§ 7.5010 Shared electronic space.

A national bank that shares a co-branded web site or other electronic space with a bank subsidiary, affiliate, or a third party must take reasonable steps to enable customers to distinguish between products and services offered by the bank and those offered by the bank's subsidiary, affiliate, or the third party. The bank also should disclose its limited role with respect to the third party product or service. This disclosure should be conspicuous, simple, direct, readily understandable, and designed to call attention to the fact that the bank does not provide, endorse, or guarantee any of the products or services available through third party web pages.

Dated: June 19, 2001.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 01–16330 Filed 6–29–01; 8:45 am]

BILLING CODE 4810–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB77

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–44475; File No. S7–11–01]

RIN 3235–AI13

Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; Application of the Definition of Narrow-Based Security Index

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and Securities and Exchange Commission (''SEC'') (collectively the ''Commissions'') are extending the comment period for proposed Subparts A and B of Part 41 of the CFTC's regulations under the Commodity Exchange Act (''CEA'') and SEC Rules 3a55–1 through 3a55–3 under the Securities Exchange Act of 1934 (''Exchange Act''), contained in Release No. 34–44288 (May 10, 2001), 66 FR 27560 (May 17, 2001). The original comment period ended on June 18, 2001. The new deadline for submitting public comments is July 11, 2001.

DATES: Public comments are due on or before July 11, 2001.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

CFTC: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to secretary@cftc.gov. Reference should be made to ''Narrow-Based Security Indexes.''

SEC: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments can also be sent electronically to the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–11–01. If e-mail is used, include this file number on the subject line. Anyone can inspect and copy the comment letters in the Commission's Public Reference Room at 450 5th Street, NW., Washington, DC 20549–0102. Electronically submitted comments will be posted on the Commission's Internet web site (*http://www.sec.gov*). The SEC does not edit personal identifying information, such as names or e-mail addresses, from electronic submissions. Submit only the information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT:

CFTC: Elizabeth L.R. Fox, Acting Deputy General Counsel; Richard A. Shilts, Acting Director; or Thomas M. Leahy, Jr., Financial Instruments Unit Chief, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418–5000. E-mail: (EFox@cftc.gov), (RShilts@cftc.gov), or (TLeahy @cftc.gov).

SEC: Nancy J. Sanow, Assistant Director, at (202) 942–0771; Ira L. Brandriss, Special Counsel, at (202) 942–0148, or Sapna C. Patel, Attorney, at (202) 942–0166, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: On May 17, 2001, the Commissions published for public comment proposed Subparts A and B of Part 41 of the CFTC's regulations under the CEA and SEC Rules 3a55–1 through 3a55–3 under the Exchange Act. These proposed rules would implement new statutory provisions of the Commodity Futures Modernization Act of 2000 (''CFMA'') concerning the definition of ''narrow-based security index.'' The CFMA directed the Commissions jointly to specify by rule or regulation the method to be used to determine ''dollar value of average daily trading volume'' and ''market capitalization'' for purposes of the new definition of ''narrow-based security index'' in the CEA and the Exchange Act.

The proposing release established a deadline of June 18, 2001 for submitting public comments. The Commissions have received requests to extend the deadline. Therefore, the Commissions are extending the comment period to July 11, 2001 so that commenters will have adequate time to address the issues raised by the proposing release.

Dated: June 26, 2001.

By the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary.

Dated: June 26, 2001.

By the Securities and Exchange Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–16501 Filed 6–29–01; 8:45 am]

BILLING CODE 6351–01–P; 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 131a; FRL–7005–9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Oxides of Nitrogen Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 30, 2001, Indiana submitted and requested parallel processing on a draft plan to control emissions of oxides of nitrogen (NO_X) throughout the State. The plan consists of two proposed rules, a preliminary budget demonstration, and supporting documentation. The plan will contribute to attainment and maintenance of the 1-hour ozone standard in several 1-hour ozone nonattainment areas including the Chicago-Gary-Lake County and Louisville areas. Indiana's plan, which focuses on electric generating units, large industrial boilers, turbines and cement kilns, was developed to achieve the majority of reductions required by EPA's October 27, 1998, NO_X State

Implementation Plan (SIP) Call. As of May 1, 2004, Indiana's plan will also provide reductions at units currently required to make reductions under the EPA's Clean Air Act Section 126 rulemaking. Through parallel processing, EPA is proposing to approve the plan as a SIP revision fulfilling the NO_X SIP Call Phase I requirements, provided Indiana corrects identified deficiencies in a manner that is consistent with this notice.

EPA notes that, as discussed in this **Federal Register** action, the State adopted final rules June 6, 2001. These rules and the supporting documents have not yet been submitted to EPA and thus EPA has not concluded its review and analysis. However, it is EPA's understanding and expectation that the rules resolve the deficiencies identified in this **Federal Register** proposal and do not introduce any unapprovable changes.

DATES: Written comments must be received on or before August 1, 2001.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the State's submittals and materials relevant to this proposed rulemaking are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (18th floor). (Please telephone Ryan Bahr at (312) 353–4366 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Ryan Bahr, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number: (312) 353–4366, E-Mail Address: bahr.ryan@epa.gov.

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I. Background

A. Why Are Reductions in NO_X Important?

The Clean Air Act (Act or CAA) requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain air pollutants that cause or contribute to air pollution and are reasonably anticipated to endanger public health or welfare. (CAA Sections 108 and 109) In 1979, EPA determined ground level ozone, at certain concentrations, to be one of those pollutants and promulgated the 1-hour ground-level ozone standard of 0.12 parts per million (ppm) or 120 parts per billion (ppb) to protect public health. 44 FR 8202 (February 8, 1979).

Ground-level ozone has long been recognized, in both clinical and epidemiological research, to affect public health. There is a wide range of ozone-induced health effects, including decreased lung function (primarily in children active outdoors), increased respiratory symptoms (particularly in highly sensitive individuals), increased hospital admissions and emergency room visits for respiratory causes (among children and adults with pre-existing respiratory disease such as asthma), increased inflammation of the lung, and possible long-term damage to the lungs.

Ground-level ozone is generally not directly emitted by sources. Rather, volatile organic compounds (VOC) and NO_X, both emitted by a wide variety of sources, react in the presence of sunlight to form additional pollutants, including ozone. NO_X and VOC are referred to as precursors of ozone.

Historically, EPA, State and industry efforts have focused on controlling VOC in urban areas to achieve the ozone standards. However, notwithstanding significant efforts, the 1-hour ozone standards have not been met in many areas, especially major urban areas. A detailed process was begun in 1995 to evaluate what effect transported pollution was having on ozone levels in nonattainment areas. This study determined, among other things, that NO_X emissions have contributed to significant transport of ozone and that a program to regulate regional NO_X emissions can provide the essential background reductions needed for the majority of nonattainment areas to attain the 1-hour ozone standard.

B. What Mechanism Is Indiana Using To Ensure That Regional NO_X Reductions Occur?

On October 27, 1998, the EPA published a final rule in the **Federal Register** finding certain States' SIPs deficient, since they failed to prohibit the interstate transport of oxides of nitrogen (63 FR 57356). This action is known as the ''NO_X SIP Call,'' and applies to a number of States, primarily east of the Mississippi, including Indiana. The NO_X SIP Call adds and revises sections of 40 CFR parts 51 and 75 and adds part 96. The 40 CFR part 51 sections codify the requirements for

the State's submittal. These requirements are primarily to develop NO_X emission control regulations and the supporting documentation and programs necessary, for a SIP revision sufficient to provide for a prescribed NO_X emission budget in 2007. The 40 CFR part 75 revisions and additions revise the part 75 monitoring requirements so that they are appropriate for the NO_X SIP Call trading program. Finally, 40 CFR part 96 is the model NO_X budget trading program for SIPs. (You will also see 40 CFR part 97 discussed in this **Federal Register** action. 40 CFR part 97 was added to the CFR in a separate action in response to 126 petitions. It establishes a control program similar to 40 CFR part 96. However, unlike part 96, part 97 is not a model rule. It is actually a USEPA implemented program which regulates sources directly. 40 CFR part 97 and the section 126 Petitions are discussed in more detail in section I.E. of today's proposal.)

EPA promulgated the NO_X SIP Call under sections 110(a)(2)(D) and 110(k) of the CAA. Section 110(a)(2)(D) applies to all SIPs for each pollutant covered by a NAAQS and for all areas regardless of their attainment designation. It requires a SIP to contain adequate provisions that prohibit any source or type of source or other types of emissions within a State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of attainment of a standard by, any other State with respect to any NAAQS. Section 110(k)(5) authorizes the EPA to find that a SIP is substantially inadequate to meet any CAA requirement when appropriate and, based on such a finding, to then require the State to submit a SIP revision within a specified time to correct such inadequacies.

Indiana submitted its plan and requested a SIP revision with parallel processing on March 30, 2001. EPA is proposing, in this **Federal Register**, to approve this plan as a SIP revision meeting the requirements of Phase I of the NO_X SIP Call, provided that Indiana corrects the identified deficiencies. Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html.*

C. What Analyses and EPA Rulemaking Actions Support the Need for the NO_X Emission Control Regulations?

The State of Indiana has the primary responsibility under the CAA for ensuring that it meets the ozone NAAQS. For that reason, the State is required to submit a SIP that specifies emission limitations, control measures, and other measures necessary for attainment, maintenance, and enforcement of the NAAQS within the State. The SIP for ozone must meet the CAA requirements discussed above, be adopted pursuant to notice and comment rulemaking, and be submitted to the EPA for approval. A number of analyses and EPA rulemaking actions have affected the SIP revisions needed for the Chicago-Gary-Lake County ozone nonattainment areas, as discussed below.

The Chicago-Gary-Lake County ozone nonattainment area has not attained and continues to violate the 1-hour ozone standard. The States of Illinois, Indiana, and Wisconsin have worked cooperatively to provide the EPA with an ozone attainment demonstration for the Lake Michigan area, which includes the Chicago-Gary-Lake County ozone nonattainment area. Analyses conducted to support this ozone attainment demonstration indicate that reductions in upwind NO_X emissions are needed to reduce the transport of ozone into these nonattainment areas.

Recognizing the complexity of ozone pollution, on March 2, 1995, Mary D. Nichols, Assistant Administrator for EPA's Air and Radiation Division, issued a memorandum titled ''Ozone Attainment Demonstrations.'' In this memorandum, the EPA recognized that the development of the necessary technical information, as well as the emission control measures necessary to achieve the attainment of the ozone NAAQS had been difficult for the States affected by significant ozone transport. EPA established a two-phased process for States with serious and severe ozone nonattainment areas, such as the Chicago/Northwest Indiana nonattainment area, to develop ozone attainment SIPs. Under Phase I, States were required to complete 1994 SIP requirements (with the exception of final ozone attainment demonstrations), submit regulations sufficient to meet rate of progress (ROP) requirements through 1999, and submit initial ozone modeling analyses, including preliminary ozone attainment demonstrations based on assumed reductions in upwind ozone precursor emissions. Phase II called for: a two-year consultative process to assess regional strategies to address ozone transport in the eastern United States and required submittal of all remaining ROP submittals to cover ROP through the attainment dates; final attainment demonstrations to address the emission reduction requirements resulting from the two-year consultative process; any additional rules and emission controls needed to attain the ozone standard; and, any regional controls needed for attainment by all areas in the eastern half of the United States.

In response to the problem of ozone transport, the Environmental Council of States (ECOS) recommended the formation of a national workgroup to develop a consensus approach to addressing the transport problem. As a result of ECOS' recommendation and in response to the March 2, 1995 EPA memorandum, the Ozone Transport Assessment Group (OTAG), a partnership among EPA, the 37 eastern States and the District of Columbia, and industrial, academic, and environmental groups, was formed to conduct regional ozone transport analyses and to develop a recommended ozone transport control strategy. OTAG was given the responsibility of conducting the two-years of analyses envisioned in the March 2, 1995 EPA memorandum.

OTAG conducted a number of regional ozone data analyses and regional ozone modeling analyses using photochemical grid modeling. In July 1997, OTAG completed its work and made recommendations to the EPA concerning the regional emissions reductions needed to reduce transported ozone as an obstacle to attainment in downwind areas. OTAG recommended a possible range of regional NO_X emission reductions to support the control of transported ozone. Based on OTAG's recommendations and other information, EPA issued the NO_X SIP Call rule on October 27, 1998. 63 FR 57356.

In the NO_X SIP Call, EPA determined that sources and emitting activities in 23 jurisdictions [1] emit NO_X in amounts that ''significantly contribute'' to ozone nonattainment or interfere with maintenance of the 1-hour ozone NAAQS in one or more downwind areas, in violation of CAA Section 110(a)(2)(D)(i)(I). EPA identified NO_X emission reductions by source sector that could be achieved using cost-effective measures and set state-wide NO_X emission budgets for each affected

[1] Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

jurisdiction for 2007 based on the possible cost-effective NO_X emission reductions. The source sectors included nonroad mobile, highway mobile, area, cement kilns, internal combustion engines, electricity generating units (EGUs) and non-EGU stationary point sources. EPA established recommended NO_X emissions caps for large EGUs and for large non-EGUs, and recommended emission limits for large cement kilns and large internal combustion engines. Large EGUs included stationary boilers, turbines and combined cycle systems, serving a generator 25 megawatts or larger, who generate electricity for sale to the electrical grid. Large non-EGUs included process stationary boilers, turbines and combined cycle systems, who are not EGUs and whose maximum design heat input is 250 million British thermal units [Btu] per hour [mmBtu/hr] or more. EPA determined that significant NO_X reductions using cost-effective measures could be obtained as follows: application of a 0.15 pounds NO_X/mmBtu heat input emission rate limit for large EGUs; a 60 percent reduction of NO_X emissions from large non-EGUs; a 30 percent reduction of NO_X emissions from large cement kilns; and a 90 percent reduction of NO_X emissions from large stationary internal combustion engines. The 2007 state-wide NO_X emission budgets were based on NO_X emissions projections to 2007 coupled with these levels of NO_X emission controls.

Although the state-wide NO_X emission budgets were based on the levels of reduction achievable through cost-effective emission control measures, the NO_X SIP Call allows each State to determine what measures it will choose to meet the state-wide NO_X emission budgets. It does not require the States to adopt the specific NO_X emission rates assumed by the EPA in establishing the NO_X emission budgets. The NO_X SIP Call merely requires States to submit SIPs, which, when implemented, will require controls that meet the NO_X state-wide emission budget. The NO_X SIP Call encourages the States to adopt a NO_X cap-and-trade program for large EGUs and large non-EGUs as a cost-effective strategy and provides an interstate NO_X trading program that the EPA can administer for the States. If States choose to participate in the national trading program, they must submit SIPs that conform to the trading program requirements in the NO_X SIP Call.

In its March 2, 1995 memorandum, EPA did not include moderate ozone nonattainment areas, such as the Louisville area, in the two-phased approach. The EPA, however, recognizes that some moderate ozone nonattainment areas may also have been significantly impacted by ozone transport from upwind areas, making attainment of the 1-hour ozone NAAQS difficult through the imposition of only local emission control measures. On July 16, 1998, EPA established a policy that allowed for a deferral of the attainment date for areas significantly impacted by ozone transport where certain conditions are met. The EPA published this policy (Extension Policy) in the **Federal Register** on March 25, 1999. 64 FR 14441.

Under the Extension Policy, the EPA would defer final findings on the attainment status for moderate nonattainment areas and would instead allow these areas to submit attainment SIPs that include boundary reductions in ozone achieved by controls measures in upwind areas. The attainment date for these areas would be the date by which the relevant upwind areas will have reduced emission, reducing the transported ozone.

On April 30, 1998, the State of Indiana submitted a major revision of the ozone attainment demonstration for the Chicago-Gary-Lake County ozone nonattainment area. In that revision, the State demonstrated that significant reductions in transported ozone and NO_X would be necessary to achieve attainment of the 1-hour ozone standard in the nonattainment area. Indiana committed to complete the ozone attainment demonstration and to adopt sufficient local and regional controls as needed to demonstrate attainment of the ozone standard and to submit the final attainment demonstration and adopted regulations to the EPA by December 2000. The EPA proposed to conditionally approve the 1-hour attainment demonstration based, in part, on the State's commitment to adopt and submit a final attainment demonstration and a post-1999 ROP plan, including the necessary State emission control regulations, by December 31, 2000. (December 16, 1999. 64 FR 70514). The NO_X regulations reviewed in this proposed rule are, in part, intended to meet part of the State's commitment to complete the ozone attainment demonstration for the Chicago-Gary-Lake County nonattainment area.

D. What Court Rulings Have Impacted EPA's NO_X Emission Control Regulations?

When the EPA published the NO_X SIP Call on October 27, 1998, a number of States and industry groups filed petitions challenging the rulemaking before the United States Court of Appeals for the District of Columbia Circuit. The Court, on May 25, 1999, stayed the states' obligation to submit SIPs in response to the NO_X SIP Call rule. Subsequently, on March 3, 2000, the Court upheld most of the NO_X SIP Call rule. The Court, however, vacated the rule as it applied to Missouri and Georgia, and remanded for further consideration the inclusion of portions of Missouri and Georgia in the rule. The Court also vacated the rule as it applied to Wisconsin because EPA had not made a showing that sources in Wisconsin significantly contribute to nonattainment or interfere with maintenance of the ozone NAAQS in any other State. Finally, the Court remanded to EPA two issues concerning a limited portion of the NO_X emission budgets. See *Michigan et al.* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000). Based on the remanded issues, on April 11, 2000, EPA initiated a two phase approach to implement the NO_X SIP Call. Phase I of this approach addresses the portion of the NO_X SIP Call upheld by the Court. It will achieve the majority of the reductions in the NO_X SIP Call. Based on the June 22 Court decision, discussed below, the Phase I plan was due from Indiana on October 30, 2000. The second phase will address the few narrow issues that the Court remanded to EPA, including: Whether, and if so, how, a small subclass of facilities that generate electricity should be included in the rule; and what control levels should be assumed for large, stationary internal combustion engines. Phase II of the NO_X SIP Call will not require a submittal from the States until EPA has proposed and finalized rules in response to the Court's remand.

On June 22, 2000, the Court removed the stay of the states' obligation to submit SIPs in response to the NO_X SIP Call and denied petitioners' motions for rehearing and rehearing en banc. In removing the stay, the Court provided that EPA should allow 128 days for States to submit SIPs to the EPA, i.e., by October 30, 2000. Shortly after removing the stay, petitioners requested that the Court adjust the NO_X SIP Call compliance date. The Court determined that the compliance date for the SIP Call would be May 31, 2004.

E. What Are Section 126 Petitions, and How Are They Related to This Proposal?

Section 126 of the CAA authorizes a downwind State to petition EPA for a finding that any new (or modified) or existing major stationary source or group of stationary sources upwind of the State emits or would emit in violation of the prohibition of section 110(a)(2)(D)(i) because the source(s) emissions contribute significantly to

nonattainment, or interfere with maintenance, of a NAAQS in the State. Sections 110(a)(2)(D)(i), 126(b)–(c). If EPA makes the requested finding, the source(s) must shut down within 3 months from the finding, unless EPA directly regulates the source(s) by establishing emissions limitations and a compliance schedule, extending no later than 3 years from the date of the finding, to eliminate the prohibited interstate transport of pollutants as expeditiously as possible. See sections 110(a)(2)(D)(i) and 126(c). Eight northeastern States, including Connecticut and New York, petitioned EPA requesting that EPA make a finding that certain major stationary sources or groups of sources in upwind States, including Indiana, emit NO_X emissions in violation of the CAA's prohibition on amounts of emissions that contribute significantly to ozone nonattainment or maintenance problems in the petitioning State.

EPA made affirmative technical determinations for six of these petitions on May 25, 1999 (64 FR 28250). EPA's approach was to defer making Section 126 findings as long as States and EPA stayed on track to meet the requirements of the NO_X SIP Call by May 1, 2003. This timing was synchronized such that approval of a complete NO_X SIP Call could supplant the section 126 rulemaking by ensuring that section 126 sources were no longer contributing significantly to downwind nonattainment. However, when the Court granted a motion to stay the compliance deadline for the NO_X SIP Call to May 31, 2004, the result was that the NO_X SIP Call no longer assured in 2003 that affected sources would not emit in violation of the prohibition in section 126 of the CAA. Thus, with the required compliance deadline for the NO_X SIP Call of May 31, 2004, the dates are no longer aligned.

EPA subsequently took final action making 126 findings on January 18, 2000 (65 FR 2674). The January 18, 2000, action also finalized the federal NO_X Budget Trading Program at 40 CFR part 97 as a means of mitigating the interstate transport of ozone and NO_X. The sources listed in the section 126 rulemaking are required to comply with the part 97 trading program by May 1, 2003. Several parties filed a petition for review of EPA's final action. On May 15, 2001, the United States Court of Appeals for the District of Columbia Circuit rendered its decision, largely upholding EPA's action. *Appalachian Power Co. et al.* v. *EPA,* No. 99–1200.

In the NO_X SIP call, EPA determined that emissions from sources throughout the entire State of Indiana significantly contribute to downwind areas. However, because the petitions from Connecticut and New York named sources in only part of the State, EPA limited its section 126 findings to the geographic scope of those petitions. Maps showing the geographic coverage of these two petitions are shown in Figures F–2 and F–6 of appendix F to 40 CFR part 52. Based on the geographic limits given in the petitions, all sources in Indiana located east of 86.0 degrees longitude are covered by the section 126 1-hour finding. The existing sources located in Indiana that are subject to the 1-hour section 126 finding are also listed in appendix A to 40 CFR part 97.

II. Summary of the State Submittal

A. When Did Indiana Develop and Submit the NO_X Emission Control Plan to the EPA?

On March 30, 2001, IDEM submitted its proposed NO_X emission control plan to the EPA and requested parallel processing.

IDEM had originated its rulemaking process on regional NO_X reductions in 1999. EPA has reviewed and provided extensive comments on several previous drafts of the rules. The State has adequately addressed most of these comments. Some of the issues raised, however, were very complex and the State was not able to address them before proposing the rule. These issues are discussed in this **Federal Register** action.

Parallel processing allows a State to submit a plan for approval prior to actual adoption by the State. 47 FR 27073 (June 23, 1982). A submittal for parallel processing must include the following three items: a letter from the State requesting parallel processing; a schedule for final adoption or issuance of the plan; and a copy of the proposed regulation or document. Indiana submitted this information in its March 30, 2001, letter.

B. What Are the Basic Components of the State's Draft Plan?

Indiana's proposed plan included a budget demonstration, supporting materials and two NO_X rules: 326 IAC 10–3, pertaining to cement kilns, and 326 IAC 10–4, a trading program focusing on reductions from EGUs and large boilers and turbines. The budget demonstration is discussed in more detail in section C, ''How does Indiana address its statewide NO_X budget?''. The supporting materials include information such as the number of allowances that Indiana intends to allocate to each unit for 2004–2006 and detailed inventories. The rules included in the plan require compliance statewide by May 31, 2004. This plan constitutes Indiana's response to Phase I of the NO_X SIP Call. The tables below summarize the requirements of the two draft rules as submitted and how the rules differ from the SIP Call. These tables are not meant to be exhaustive of every requirement in Indiana's rules. Rather, they are intended to provide a general idea of how Indiana's rules are structured and some of the significant requirements. For a complete understanding of the proposed rules, please see the applicable rulemaking package which is available at the locations listed in the **ADDRESSES** section of this proposal. As described in this proposal action, it is EPA's understanding that the State made changes in response to comments by EPA and affected stakeholders. (These tables, however, reflect the proposed rules as submitted.)

TABLE 1.—326 INDIANA ADMINISTRATIVE CODE 10–3

Cite	Section title/subject
326 IAC 10–3–1	Applicability—Generally Portland Cement Kilns larger than specified size with specified exceptions.
326 IAC 10–3–2	Definitions
326 IAC 10–3–3	Emission limits • Technology Requirements (mid-kiln firing or low NO_X burners) or • Ozone Season Emission Averages 2.8—6 pounds of NO_X per ton of clinker depending on type of kiln or • Approved alternatives to achieve 30% reductions
326 IAC 10–3–4	Monitoring and Testing Requirements • Technology Requirements—preventative maintenance plan • Ozone Season Emission Averages or Approved alternatives to achieve 30% reductions—initial and subsequent annual testing or NO_X Continuous Emission Monitoring Systems (CEMS)

TABLE 1.—326 INDIANA ADMINISTRATIVE CODE 10–3—Continued

Cite	Section title/subject
326 IAC 10–3–5(a)	Record keeping and Reporting (a) Record keeping—Begin May 31, 2004, and keep records at the unit for 5 years. • Technology Requirements—record maintenance, startup, shutdown, and malfunction information • Ozone Season Emission Averages or Approved Alternatives to achieve 30% reductions—emissions in pounds per ton of clinker, results of performance testing, CEMS data if CEMS are used, startup, shutdown and malfunction information (b) Reporting • By May 31, 2004 submit initial information to IDEM • By October 31, 2004 and before October 31 each year after submit NO_X emission information.

In addition to the specific rule for cement kilns, 326 IAC 10–3, Indiana proposed a rule to implement the 40 CFR part 96 Nitrogen Oxides Budget Trading Program.

TABLE 2.—326 IAC 10–4 NITROGEN OXIDES BUDGET TRADING PROGRAM

Cite/section	Title/subject	Comparable federal regulation/note
326 IAC 10–4–1	Applicability	§ 96.4—Indiana's rule includes same core sources (EGUs and large non utility boilers and turbines) as NO_X SIP Call and opt in provisions. It contains 2 additional 25 ton exemptions.
326 IAC 10–4–2	Definitions	§ 96.2—Indiana adds definition for ''energy efficient or renewable energy projects.'' Indiana also adjusts some definitions to account for 2004 compliance date.
326 IAC 10–4–3	Retired Unit Exemption	§ 96.5
326 IAC 10–4–4	Standard Requirements	§ 96.6—Proposed rule does not include full liability requirements of SIP Call and will need to be revised.
326 IAC 10–4–5	Computation of time	§ 96.7—Indiana clarified that the ozone control period always begins and ends on the calendar dates specified in the definition.
326 IAC 10–4–6	NO_X Authorized Account Representative.	§ 96.10, § 96.11, § 96.12, § 96.13, § 96.14
326 IAC 10-4–7	Permit Requirements	§ 96.20, § 96.21, § 96.22, § 96.23, § 96.24, § 96.25—Indiana is implementing the permitting requirements with its existing permitting programs, 326 IAC 2–7.
326 IAC 10-4–8	Compliance Certification	§ 96.30, § 96.31.
326 IAC 10–4–9	Allowance Allocations	§ 96.40, § 96.41, § 96.42 State is establishing trading program budget of 43,654 tons of NO_X in 2004 and 2005 and 45,033 tons thereafter. The State requested changes to the SIP Call budget as discussed in the preliminary budget demonstration. The State also provides a mechanism to transition from the Section 126 petitions to the SIP Call. This issue is discussed in detail in this proposal. The State has developed an allocation methodology, utilizing the flexibility under the NO_X SIP Call.
326 IAC 10–4–10	NO_X allowance	§ 96.50, § 96.51, § 96.52, § 96.53, § 96.54, § 96.56, § 96.57.
326 IAC 10–4–11	NO_X allowance transfers	§ 96.60, § 96.61, § 96.62.
326 IAC 10–4–12	NO_X monitoring and reporting requirements.	§ 96.70, § 96.71, § 96.72, § 96.73, § 96.74, § 96.75, § 96.76—State's proposed rule would not require sources to begin monitoring May 1 of the year before the compliance year as required by the NO_X SIP Call as discussed in this proposal.
326 IAC 10—13	Individual opt-ins	§ 96.80, § 96.81, § 96.82, § 96.83,§ 96.84, § 96.85, § 96.86, § 96.87, § 96.88.
326 IAC 10–4–14	NO_X Banking	§ 96.55(a) and (b).
326 IAC 10–4–15	Compliance Supplement	§ 96.55(C)—The State has made several changes to this section to allow for an easier transition from the Section 126 rulemaking as discussed below.

TABLE 3

Sections of the 40 CFR Part 96 model rule not addressed by a specific section in Indiana's Rule	How Indiana has addressed or needs to address these sections.
40 CFR 96.1, 40 CFR 96.3	Indiana has addressed both of these sections by 1) submitting a rule, and 2) addressing specifics in various sections of its rule. For example, the requirement in 40 CFR 96.1 that, by adoption of the rule a state authorizes EPA to assist in operating the trading program, is addressed in the rule's definition of EPA in 326 IAC 10–4–2(65).

C. How Does Indiana Address Its Statewide NO_X budget?

1. What NO_X budget Did EPA Determine for the State?

In the October 27, 1998, NO_X SIP Call, Indiana's NO_X budget was set at 202,584 tons/season with a ''compliance supplement pool'' of 19,738 tons. The ''compliance supplement pool'' is a voluntary provision that provides flexibility to States in addressing concerns of full compliance by May 31, 2004. Each State will be able to use its pool to cover excess emissions from sources that are unable to meet the compliance deadline during the 2004 and 2005 timeframe. In the final NO_X SIP Call, EPA provided a 60-day public comment period on 2007 baseline sub-inventory revisions. The EPA received numerous requests to allow more time to accept revisions to source-specific inventory data used to establish each State's emissions baseline and budget in the NO_X SIP Call and also to allow revisions to vehicle miles traveled (VMT) projections. Therefore, by notice dated December 24, 1998, EPA published a ''Correction and Clarification to the Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone'' (63 FR 71220), which may be referred to as ''the correction notice.''

In the correction notice, EPA reopened and extended the comment period to February 22, 1999, on emissions inventory revisions for the 2007 baseline information used to establish each State's budget in the NO_X SIP Call. This included source-specific emission inventory data, data on VMT and nonroad mobile growth rates, VMT distribution by vehicle class, average speed by roadway type, inspection and maintenance program parameters, and other input parameters used in the calculation of highway vehicle emissions. In response to the comments received during this comment period, EPA published revised baseline inventories and budgets in the May 14, 1999 technical amendment (64 FR 26298).

Subsequently, on March 2, 2000 (65 FR 11222), the EPA proceeded to final action on a second technical amendment based on further comments received from the public in response to the NO_X SIP Call and the request for comments on inventory revisions as well as the May 14, 1999 technical amendment. The final NO_X SIP Call required that States submit the SIPs by September 30, 1999, and that the rules require the sources to implement the controls by May 1, 2003. The March 2, 2000, changes were also necessary to make the NO_X SIP Call inventory consistent with the inventory adopted when EPA granted section 126 petitions on December 17, 1999. The March 2, 2000, 2007 NO_X emission budget for the State of Indiana is 229,965 tons/season with a compliance supplement pool of 19,915 tons.

This revision did not address the issues remanded by the D.C. Circuit Court of Appeals on March 3, 2000. As discussed earlier, in this decision, the Court generally upheld the NO_X SIP Call. It did, however, vacate the standard for some states and portions of other states, and remanded two issues concerning a limited portion of the NO_X emission budgets. Based on this decision, EPA sent letters to the affected states' governors on April 11, 2000, to specify what portion of the budget needed to be met to achieve the reduction upheld by the Court. Consistent with the Court's opinion, these budgets, referred to as the ''Phase I NO_X budgets,'' reflect controls on electricity generating units subject to the acid rain program; large boilers and turbines; and cement kilns. For Indiana, the Phase I budget was 234,625 tons for each NO_X SIP Call ozone control period. The compliance supplement pool was not affected by the phased approach.

2. What Changes Did The State Request to the NO_X Budget and Are Those Changes Approvable?

The State submitted its draft rules and preliminary budget demonstration to the EPA for parallel processing on March 30, 2001. In the preliminary budget demonstration, the State took a slightly different approach than that laid out by EPA in the phased approach, and also requested several changes to the statewide budget. The resulting overall budget for the State, that EPA is proposing approval on in this action, is 233,633 tons. These changes also affected the portion of the budget that is being used to ensure that the appropriate reductions are being achieved from EGUs and large industrial boilers and turbines in the State, namely the trading budget. The State trading portion of the budget, in its submittal, is 57,059 tons.

In the budget demonstration, IDEM used the same inventories as the EPA for area, on-road mobile and non-road mobile categories. IDEM also used the inventories from the NO_X SIP Call as a starting point for its budget demonstration for EGUs and the non-EGU point sources.

IDEM then requested moving several units at the Indianapolis Power & Light Perry K facility identified by EPA in the EGU inventory to the non-EGU inventory based on those units meeting the definition in 326 IAC 10–4–2 for ''large affected units''. The 2007 projected uncontrolled emissions from these units were then multiplied by 40% (to account for 60% control as non-EGU large affected units) and added to the non-EGU portion of the budget.

In addition to the changes to the Perry K facility, IDEM determined that 19 units that EPA had characterized as large non-EGUs in fact have capacities of less than 250 mmBtu/hr. As a result, they do not meet either EPA's or IDEM's definition for units that need to be controlled. Therefore, IDEM requested and EPA is proposing for approval that these units be shifted from the large non-EGU portion of the inventory to the small non-EGU portion. More information on the inventory and these changes is available in the Docket.

IDEM also presented inventory information that units at Bethlehem Steel and Purdue University are larger than 250 mm/Btu. Since these units meet the definition for ''large affected units'', IDEM has requested that they be moved to that category and with controls assumed to be 60%. IDEM also noted two numerical errors in the SIP call inventory; one affecting a New Energy unit and the other affecting two units at SIGECO's Warrick Station. The State has submitted inventory information to support correcting these errors. We are proposing to approve these inventory corrections. More information on these changes is available in the Docket.

The following table shows how IDEM's proposed inventories differed from those used by EPA.

TABLE 4.—EPA AND IDEM INVENTORIES

Source category	EPA		IEDM	
	2007 Projected uncontrolled	2007 Budget	2007 Projected uncontrolled	2007 Budget
Point:				
EGUs	136,773	47,712	136,773	46,778
Non-EGUs	69,011	52,042	67,263	51,984
Area	29,070	29,070	29,070	29,070
On-road Mobile	79,307	79,307	79,307	79,307
Non-road Mobile	26,494	26,494	26,494	26,494
Total	340,655	234,625	338,907	233,633

EPA is proposing to approve the changes submitted by IDEM in its budget demonstration. Based on these changes, the State's budget would be 233,633 tons.

3. How Does Indiana Demonstrate That It Is Meeting the Budget?

To meet the overall budget, Indiana is relying on reductions from cement kilns of 30% (326 IAC 10–3) and reductions equivalent to 0.15 pounds of NO_X per million BTU heat input for EGUs and a 60% reduction from industrial boilers and turbines with maximum rated heat input greater than 250 mmBtu/hr. The reductions from EGUs and large industrial boilers and turbines will be achieved through the State's trading program (326 IAC 10–4). The State demonstrates that, based on these regulations and the changes that it requested to its 2007 NO_X budget, it is controlling facilities to the extent necessary to ensure the budget is being met. The following table shows that, through the implementation of controls on EGUs, large industrial boilers and turbines and cement kilns, the State projects, in its submitted materials, that it will meet its 2007 budget.

TABLE 5.—IDEM'S SUBMITTED PRELIMINARY BUDGET DEMONSTRATION

Source category	2007 Projected uncontrolled	2007 Budget	Reductions	Trading portion of budget
EGUs	136,773	46,778	89,995	45,952
Non-EGUs:				
Boilers > 250 mmBtu/hr	24,715	11,107	13,608	11,107
Controlled cement kilns	5,572	3,900	1,672	
Uncontrolled	36,976	36,977	0	
Area	29,070	29,070	0	
On-road Mobile	79,307	79,307	0	
Non-road Mobile	26,494	26,494	0	
Total	338,907	233,633	[a] 105,274	57,059

[a] Slight difference due to rounding.

One of the most significant numbers in this chart is the total trading budget since, through the trading program, this budget will ensure that the majority of emission reductions are being obtained. As shown below, Indiana included ''set-asides'' for new sources, equivalent to 5% of the EGU portion of the budget and 1% of the non-EGU portion until 2006, with 2% and 1% respectively, thereafter. The State also included an energy efficiency set aside of 1% from the non-EGU category. The concept of a set aside was discussed in NO_X SIP Call Rulemaking **Federal Register** actions. The State may establish set-asides where a portion of the trading budget is reserved for a special purpose. It is a tool to help States manage their budgets. The result is that the total trading budget is 57,059, including the set-asides, and 53,509 tons, when considering that excess emission reductions will be required from existing facilities to provide for the tonnage reduction to supply the set-asides with allowances. The following table illustrates the total Indiana budget, the trading portion and the set-asides.

TABLE 6.—SUMMARY OF INDIANA'S PHASE I NO_X BUDGET

[(tons/season) (as submitted in Draft)]

	EGU	Non-EGU	Area	On-road Mobile	Non-road Mobile	Total
2007 Projected Uncontrolled Inventory	136,773	67,263	29,070	79,307	26,494	338,907
2007 Budget	46,778	51,984	29,070	79,307	26,494	233,633
NO_X Trading Budget Portion	45,952	11,107				57,059
New Source Set-Aside	2,298	111				2,409
Energy Efficiency Set-Aside		1,141				1,141
Trading Budget minus Set-Asides	43,654	9,855				53,509

As explained in section I below, where we discuss changes that IDEM has made in response to comments, the emissions from ''blast furnace gas'' units have been removed from the trading program in the final adopted rule. Indiana did not intend to require reductions from these units, regardless of whether the units were included in the trading program or not. For a more thorough discussion, please see section I below. The resulting impact on the budget is as follows:

TABLE 7.—SUMMARY OF INDIANA'S PHASE I NO_X BUDGET

[(tons/season) (as revised in final adopted rule)]

	EGU	Non-EGU	Area	On-road Mobile	Non-road Mobile	Total
2007 Projected Uncontrolled Inventory	136,773	67,263	29,070	79,307	26,494	338,907
2007 Budget	46,778	51,984	29,070	79,307	26,494	233,633
NO_X Trading Budget Portion	45,952	8,008				53,960
New Source Set Aside	2,298	80				2,378
Energy Efficiency Set Aside		1,079				1,079
Trading Budget minus Set-Asides	43,654	6,849				50,503

Either of these approaches is acceptable to EPA and should ensure that the required reductions will occur in the State. EPA is proposing for approval the trading budget and set-asides as revised in the final adopted rule and reflected in Table 7 above.

D. How Is the State Addressing the Units Covered by Section 126 Petitions?

IDEM's proposed trading rule states that sources subject to 40 CFR part 97 will be subject to the Indiana trading rule as of May 1, 2004. Indiana's intention is that, as of that date, its rule will ensure that those sources are no longer significantly contributing to downwind nonattainment and thus the sources would no longer need to be subject to the section 126 requirements.

Under certain circumstances in which the section 126 sources in a State are no longer significantly contributing to downwind nonattainment, EPA believes it would be appropriate to propose to withdraw the section 126 findings of significant contribution and the accompanying requirements for such sources. Specifically, where a State's regulation is approved into the SIP and requires at least the same total quantity of reductions from the same group of sources as would have been controlled under the section 126 rule, we believe it would be appropriate to propose withdrawal of the section 126 requirements. EPA believes it would be reasonable to find that, as of the required date of compliance with the State regulations, such sources were no longer contributing significantly to downwind nonattainment for purposes of section 126.

Under Indiana's proposed regulations, all of the section 126 sources in the State would be covered by the State rule, and the rule requires those sources to reduce a quantity of emissions greater than the quantity of reductions required under the section 126 rule. Under these circumstances, and assuming that EPA's final analysis of Indiana's adopted rule confirms that Indiana has addressed the other identified deficiencies, EPA intends to propose to withdraw the section 126 findings and requirements for sources in the State as of May 1, 2004.

As Indiana noted in correspondence to EPA, an Indiana state rule cannot operate to withdraw the section 126 findings, which can only be modified through further rulemaking under the section 126 rule. However, the submitted draft of the Indiana regulations contains a provision (326 IAC 10–4–1(c)) that suggests otherwise. In light of EPA's intention to propose withdrawal of the section 126 findings and requirements for the State as of May 1, 2004, this provision in the draft submittal needs to be removed. EPA expressed its concerns with this issue to the State in a May 3, 2001, letter from John S. Seitz, Director of the Office of Air Quality Planning and Standards to Lori F. Kaplan, Commissioner, IDEM. Indiana has removed the language referenced above from the final adopted rule. Indiana's NO_X SIP rule could meet the requirements of the NO_X SIP Call without addressing the section 126 requirements. However, Indiana and EPA have worked together to help ensure that Indiana's SIP Call rule is written to allow for a smooth transition to phase out the section 126 requirements.

In order to make this transition, EPA identified several other issues that Indiana must address in its final submittal so that EPA can propose to amend the applicability of the section 126 rulemaking. We are highlighting those issues in today's proposal because Indiana has made changes to the submitted NO_X regulations in response to our comments.

First, if Indiana were to have sole responsibility for distributing the ''compliance supplement pool'' for the State, it must account for the section 126 sources in the State, as well as the sources covered only by the State program. The submitted draft of the Indiana rule would provide allowances from the compliance supplement pool for early reductions made in 2002 and 2003. EPA recommended that Indiana consider also providing allowances from the compliance supplement pool for early reductions made in 2001, to assure that the section 126 sources have a full two years to earn early reduction credits before their compliance deadline of 2003. Indiana's final adopted rule provides the opportunity for sources to request early reduction credits for reductions made in 2001.

Second, the sources covered by the section 126 rule should not be able to earn early reduction credits for any reductions made in 2003. The Indiana draft rule provides that reductions already required by federal law are not eligible for early reduction credits. EPA interprets this language as precluding sources covered by the section 126 rule from being granted compliance supplement pool allowances for reductions made in 2003. It is our understanding that Indiana agrees and the State is expected to confirm this in its final submittal.

The third change to Indiana's proposed NO_X rule addresses a concern that arises because the NO_X SIP Call covers the full State, but the section 126 rule covers only a portion of the State. The statewide compliance supplement pool is substantially larger than either the compliance supplement pool for Indiana under section 126 or, for that matter, the entire budget for the section 126 sources in Indiana. Thus, if the State were to distribute the full compliance supplement pool for

Indiana in a manner that allowed the section 126 sources to use all of those allowances in 2003, the section 126 sources might not need to make any emissions reductions in 2003. This would undercut the benefits of the section 126 requirements and make it difficult for EPA to justify a proposal to withdraw the section 126 program for Indiana.

Indiana's final adopted rule removes this concern by limiting when the compliance supplement pool allowances can be used. The rule limits the compliance supplement pool allowances that could be used in 2003 to no more than 2,454 allowances (i.e., the quantity equal to the compliance supplement pool under the section 126 rule). The remainder could be used beginning in 2004. This limitation on the number of compliance supplement pool allowances that can be used in 2003, equal to the quantity of compliance supplement pool allowances under the section 126 rule, is included in IDEM's final rule and is being proposed for approval in this action.

Fourth, the State may change the rule to enable it to distribute the compliance supplement pool allowances at any time after the early reductions have been verified, but no later than the date that the source claiming the early reduction credit becomes subject to the requirement to hold allowances. Thus, for section 126 sources making early reductions, the State could distribute compliance supplement pool allowances up to April 30, 2003. For all other sources making early reductions, the State can distribute compliance supplement pool allowances up to May 30, 2004. The State's final rule specifies that the issuance of allowances, under these provisions, shall be completed by March 31, 2003 for section 126 sources and March 31, 2004, for non-section 126 sources.

E. What Public Review Opportunities Did the State Provide?

Indiana has led a proactive outreach effort with affected stakeholders throughout this rulemaking process. IDEM began conducting discussion with stakeholders prior to the publication of the NO_X SIP Call. In April 1999, IDEM drafted language for a NO_X rulemaking, considering options to fulfill the NO_X SIP Call requirements and a NO_X emission limit of 0.25 lb/mmBtu for EGUs, and began to hold monthly public meetings to discuss issues and receive feedback on the approaches it was developing to respond to the NO_X SIP Call. Indiana began its formal rulemaking process for the regulations in response to the NO_X SIP Call on July 1, 2000, opening a comment period for 30 days. (In the State of Indiana, at least three written public comment periods are required for each rulemaking.) The State opened the second comment period on December 1, 2000. Indiana preliminarily adopted the draft rule on February 7, 2001.

The proposed rule was published in the Indiana **Federal Register** on April 1, 2001, providing a third written comment period. The comment period closed on April 23, 2001. Indiana received numerous comments from EPA and affected stakeholders. Since preliminary adoption, IDEM has held numerous formal and informal meetings to discuss those comments and their resolution with affected stakeholders and EPA. IDEM and EPA have discussed several changes to the rules, significant and otherwise, that will need to be made or are being made in response to comments. The significant issues that are expected to be addressed are discussed in this proposal. The State will also need to include responses to these comments in its final submittal to EPA.

Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html.*

F. What Guidance Did EPA Use To Evaluate Indiana's NO_X Control Program?

In evaluating Indiana's draft NO_X rules, EPA considered a number of documents related to the NO_X SIP Call, section 110 of the Clean Air Act and 40 CFR part 51. These documents include:

(1) ''Federal Implementation Plans to Reduce the Regional Transport of Ozone; Proposed Rule,'' published October 21, 1998. (63 FR 56393)

(2) ''Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule,'' published October 27, 1998. (63 FR 57356). This **Federal Register** is referred to as ''The NO_X SIP Call'' in today's action.

(3) ''Correction and Clarification to the Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone,'' published December 24, 1998 (63 FR 71220).

(4) EPA's '' NO_X SIP Call Checklist,'' (the checklist), issued on April 9, 1999. The checklist summarizes the requirements of the NO_X SIP Call set forth in 40 CFR 51.121 and 51.122.

(5) ''Development of Emission Budget Inventories for Regional Transport NO_X SIP Call'' issued by the EPA Office of Air Quality Planning and Standards May 1999 and technically-amended December 1999.

(6) Technical amendments to the NO_X SIP Call, published May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222).

(7) The section 126 findings and requirements as contained in the January 18, 2000, **Federal Register** (63 FR 2674).

(8) The April 11, 2000 letter from EPA Administrator Carol Browner to Indiana Governor Frank O'Bannon, regarding the phased approach to implement the issues upheld by the Court, based on the March 3, 2000, decision from the United States Court of Appeals for the District of Columbia Circuit regarding the NO_X SIP Call.

(9) ''Summary of EPA's Approach to the NO_X SIP Call in Light of the March 3rd Court Decision'' fact sheet issued April 11, 2000.

(10) EC/R, Inc., '' NO_X Control Technologies for the Cement Industry.'' Chapel Hill, NC. September 19, 2000. This report updates information in the ''Alternative Control Techniques Document- NO_X Emissions from Cement Manufacturing'' (EPA–453/R–94–004), which was the primary reference used in preparing the cement kiln portion of the proposed Federal Implementation Plan (FIP) rulemaking. The report includes updated information on uncontrolled NO_X emissions from cement kilns and on the current use, effectiveness and cost of NO_X controls.

(11) A May 3, 2001, letter from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Lori F. Kaplan, Commissioner, IDEM.

As noted in the EPA's NO_X SIP Call checklist, the key elements of an approvable submittal are: a budget demonstration; enforceable control measures; legal authority to implement and enforce the control measures; adopted control measure compliance dates and schedules; monitoring, recordkeeping, and emissions reporting; and elements that apply to states that choose to adopt an emissions trading rule in response to the NO_X SIP Call. The documents related to the NO_X SIP Call are available to the public on EPA's website at: *http://www.epa.gov/ttn/otag/sip/related.html.*

G. Does Indiana's Proposed NO_X Emissions Control Plan Meet All of the Federal NO_X SIP Call Requirements?

Based on EPA's review, Indiana's proposed plan meets all of the federal requirements, including the Phase I NO_X SIP Call requirements, with the exception of the deficiencies identified in this document. In addition, the State's final submittal will need to include responses to comments on the preliminarily adopted rule. Furthermore, Indiana must have addressed the deficiencies identified in this proposal, including revisions to the preliminary budget demonstration to support those changes where appropriate. Finally, Indiana must not significantly change the submitted rules from those being proposed for approval today, other than to address EPA comments or changes that are discussed in this **Federal Register** action. In addition, if Indiana does not correct these deficiencies, EPA is proposing to disapprove these rules, in the alternative.

Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html.*

H. What Deficiencies Are There in Indiana's Proposed NO_X Emissions Control Regulations, and Do Any of These Deficiencies Constitute an Approvability Issue?

EPA reviewed the State's proposed NO_X emissions control rules at 326 IAC 10–3 and 10–4 and offers the following comments on deficiencies found in the rules. Many of these comments are minor and should be readily correctable in the final rule adoption process. These deficiencies must be corrected before the EPA can give final approval on the Indiana NO_X rules. EPA is proposing disapproval, in the alternative, if the State does not correct these deficiencies.

1. The 25-Ton Exemptions

States may develop alternative 25-ton NO_X exemptions to the one included in the model rule (40 CFR part 96) provided they are based on permit restrictions that limit a unit's potential to emit during an ozone season to 25 tons or less. Indiana's proposed rule, 326 IAC 10–4, Nitrogen Oxides Budget Trading Program Section, includes in 10–4–1(b), the 25-ton exemption from the model rule and two additional exemptions. One of these alternatives relies on Continuous Emission Monitoring System (CEMS) data. In this exemption, units may use CEMS data to demonstrate that the unit is not emitting more than 25 tons during an ozone season. For this exemption to provide sufficient assurance that these units will not emit more than 25 tons per season, these units must still be required to monitor according to 40 CFR part 75, subpart H, even while they have the exemption. This requirement needs to be clarified in Indiana's rule.

The second alternative attempts to restrict the unit's usage of each fuel that it is authorized to burn (natural gas or fuel oil) such that the unit's potential NO_X mass emissions will not exceed 25 tons of NO_X during the ozone season. Indiana's intent in including this exemption appears to be to allow units which burn predominantly natural gas, and only a small amount of oil, to not have to use only the default emissions rate in 40 CFR 75.19, table 2, for oil when determining the 25-ton exemption. However, the provisions in Indiana's rule are unclear and would not result in limiting the unit's potential NO_X emissions to 25 tons or less. Indiana must either use the following language to correct this deficiency or use similar language which is as stringent and achieves similar and acceptable results. This language allows units the flexibility Indiana intended and also limits a unit's potential NO_X emissions to less than 25 tons:

326 IAC 10–4–1(b)(3)(B)(iii): Restrict the number of hours a unit may use each fuel that it is authorized to burn such that the unit's potential NO_X mass emissions will not exceed twenty-five (25) tons per ozone control period, calculated by dividing twenty-five (25) tons of potential NO_X mass emissions by the unit's maximum potential hourly NO_X mass emissions (DD), where the unit's maximum potential hourly NO_X mass emissions shall be calculated as follows:

(AA) Identify the percentage of hours in the ozone control period during which the unit intends to burn each type of fuel that is authorized under the fuel use restriction in clause (A).

(BB) For each fuel type identify the default NO_X emission rate in 40 CFR 75.19(c)(1)(ii), Table 2 for each type of fuel that the unit is allowed to burn under the fuel use restriction in clause (A).

(CC) For each fuel type multiply the default NO_X emission rate under subitem (BB) and the percentage of the unit's maximum rated hourly heat input for that fuel type identified under subitem (AA). The owner or operator of the unit may petition the department to use a lower value for the unit's maximum rated hourly heat input than the value as defined under section 2(24) of this rule. The department may approve the lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that the lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently;

(DD) Sum the products determined in (CC) for each fuel type.

In addition, when a unit receives a 25-ton exemption, the unit's emissions must be removed from the trading program budget to avoid double counting. EPA has concerns about how Indiana's submitted rule accounts for the emissions of the exempt units. Specifically, the provision at 326 IAC 10–4–9(a), which states that ''the total number of NO_X allowances shall be adjusted, as needed, to account for units exempted under section (1)(b) of this rule'' is not explicit enough to account for the emissions of units receiving the 25-ton exemption. IDEM needs to specify the mechanism that will be used to ensure that the emissions from these sources are removed from the trading budget.

There are many ways Indiana can account for the exempted units' emissions. If Indiana does not plan on allocating allowances to units which are exempt from the program based on the 25-ton exemption, then it must subtract the unit's potential tons of emissions from the trading budget. Alternatively, if Indiana chooses to allocate allowances to these exempt units, then immediately after EPA allocates allowances, IDEM's rule needs to provide that EPA should deduct from accounts the maximum number of tons of NO_X emissions the units have the potential to emit. The Authorized Account Representatives (AAR) for the units are required to ensure that enough allowances are in the units' accounts. EPA notes that Indiana has posted its final adopted NO_X regulation to its website, and this rule appears to address the EPA's concerns regarding Indiana's 25-ton exemptions.

2. Definition of ''Maximum Design Heat Input''

Indiana's rule changes the definition of ''maximum design heat input'' to, ''the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical characteristics of the unit *and the federally enforceable permit conditions limiting the heat input.''* This expansion of the term is unacceptable as it would exempt from the trading program units (both new and existing) that meet the definition of a large

electric generating unit or large non-electric generating unit under 40 CFR 51.121, which is based strictly on the physical characteristics of the unit.

Additionally, such a definition could result in load shifting from affected to non-affected units. If there is load shifting, the emissions from the affected units would decrease but there would be no net decrease in emissions because the emissions of the unaffected units that picked up the load would increase by a commensurate amount. This definition needs to be revised so that ''maximum design heat input'' is based solely on physical characteristics and not permitted limits. The State has made this change in its final adopted rule by removing the reference to permit limits.

3. Definition of ''NO_X Budget Trading Program''

Indiana's submitted draft rule allows trading between Section 126 and NO_X SIP call sources. Because under the NO_X SIP Call, States have the option of developing their own *intrastate* trading programs, the State must add language to the definition of ''NO_X budget trading program'' to indicate that trading may only occur between sources that are participating in an EPA administered trading program. IDEM has added this language to its final adopted rule.

4. Definition of ''Percent Monitoring Data Availability''

Indiana's submitted draft rule includes a definition of ''percent monitoring data availability''. The definition is not correct. (EPA notes that the definition of ''percent monitoring data availability'' in part 97 is also incorrect, and intends to take action to correct the definition.) Under Indiana's definition, a source would determine the percent availability based on the assumption that it is operating the entire ozone season. With this definition, a unit could fail to meet the 90% monitoring data availability requirement even if its monitors were available 90% of the time it operated. Thus, Indiana must revise the definition such that the unit's total operating hours constitute the denominator of the equation instead of the total potential operating hours in the season. IDEM has made this revision in the final adopted rule.

5. Monitoring Requirements

Indiana's 326 IAC 10–4–12(c) does not require units to comply with the rule's monitoring and reporting requirements until May 31, 2004 unless they are applying for early reduction credits. However, the model rule requires compliance with the monitoring and reporting requirements one year before the program begins (*i.e.,* May 31, 2003). The additional year of monitoring is for the benefit of the sources. It allows them to ensure that their monitoring and reporting systems are working and accurate before the program begins, thus avoiding unnecessary penalties once the trading program has begun. Additionally, Indiana may want to use the 2003 data for determining allocations under ''326 IAC 10–4–9 NO_X allowance allocations.'' The date for required monitoring must be May 31, 2003 at the latest. However, EPA has recommended to Indiana that monitoring begin May 1, 2003, so that when Indiana updates its allocations, it has a full year of data to use. Indiana has revised this date in its final rule to require monitoring to begin May 1, 2003.

6. Indiana's New Source and Energy Efficiency and Renewable Energy ''Set-Asides''

Indiana may include the new source, and energy efficiency and renewable energy ''set-asides'' outlined in 326 IAC 10–4–9(e). However, the allowances reserved for these set-asides must come from the trading program budget. While EPA believes this was Indiana's intent, Indiana should clarify that the allowances reserved for these set-asides are within the bounds of its trading program budget. EPA can only approve a rule where the set-asides come from the trading program budget. IDEM has clarified this issue in its final adopted rule.

7. Penalties

The following language in 40 CFR 96.54(d)(3)(i) must be added to the rule:

> For purposes of determining the number of days of violation, if a NO_X Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation, unless the owners and operators demonstrate that a lesser number of days should be considered.

The language stipulates the maximum number of days in which a violation could be sought. However, EPA notes that if an agency were to seek penalties for a violation, it has the discretion to seek penalties for fewer days of violation. Removing this language would limit both the State and EPA's ability to seek violation for the maximum number of days which would be a violation of the Clean Air Act, as interpreted in case law. IDEM has added this language to its final adopted rules.

8. 326 IAC 10–3 Nitrogen Oxide Reduction Program for Specific Source Categories

326 IAC 10–3, as submitted by Indiana, requires emission reductions at cement kilns. Model rules for cement kilns were not a part of the NO_X SIP Call. For this reason, the State used the proposed October 28, 1998, NO_X Federal Implementation Plan (FIP) as a starting point in developing its rules. Since much of the analysis and background materials for the proposed FIP are germane to cement kilns, as noted below, these materials were also used to provide information to review the State's submittal.

326 IAC 10–3–1 Applicability. Indiana's submitted rules contain a provision, 326 IAC 326 10–3–1(b), that would exempt cement kilns covered by the rule from the Clark and Floyd NO_X Reasonably Available Control Technology (RACT) rules at 326 IAC 10–1. EPA commented to Indiana that 326 IAC 10–3 can only supercede the Clark and Floyd NO_X RACT rules at 326 IAC 10–1 if the State either demonstrates that 326 IAC 10–3 is as stringent as 326 IAC 10–1 or provides photochemical dispersion modeling that shows the area remains in attainment without the RACT controls.

In response to EPA's comment, in the final adopted rule, Indiana significantly narrowed the scope of the provision and argued that for the group of cement kilns affected, 326 IAC 10–3 is as stringent as 326 IAC 10–1. Indiana narrowed the scope of the provision such that only cement kiln units operating low-NO_X burners would be exempt. Furthermore, the final adopted rule states that those units are only exempt from the emission limit in 326 IAC 10–1 and only during the ozone control period.

Indiana's argument is that based on the expected emission limits achievable for low-NO_X burners installed on cement kilns, those kiln's emissions under 326 IAC 10–3 are expected to be less than the emission limits required for those kilns under 326 IAC 10–1. The following table summarizes the emission limits in 326 IAC 10–1 compared to the expected emissions from a cement kiln with low-NO_X burners installed.

TABLE 8.—LOW-NO_X BURNER CEMENT KILN STRINGENCY

Cement Kiln Type	326 IAC 10–1 Pounds per ton of clinker		326 IAC 10–3 Pounds per ton of clinker
	30 day limit	Daily limit	Expected emissions averaged over 30 days
preheater kiln	4.4	5.9	3.8
long dry kiln	6.0	10.8	5.1

As discussed in the proposed October 28, 1998, NO_X FIP, EPA expects that low-NO_X burners can achieve a NO_X emission rate of 3.8 pounds per ton for any preheater kiln, and 5.1 pounds per ton of clinker for any long dry kiln averaged over 30 days. The RACT rule requires 4.4 and 6.0 pounds per ton of clinker produced on a thirty-day average basis, respectively, and 5.9 and 10.8 pounds per ton of clinker produced on a daily basis, respectively.

On a thirty-day rolling average basis, low-NO_X burners are expected to have lower emissions than the current requirement in the RACT rule. The expected emission rate is also 64% of the daily RACT requirement for preheater kilns and 47% of the daily RACT requirement for long dry kilns. Low-NO_X burners are a type of technology that, once installed, can not be bypassed or taken off-line unless the entire kiln is shut down. 326 IAC 10–3 requires that the low-NO_X burners be installed, operated and maintained. Keeping these burners properly maintained should ensure that they provide a relatively constant effect on NO_X emissions. Hence, EPA believes that the significantly lower expected emissions from having the low-NO_X burners installed should ensure that for cement kilns in Clark and Floyd Counties with low-NO_X burners installed 326 IAC 10–3 is as stringent as the applicable emission limits in 326 IAC 10–1. The State is also expected to submit supporting documentation with its final plan submittal.

326 IAC 10–3–3 Emission Limits. IDEM included an emission limit option at subdivision(a)(2), in which a unit could meet emission limits that were determined to be the equivalent of 30% reduction from the industry-wide average in the FIP proposed October 21, 1998 (63 FR 56393). The proposed FIP and the supporting documents have been used as tools for evaluating cement kiln provisions in State rules. While EPA agrees that the emission limit option can be provided, it was not proposed as part of the FIP and certain elements need to be incorporated into the State's rule to make it viable. The preamble to the FIP listed these emission limits to be based on a 30 day average. The State has asserted that the NO_X SIP Call is for the purposes of addressing regional transport on a seasonal basis. EPA has reconsidered the averaging time for these limits and determined that a seasonal average can be appropriate as long as the State adds compliance language to indicate that if the limit is exceeded at any time in the season, it constitutes a separate violation for every day in the season unless the unit can demonstrate otherwise. IDEM's final rule includes this language.

Under 326 IAC 10–3–3 (a)(3), IDEM has an emission limit option which allows a reduction equivalent to 30% subject to IDEM and EPA approval. EPA agrees that again, this is a reasonable approach to achieving the emissions decreases intended by the NO_X SIP Call. The approach in the submitted draft rule is a variation of the industry-wide average emissions rate provision described in the proposed FIP. It uses actual, measured uncontrolled emissions to set the baseline rate and then requires a 30 percent reduction from that baseline.

While this approach provides flexibility to sources and may reduce costs, we are concerned that the site-specific emissions baseline needs to be carefully determined. Due to the large variability of emissions at cement kilns cited in comments we received on the FIP proposal, and confirmed in the September 19, 2000, EC/R Incorporated report referenced above, we believe that short-term emissions testing is not appropriate for establishing a baseline or a seasonal emission average for this compliance option. An unduly high emissions reading with a short-term test could lead to a minimal emissions reduction requirement. Conversely, an unduly low emissions reading could lead to an unrealistically high emissions reduction requirement. For this reason, Indiana must require sources to establish baseline emissions with a CEMS or require in the rule that the 30% reduction be measured from industry wide average—the resulting emission limits being those required in 326 IAC 10–3–3(a)(2). The State has followed the second approach in its final adopted rule.

326 IAC 10–3–4 Monitoring and Testing Requirements. As discussed above, EPA believes IDEM's additional compliance options at 326 IAC 10–3–3 (a)(2)and (a)(3) to be reasonable, provided reliable seasonal emission averages can be determined. If the cement kiln is complying through subdivision (a)(2) or (a)(3), it needs to determine the seasonal average using an agreed-upon reliable mechanism such as CEMS data. This is due to the variability in NO_X emissions from cement kilns, as referenced above. In discussions with the State, it has agreed that CEMS is the only viable option for compliance with these provisions and IDEM has included the requirement for CEMS, if the unit is complying with one of these emission limit options, as part of its final adopted rule.

326 IAC 10–3–5 Record Keeping and Reporting. Sources that are complying by meeting the emission limits on a pound of NO_X per ton of clinker basis would need to keep daily cement kiln production records to ensure that the emission limits are complied with on at least a 30-day rolling average. Alternatively, if IDEM adds language to clarify that exceeding the emission limit at any time during the ozone control period constitutes a violation for every day in the period, it does not need to make this change. IDEM has included language in the final adopted rule that clarifies the violation issue and requires sources to report the daily cement kiln production records.

9. General SIP Requirements

Indiana's draft submittal did not fully address some of the general requirements required under the NO_X SIP Call for a SIP revision. These requirements must be addressed before EPA can take a final rulemaking action. The requirements include: that resources are available to implement the

program, that the State address the data availability requirements of 40 CFR 51.116, how the SIP provides for compliance with the annual and trienniel reporting requirements set forth in 40 CFR 51.122, that the State has the legal authority to carry out the SIP revision, and information that the general testing, inspection, enforcement and complaint mechanisms required under 40 CFR 51.121(f)(1) and 40 CFR 51.212 are in place to support implementation of this rule.

I. What Additional Significant Changes Has IDEM Incorporated in Response to Comments?

IDEM received comments on several aspects of its preliminarily adopted rule. EPA understands that several changes have been made to the final adopted rule to respond to these comments, as discussed above. In addition, EPA also sees the following changes as being reasonable for the reasons discussed below. Indiana posted final adopted rules on its website on June 14, 2001. *See http://www.state.in.us/idem/oam/standard/Sip/index.html.*

1. Blast Furnace Gas Units

The final adopted rule would include the regulating of blast furnace gas units under 326 IAC 10–3, as opposed to 326 IAC 10–4, as originally proposed. Since these units have a relatively low emission rate on a lb/mmBtu basis, IDEM was not anticipating requiring them to make reductions under the trading program. EPA generally requires, under the NO_X SIP Call, that if any type of unit in a category is regulated by the NO_X SIP Call trading program, the entire category must be covered by the trading program. This prevents production from getting shifted out of the trading program while it appears that units within the trading program have reduced their seasonal NO_X emissions. However, since the entire blast furnace gas boiler category is not included in the trading program, there is no possibility of shifting production of steel within the State from a unit covered by the trading program to one outside the program. Indiana has also argued that, because the availability of blast furnace gas is limited based on steel production, the shifting of production out of the trading program is prohibitive.

Since IDEM did not envision these units contributing to the reductions required in the State, removing them from the trading program will have no net effect on the amount of total reductions achieved. The most significant effect is that the emissions are being removed from the trading portion of the overall budget and hence the trading portion of the budget has been revised in the final adopted rule.

In IDEM's final adopted rule, it removed the blast furnace gas boilers' uncontrolled 2007 emissions from the trading budget. IDEM then developed an emission factor for the sources based on those uncontrolled emissions and 2007 projected heat inputs from the units. Since these units are not contributing to the required reductions, this emission factor was established to effectively limit the blast furnace gas units emissions assuming the growth factors in the NO_X SIP Call. Since this modification does not impact the reductions being achieved under IDEM's proposed rule, EPA proposes to approve this rule modification.

2. Definition of ''Repowered Natural Gas-Fired Units''

IDEM's final adopted rule adds new language to define repowered natural gas-fired units''. This term is defined for the purpose of determining the allowance allocations for these units. Since the addition of this term only affects the way that allowances are allocated, this rule modification also appears acceptable.

3. Utilization Correction for New Units

IDEM's submitted draft rules would have required an additional deduction of allowances from new sources. The deduction would have been to account for actual utilization of the unit as opposed to the projected utilization. This interpretation was more stringent than necessary as it could potentially permanently remove NO_X allowances from the trading program for emissions that had not occurred. The NO_X SIP Call model rule requires a similar correction based on actual utilization but intends for the excess allowances to be returned to the set aside instead of completely removing them from the trading program. The State's final adopted rule takes a slightly different approach. It requires any allowances remaining in a new NO_X budget unit's account at the end of each season to be returned to the new source set aside. Although this approach is different than used in the model trading rule, it should ensure the integrity of the trading program and that the NO_X budget is being met.

4. Centralized Recordkeeping

IDEM's final adopted rules allow recordkeeping at a central location. EPA discussed these recordkeeping requirements at length with the State. EPA was only able to agree to the provisions, under certain circumstances, for sources not participating in the trading program. The State choose to retain the provisions throughout the rule (since it had determined that the centralized recordkeeping could be acceptable to the State). However, the State also added language to clarify that the central recordkeeping provisions do not override or alter any of the record retention requirements for a source under 40 CFR part 75. (Since the recordkeeping requirements in 40 CFR part 75 need to be required for federal SIP approval.)

These recordkeeping requirements are included in three parts of the final adopted rule and apply to: (1) Units burning only natural gas or fuel oil during the ozone control period with potential NO_X mass emissions for the ozone control period twenty-five (25) tons or less; (2) Retired units; and (3) NO_X Budget Units covered by the trading program. As mentioned above, to the extent these units are required to comply with 40 CFR part 75, these centralized recordkeeping provisions do not alter those requirements. For example, each unit under the trading program must, as required by part 75, maintain its records on-site. Furthermore, any unit with an exemption based on part 75 monitoring, demonstrating 25 tons or less of emissions, must maintain records on-site and in accordance with part 75. Since the State has been explicit in its rule that the 40 CFR part 75 requirements stay in place, the centralized recordkeeping requirements appear acceptable.

5. Allocation Methodology

The final adopted rule incorporates several changes to the State's NO_X allowance allocation methodology. The State has provided more concise definitions of the projects that qualify for allowances from the energy efficiency and renewable energy set aside, for example. The State has also replaced the allocation methodology for existing non-EGUs with a table specifying the allowances that will be allocated to each non-EGU. EPA has reviewed the revisions to the allocation methodologies and determined that they do not adversely affect the State's demonstration that it meets the NO_X SIP Call budget. The changes only affect how the allowances will be allocated and do not affect the number of allowances that will be allocated. For these reasons, these changes appear acceptable.

III. Proposed Action

A. What Action Is EPA Proposing Today?

EPA proposes to approve Indiana's submitted plan as a revision to the SIP to fulfill the Phase I NO_X SIP Call requirements, if Indiana corrects the deficiencies discussed in this document and does not make additional significant revisions not discussed in this document. The submitted plan includes a budget demonstration, supporting materials and the NO_X SIP rules for cement kilns (326 IAC 10–3) and the trading program for EGUs, large non-EGU boilers and turbines and opt-in sources (326 IAC 10–4). The rules achieve 30% reductions from cement kilns, the equivalent of a 0.15 lb/mmBtu limit on EGUs and 60% reductions from large non-EGU boilers and turbines. In the alternative, if Indiana does not address the identified deficiencies, EPA is proposing to disapprove this plan.

Indiana adopted final rules on June 6, 2001. EPA has not concluded its analysis of these final adopted rules and the associated plan. However, based on our preliminary review and conversations with the State, we expect that the rules will address the deficiencies identified in this proposal. These final adopted rules are available on Indiana's website at: *http://www.state.in.us/idem/oam/standard/Sip/index.html.*

B. What Happens if Indiana Does Not Address the Deficiencies Identified or Has Significantly Changed the Regulations During the Final Adoption Process?

Since the EPA is proposing to rulemake on the Indiana NO_X plan under parallel processing procedures, it notes the possibility exists that Indiana will submit a final version of the plan which differs significantly from the version of the plan reviewed in this proposed rulemaking.

If the State makes significant changes to the plan as a result of its public comment and adoption process and based on further deliberation and/or on comments other than based on the discussion and deficiencies noted above, the EPA will need to re-evaluate the rules through a new proposed rulemaking. If, on the other hand, the State only makes changes in the plan to correct the deficiencies identified in this proposed rule consistent with the analysis presented here, the EPA will proceed to final approval rulemaking after considering public comments received in writing during the public comment period on this proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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.*). 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 (Public Law 104–4). This proposed 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 government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve State rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. 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. 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 oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 25, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI103–7333; FRL–7005–3]

Approval and Promulgation of Implementation Plans; Wisconsin; Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On December 22, 2000, the Wisconsin Department of Natural Resources submitted a revision to its State Implementation Plan for attainment of the one-hour ozone standard. The submittal includes, among other things, air quality modeling, rules to reduce emissions of ozone forming pollutants (i.e., nitrogen oxides (NO_X) and volatile organic compounds (VOC)), and a plan demonstrating how progress in emission reductions will be achieved through the area's attainment date of 2007 (i.e., Rate of Progress Plan (ROP)). In this action, EPA is proposing to approve the attainment demonstration, the NO_X