16, 2004. The effect of this approval is to ensure federal enforceability of the state NO_X plan and to maintain consistency between the state-adopted plan and the approved Michigan SIP. EPA proposed approval of this SIP revision and published a direct final approval on December 23, 2004. EPA received adverse comments on the proposed rulemaking and, therefore, withdrew the direct final rulemaking on February 15, 2005.

DATES: This rule is effective June 3, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R05–OAR–2004–MI–0002. All documents in the docket are listed in the index. Although listed in the index, some information is not publicly available, i.e., consolidated business information (CBI) or other information where disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. The Docket Facility is open during normal business hours, Monday through Friday, excluding legal holidays. We recommend that you telephone Douglas Aburano at (312) 353–6960, before visiting the Region 5 office.

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

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. Does this Action Apply to Me?
II. What Action Is EPA Taking Today?
III. What Is the Background for this Action?
IV. What Public Comments Were Received and What Is EPA's Response?
V. Statutory and Executive Order Reviews.

General Information

I. 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.

II. What Action Is EPA Taking Today?

EPA is approving the NO_X SIP submitted on August 5, 2004. EPA finds that Michigan's submittal is fully approvable because EPA conditionally approved Michigan's initial April 3, 2003, submittal, and Michigan satisfied the conditions for full approvability in the August 5, 2004, submittal. This submittal meets the requirements of the Phase I NO_X SIP Call.

Specifically, we are approving Michigan's revision of the ozone SIP that responds to EPA's Phase I NO_X SIP Call. On April 3, 2003, Michigan submitted for EPA approval Michigan Air Pollution Control Rules 803, 805–810, and 812–817. Michigan submitted Michigan Air Pollution Control Rules 802, 804 and 811 on May 27, 2004. Michigan submitted a revision combining rules 802–817 as submitted on April 3, 2003 and May 27, 2004 as a supplement for ease of incorporation by reference. This supplemental submittal was sent by MDEQ to EPA on August 5, 2004, and it is this revision that we are approving into the SIP today.

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

III. What Is the Background for This Action?

The SIP revision submitted by the MDEQ on August 5, 2004, consists of Michigan Rules 802 through 817. MDEQ has requested that we approve all of these rules in the SIP to satisfy the requirements of EPA's Phase I NO_X SIP Call.

We concluded in our April 16, 2004, direct final conditional approval at 69 FR 20548 that the April 3, 2003, SIP revision was approvable except for a number of minor deficiencies. Therefore, EPA conditionally approved the submittal. On May 27, 2004, MDEQ submitted for approval as a SIP revision a package that addressed all of the issues raised in EPA's April 16, 2004, conditional approval. On December 23, 2004, we published a direct final action approving the corrections submitted by MDEQ on May 27, 2004. Because EPA received adverse comments during the public comment period, we were required to withdraw the December 23, 2004, direct final rulemaking and address those comments in today's rulemaking.

IV. What Public Comments Were Received and What Is EPA's Response?

We received four adverse comments on our December 23, 2004, approval of Michigan's August 5, 2004, SIP revision. Although the comments do not specifically address the actual action taken in the SIP revision, they are ''adverse'' to the SIP action in that the commenters generally disagree with the action we took on December 23, 2004. Because all of the comments expressed the same general concerns in a similar language, we have summarized them below as one comment.

Summary of comments (paraphrased): Several commenters stated that they generally did not agree with this action. One specifically felt that the air in New Jersey is adversely affected by emissions from other States and requested that the Agency require the most stringent controls on upwind sources that impact the air in New Jersey.

Response: The level of emission reductions required by Michigan's NO_X rules meets the requirements of EPA's NO_X SIP Call. The NO_X SIP Call finds that specific states (e.g., Michigan) have sources whose NO_X emissions contribute significantly to another state's failure to attain the ozone standard and requires each such state to eliminate the amount of such significant contribution. EPA set the amount of required NO_X emission reductions for each State equal to the amount of highly cost-effective NO_X reductions available in the State. Michigan's rule requires the amount of NO_X emission reductions determined by EPA for Michigan in the NO_X SIP Call. Consequently, although the commenter apparently would like additional reductions, beyond the amount required by the NO_X SIP Call, by Michigan sources, EPA's approval of Michigan's rule is reasonable, and, in fact, there is no basis for rejecting Michigan's rule.

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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

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 (Pub. L. 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 Clean Air Act.

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

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 our 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.

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, EPA 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 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, Ozone, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 13, 2005.

Richard C. Karl,

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 regulations restricting emissions of oxides of nitrogen (NO_X) to address the Phase I NO_X SIP Call requirements. EPA conditionally approved Michigan's April 3, 2003, SIP revision on April 16, 2004. On May 27, 2004 and August 5, 2004, Michigan subsequently submitted for EPA approval SIP revisions to address the requirements found in EPA's conditional approval. These additional submittals, in combination with the original SIP revision, fulfill the Phase I NO_X SIP Call requirements.

(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, 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 [Removed]

3. Section 52.1218 is removed.

[FR Doc. 05–8787 Filed 5–3–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 2, and 15

[ET Docket No. 03–108; FCC 05–57]

Cognitive Radio Technologies and Software Defined Radios

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the Commission's rules to reflect ongoing technical developments in cognitive radio technologies. In light of the Commission's experience with these rules, the Commission is modifying and clarifying the equipment rules to further facilitate the development and deployment of software defined and cognitive radios. These actions are taken to facilitate opportunities for flexible, efficient, and reliable spectrum use by radio equipment employing cognitive radio technologies and enable a full realization of their potential benefits.

DATES: Effective August 2, 2005.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail: *Hugh.VanTuyl@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 03–108, FCC 05–57, adopted March 10, 2005 and released March 11, 2005. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM*.

Summary of the Report and Order

1. An accelerating trend in radio technologies has been the use of software in radios to define their transmission characteristics. The incorporation of cognitive radio technologies to allow the more efficient use of spectrum is also becoming increasingly common. As demonstrated in this and earlier proceedings, this Commission has a continuing commitment to recognize these important new technologies and make any necessary changes to its rules and processes to facilitate their development in the public interest.

2. Over the past several years, manufacturers have increased the computer processing capabilities of radio system technologies. As a result, radio systems are increasingly incorporating software into their operating design. Incorporating software programming capabilities into radios can make basic functions easier to implement and more flexible. As the capabilities have advanced, radio systems have been gaining increased abilities to be ''cognitive''—to adapt their behavior based on external factors. This ''ability to adapt'' is opening up a vast potential for more flexible and intensive use of spectrum.

3. On December 17, 2003, we adopted a *Notice of Proposed Rule Making and Order,* 69 FR 7397, February 17, 2004, (''NPRM'') in this proceeding to explore the uses of cognitive radio technology to facilitate improved spectrum access. The *NPRM* addressed: (1) The capabilities of cognitive radios, (2) permitting higher power by unlicensed devices in rural or other areas of limited spectrum use, (3) enabling the development of secondary markets in spectrum use, including interruptible spectrum leasing, (4) applications of cognitive radio technology to dynamically coordinated spectrum sharing, and (5) software defined radio and cognitive radio equipment authorization rule changes. A total of 56 parties filed comments and 14 parties filed reply comments in response to the *NPRM.*

Discussion

4. The development of cognitive radio technology has been and will continue to be evolutionary in nature. As the technology evolves, our intent is to delete, change, or adopt rules in phases so as to ensure that our rules facilitate the market-based development and deployment of these technologies. In this *Report and Order,* we first cover in some detail various wide-ranging efforts being undertaken today by both government and industry to further in the near term the development of cognitive capabilities in software-based radio systems and in the longer term the evolution into fully capable cognitive radio systems.

5. To facilitate the market-based development and introduction of new technologies into the market, we addressed certain issues in the *Report and Order* that have arisen with respect to the certification of software-based radio equipment. Based on our experience and the comments in the record, we modify and clarify certain of