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Dated: May 30, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2006-0467; FRL-8179-8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 3, 2005, Missouri submitted a plan to control emissions of nitrogen oxides (NO_x) for the eastern one-third of the state. The plan consists of three rules, a budget demonstration, and supporting documentation. The plan will contribute to attainment and maintenance of the 8-hour ozone standard in several downwind areas. Missouri's plan, which focuses on large electric generating units, large industrial boilers, large stationary internal combustion engines, and large cement kilns, was developed to meet the requirements of EPA's April 21, 2004, Phase II NO_x State Implementation Plan (SIP) Call. EPA is proposing to approve the plan as a SIP revision fulfilling the NO_x SIP Call requirements. The initial period for compliance under the plan will begin in 2007, and the emission monitoring and reporting requirements for sources holding allowances under the plan began on May 1, 2006.

DATES: Comments must be received on or before July 5, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2006-0467, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: jay.michael@epa.gov.
3. Mail: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to: Michael Jay, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2006-0467. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an

appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Michael Jay at (913) 551-7460 or by e-mail at jay.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. Background

A. What Is EPA's NO_x SIP Call?

By notice dated October 27, 1998 (63 FR 57356), we took final action to prohibit specified amounts of emissions of one of the main precursors of groundlevel ozone, NO_x, in order to reduce ozone transport across state boundaries in the eastern half of the United States. Based on extensive air quality modeling and analyses, we found that sources in 22 states and the District of Columbia (DC) emit NO_x in amounts that significantly contribute to nonattainment of the 1-hour and 8-hour ozone national ambient air quality standards (NAAQS) in downwind states. We set forth requirements for each of the affected upwind states to submit SIP revisions prohibiting those amounts of NO_x emissions during the

five-month period from May 1 through September 30 which significantly contribute to downwind air quality problems. We established statewide NO_x emissions budgets for the affected states. The budgets were calculated by assuming the emissions reductions that would be achieved by applying available, highly cost-effective controls to source categories of NO_x, *i.e.*, the amounts of reductions determined by EPA for large, fossil-fuel-fired electric generating units (EGUs), large, fossil-fuel-fired industrial boilers, combustion turbines, and combined cycle systems (non-EGUs), large stationary internal combustion (IC) engines, and cement kilns. States have the flexibility to adopt the appropriate mix of controls for their state to meet the NO_x emissions reductions requirements of the NO_x SIP Call. A number of parties, including certain states as well as industry and labor groups, challenged our NO_x SIP Call rule.

B. What Was Our Response to Court Decisions on the NO_x SIP Call That Affected Missouri?

On March 3, 2000, the Court of Appeals for the District of Columbia Circuit issued its decision on the NO_x SIP Call, ruling in our favor on the issues that affected the rulemaking as a whole, but ruling against us on several issues. *Michigan v. EPA*, 213 F.3d 663 (DC Cir. 2000). One of the adverse rulings affected our original decision to include the entire state of Missouri in the NO_x SIP Call. Specifically, the Court remanded and vacated the inclusion of Missouri in light of the Ozone Transport Assessment Group (OTAG) conclusions that emissions from the coarse grid portions of the modeling did not merit controls. Because the NO_x SIP Call was vacated with respect to Missouri, we advised Missouri that it need not submit a NO_x SIP Call revision until the remanded issue was addressed in a future rulemaking.

In response to the Court's decision that vacated our inclusion of the entire state of Missouri, we issued the February 22, 2002, proposed rule to include only fine grid parts of Missouri in the NO_x SIP Call. We explained that the Court in *Michigan* did not call into question our "proposition that the fine grid portion of each State should be considered to make a significant contribution downwind." (67 FR 8413) We further explained that "because of difficulties and uncertainties with accurately dividing emissions between fine and coarse grid of individual counties for the purpose of setting overall NO_x emissions budgets, we believe that the calculation of the

emissions budgets should be based on all counties which are wholly contained within the fine grid." (67 FR 8415)

On April 21, 2004, we finalized our responses to the Court's decision in a final rulemaking, "Interstate Ozone Transport: Response to Court Decisions on the NO_x SIP Call, NO_x SIP Call Technical Amendments, and Section 126 Rules," also referred to as the "Phase II of the NO_x SIP Call" (69 FR 21604). This rulemaking made a number of revisions to the 1998 rule. Most relevant to this proposal, it finalized our earlier proposal to include the fine grid portions of Missouri as contributing significantly to downwind nonattainment. Accordingly, consistent with the Court's finding in *Michigan*, the NO_x emissions budget was revised to include only the fine grid portion of the state, which constitutes approximately the eastern one-third of Missouri. The counties that are included in the calculation of the revised budget are listed in Table 1. The SIP due date was one year from the Phase II rulemaking. The requirement for compliance with the NO_x SIP Call is May 1, 2007.

TABLE 1.—FINE GRID COUNTIES IN MISSOURI

Bollinger Co.
Butler Co.
Cape Girardeau Co.
Carter Co.
Clark Co.
Crawford Co.
Dent Co.
Dunklin Co.
Franklin Co.
Gasconade Co.
Iron Co.
Jefferson Co.
Lewis Co.
Lincoln Co.
Madison Co.
Marion Co.
Mississippi Co.
Montgomery Co.
New Madrid Co.
Oregon Co.
Pemiscot Co.
Perry Co.
Pike Co.
Ralls Co.
Reynolds Co.
Ripley Co.
St. Charles Co.
St. Genevieve Co.
St. Francois Co.
St. Louis Co.
St. Louis City
Scott Co.
Shannon Co.
Stoddard Co.
Warren Co.
Washington Co.
Wayne Co.

C. What Requirements Must Missouri Meet?

The NO_x SIP Call requires that states revise their SIPs to assure that sources in the state reduce their NO_x emissions sufficiently to eliminate the amounts of NO_x emissions that contribute significantly to ozone nonattainment, or that interfere with maintenance, downwind. After prohibiting these significant contributions of NO_x, the remaining amounts emitted by sources in the state will not "significantly contribute to nonattainment, or interfere with maintenance by," a downwind state under Clean Air Act (CAA) section 110(a)(2)(D)(i)(I), as determined under the NO_x SIP Call. To determine the "significant amount", we projected the total amount of NO_x emissions that large EGUs, large non-EGUs, large IC engines, and cement kilns in each covered state would emit, in light of expected growth, in 2007 taking into account other measures required under the CAA. We then projected the total amount of NO_x emissions that each of those states would emit in 2007 if each such state applied recommended highly cost-effective measures to these source categories. The difference between the two projections represents the "significant amount" of NO_x emissions that the State's SIP must prohibit under the NO_x SIP Call.¹ Missouri must demonstrate that its SIP includes sufficient measures to eliminate those emissions. The total amount of NO_x emissions from all NO_x sources remaining after the state prohibits the significant amount represents the emissions budget for the state.

The NO_x SIP Call provided states the flexibility to decide which source categories to regulate in order to meet the emissions budget. In order to provide assistance to the states, we suggested imposing a variety of control strategies that provide for a highly cost effective means for states to meet their NO_x emissions budgets. These strategies include imposing NO_x emissions caps and providing for an allowance trading program for large EGUs and large non-EGUs, as well as emission reduction requirements for cement kilns and large IC engines. EPA explained that, in order for a state to participate in the EPA-administered trading program, the state rule would have to include at least the "core" group of sources specified in the model trading rule, *i.e.*, large EGUs and

¹ For the fine grid portion of Missouri, the difference for large non-EGUs between projected emissions without highly cost effective reductions and projected emissions with highly cost effective reductions (as proposed in this action) is 88 tons (*i.e.*, 147 tons – 59 tons).

large non-EGUs. While a state could develop a trading program that did not include the core applicability provisions of the model trading rule, EPA would not administer such a trading program for the state. See 63 FR 57461.

D. What Is EPA's NO_x Budget Trading Program?

EPA's model NO_x budget trading rule for SIPs, 40 CFR Part 96, Subparts A through I, sets forth a NO_x allowance trading program for large EGUs and large non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading as a way to achieve the required emission reductions. The October 27, 1998, **Federal Register** document contains a full description of the EPA's model NO_x budget trading program (See 63 FR 57514–57538 and 40 CFR part 96, subparts A through I). In general, allowance trading uses market forces to reduce the overall cost of compliance for pollution sources in the program, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget trading program, commonly referred to as a “cap and trade” program. A cap and trade program first sets an aggregate cap, or maximum limit, on emissions for all covered sources for a specified control period. Sources covered by the program then receive authorizations to emit in the form of emission allowances, with the total amount of allowances limited by the cap. Each source can design its own compliance strategy to meet the overall reduction requirement, including sale or purchase of allowances, installation of pollution controls, or implementation of efficiency measures, among other options. Individual control requirements are not specified under a cap and trade program, but each emissions source must surrender allowances equal to its actual emissions in order to comply. Sources must also completely and accurately measure and report all emissions in a timely manner to guarantee that the overall cap is not exceeded.

E. How Does the NO_x SIP Call Rule Relate to the Existing Statewide NO_x Rule?

The current statewide NO_x rule, as amended in the SIP on September 19, 2005 (70 FR 54840), is designed to achieve emissions reductions to improve the air quality in the St. Louis ozone nonattainment area. This rule requires emissions reductions in the eastern one-third of the state and lesser reductions in the remainder of the state

for large EGUs. While we approved this rule because it helped address the ozone nonattainment issue in St. Louis, we did not find that this rule addressed the significant transport of NO_x to other areas that we have identified in the NO_x SIP Call. The SIP-approved statewide NO_x rule achieves less emissions reductions and overall is less stringent than the requirements of the NO_x SIP Call. The additional rules and budget demonstration adopted by Missouri and being proposed for EPA approval today as a revision to the SIP are necessary to meet the additional requirements set forth by the NO_x SIP Call.

F. How Does the NO_x SIP Call Rule Relate to the Clean Air Interstate Rule?

Like the NO_x SIP Call, the Clean Air Interstate Rule (CAIR) rulemaking is based on the “good neighbor” provision of CAA 110(a)(2)(D), which requires states to develop SIP provisions assuring that emissions from their sources do not contribute significantly to downwind nonattainment, or interfere with maintenance, of the NAAQS (70 FR 25162). However, this rulemaking focuses exclusively on interstate transport of NO_x and its impact on downwind ozone nonattainment and addresses only NO_x SIP Call requirements. Also, the NO_x SIP Call only affects those counties lying in the eastern one-third of the state that are listed in Table 1. In contrast, the CAIR regulates NO_x and sulfur dioxide (SO₂), as precursors of PM_{2.5}, in addition to regulating NO_x as a precursor of ozone, and affects the entire state of Missouri. Due to the persistent nature of PM_{2.5} pollution throughout the entire year, the CAIR also differs from the NO_x SIP Call in that it contains an annual control period for NO_x and SO₂ in addition to an ozone season control period for NO_x. The rules also contain different compliance dates. For Missouri, the NO_x SIP Call compliance date is May 1, 2007, and for CAIR the first compliance date is January 1, 2009, for the NO_x ozone season program requirements, and January 1, 2010, for the CAIR SO₂ annual program requirements. It should also be noted that the CAIR NO_x ozone season trading program, while similar to the NO_x SIP Call trading program, is different and that Missouri would need to adopt the CAIR provisions to participate in that program.

II. Summary of State Submittal

A. When Did Missouri Develop and Submit the NO_x Emission Control Plan to EPA?

In response to the Federal NO_x SIP Call Rulemaking in October 1998, the Missouri Department of Natural Resources (MDNR) began the rulemaking process by drafting rules to meet the NO_x SIP Call reduction requirements. The MDNR subsequently abandoned its 18-month state rulemaking process when it was notified by EPA that, as a result of the *Michigan* decision, the state was not required to submit a SIP. The MDNR had to restart this process in April 2004 when the Phase II rule was published. The Missouri Air Conservation Commission adopted three rules and a NO_x budget demonstration on May 26, 2005, and June 30, 2005, respectively, after considering comments at public hearing. The rules were published in the state rules publication on October 13, 2005, and became effective on October 30, 2005.

The MDNR submitted the three separate rules, the budget demonstration and supporting documentation to EPA as a SIP package on August 2, 2005. A complete SIP package, with the necessary documentation, was submitted to EPA on November 3, 2005. On November 18, 2005, EPA sent a letter to MDNR deeming the Missouri SIP submittal technically and administratively complete.

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

The main components of Missouri's plan include three NO_x rules and a budget demonstration with supporting materials. The rules include: 10 CSR 10–6.360, pertaining to large EGUs and large fossil-fuel-fired industrial boilers (industrial boilers), 10 CSR 10–6.380 for cement kilns, and 10 CSR 10–6.390 for large stationary internal combustion engines. The purpose of these rules is to prohibit NO_x emissions as identified in the NO_x SIP Call that significantly contribute to downwind ozone nonattainment. In the NO_x SIP Call the required emissions reductions were determined based on the implementation of available, highly cost-effective controls for selected source categories. Therefore, Missouri has developed and adopted three rules generally covering the source categories (*i.e.*, large EGUs, large industrial boilers, cement kilns, and large stationary IC engines) for which EPA found that cost-

effective controls were available.² EPA has reviewed the three rules and has found that, in light of the discussion below concerning the applicability provisions of Missouri's trading rule, Missouri's rules will achieve the emission reduction requirements of the NO_x SIP Call and thus eliminate Missouri's significant contribution to downwind 8-hour ozone nonattainment. A more detailed description of each rule follows under II(C). The purpose of the budget demonstration is to provide an accounting mechanism for ensuring that Missouri has adopted control measures that prohibit the significant amounts of NO_x emissions targeted by CAA section 110(a)(2)(D)(i)(I). A more detailed discussion of the demonstration is provided below under II(D). As part of the supporting materials to the budget demonstration, Missouri also provided baseline test data from the cement kiln industry in support of its cement kiln rule.

C. What Do the Rules Require?

1. What Are the Requirements of the EGU and Non-EGU Rule?

Missouri adopted 10 CSR 10–6.360 “Control of NO_x Emissions from Electric Generating Units and Non-Electric Generating Boilers.” The rule effectively adopts the essential elements of EPA's NO_x Budget Trading model rule set forth in the October 1998 **Federal Register** document and described in I(D) above for applicable sources found in the eastern one-third of the state covered by the NO_x SIP Call. The Missouri rule affects large EGUs (in general, fossil-fuel fired boilers, combustion turbines, and combined cycle systems that serve a generator with a nameplate capacity greater than 25 megawatts (MWe) producing electricity for sale) and large industrial boilers (generally, industrial fossil-fuel fired boilers with a maximum design heat input greater than 250 million British thermal units per hour (mmBtu/hr)).³

² Although in the NO_x SIP Call, EPA found generally that highly cost effective reductions were achievable at large industrial boilers, combustion turbines, and combined cycle systems, the fine grid portion of Missouri does not include existing large combustion turbines and combined cycle systems. The language of the applicability provisions for non-EGUs in Missouri's trading rule expressly covers only large non-EGUs that are industrial boilers.

³ It should be noted that EPA interprets “nameplate capacity” to be the amount, specified by the manufacturer of the generator, as of initial installation and interprets “maximum design heat input” to be the amount, specified by the manufacturer of the unit, as of initial installation based on the physical design and physical characteristics of the equipment. Consequently, nameplate capacity and maximum design heat

The emissions cap on large EGUs for the eastern one-third of Missouri, as described in the Phase II notice, is set at 13,400 tons per ozone season, and was based on a baseline heat input (mmBtu/hr) and emissions rate of 0.15 NO_x lbs/mmBtu. The EGU emissions budget is equivalent to the number of allowances that the state has authority to distribute. One percent of this budget, 134 tons, has been included in an “energy efficiency and renewable generation projects set-aside.” The purpose of this set-aside is to provide an incentive to save or generate electricity through the implementation of projects that reduce the consumption of fossil-fuel. The rule contains a list of large EGUs and the number of remaining allowances that will be provided for each unit during the control periods beginning in the year 2007.

The level of reduction for large industrial boilers was based on emissions decreases from uncontrolled levels. In accordance with the NO_x SIP Call, Missouri based the number of NO_x allowances for each unit on a 60 percent reduction from each unit's estimated 2007 levels of emissions, which were adjusted for projected growth for large industrial boilers. Missouri identified three existing units in the eastern one-third of the state as meeting the applicability requirement for large industrial boilers and, based on reductions from their uncontrolled emissions adjusted for projected growth, established 59 tons as the large industrial boiler portion of the trading budget. The rule specifically allocates allowances to these three large industrial boilers. The NO_x trading budget for Missouri is the sum of the large EGU budget (13,400) and the large industrial boiler budget (59) and totals 13,459 tons.

Under 10 CSR 10–6.360, Missouri allocates NO_x allowances to both its large EGUs and large industrial boilers. Each NO_x allowance permits a unit to emit one ton of NO_x during the ozone season control period. NO_x allowances may be bought or sold. Unused NO_x allowances may also be banked for future use, with certain limitations. Missouri's rule requires each large EGU and large industrial boiler to hold allowances to cover its emissions after each control period. For each ton of NO_x emitted in a control period, EPA will remove one allowance from the unit's NO_x Allowance Tracking System account after the end of the control period. Once the allowance has been

input are determined on a one-time basis and are not changed by subsequent modification of the generator or unit respectively.

used for compliance, no unit can use the allowance again. Monitoring requirements specify that owners and operators will be required to continuously monitor their NO_x emissions by using systems that meet the requirements of 40 CFR part 75, subpart H. The monitoring requirements also include quarterly emission reporting.

The compliance supplement pool (CSP) is a pool of allowances that can be used in the beginning of the program to provide certain NO_x Budget units additional compliance flexibility. The CSP was created to address concerns raised by commenters on the NO_x SIP Call proposal regarding electric reliability during the initial years of the program. Missouri may distribute its 5,630 ton allowance pool based on early reductions, a demonstrated need, or both. A unit making an application to the CSP based on early reductions must demonstrate that reductions were made beyond all applicable requirements sometime during the ozone seasons of 2002 through 2006. Missouri's CSP may be used to account for emissions during the 2007 and 2008 control periods.

2. What Are the Requirements of the Cement Kiln Rule?

Missouri adopted 10 CSR 10–6.380, “Control of NO_x Emissions from Portland Cement Kilns.” The rule effectively adopts the NO_x SIP Call's recommended approach of obtaining a 30 percent reduction from uncontrolled levels from large Portland cement kilns found in the NO_x SIP Call region of the eastern one-third of the state. The rule applies only to kilns with process rates of at least the following:

Long dry kilns—12 tons per hour (TPH).

Long wet kilns—10 TPH.

Preheater kilns—16 TPH.

Precalciner and preheater/precalciner kilns—22 TPH.

In the NO_x SIP Call, EPA cited its peer reviewed analysis, “EPA's Alternative Control Techniques (ACT)” (EPA-453/R-94-004, March 1994) as demonstrating that cost-effective controls in the form of low-NO_x burners and mid-kiln firing are available to the cement kiln industry and can achieve a 30 percent reduction from uncontrolled levels of emissions. Consistent with EPA's approach in the NO_x SIP Call, Missouri's rule provides that compliance can be achieved by the installation and operation of low-NO_x burners or mid-kiln firing or by alternative measures that are all designed to achieve the 30 percent cost-effective reduction.

3. What Are the Requirements of the Large Stationary Internal Combustion Rule?

Missouri adopted 10 CSR 10–6.390, “Control of NO_x Emissions from Large Stationary Internal Combustion Engines.” The rule effectively adopts the NO_x SIP Call’s recommended approach of the establishment of emissions levels that obtain an 82 percent reduction from large natural gas-fired stationary IC engines and a 90 percent reduction from large diesel and dual fuel stationary IC engines found in the NO_x SIP Call region of the eastern third of the state. Missouri determined that there are no eligible units that meet the applicability criteria of “large” by being rated equal to or greater than the applicable brake horsepower and emitting more than one ton per day of NO_x. This finding differed from the initial inventory review that EPA conducted that identified one eligible unit. A more detailed discussion of this and other proposed changes to the inventory is provided under II(D)(2), “What changes did the State request to the NO_x budget and are those changes approvable?”.

D. How Does Missouri Address Its NO_x SIP Call Budget?

1. What NO_x Budget Did EPA Determine for the State?

Missouri’s budget for the NO_x SIP Call was contained in the Phase II rulemaking in April 2004. The purpose of providing a budget was to offer the states a choice of which mix of measures to adopt in order to meet the aggregate amount of required NO_x emissions reduction identified by EPA as being available for removal by highly cost-effective measures. EPA based all state budgets on its determination of which measures are highly cost-effective for upwind states to implement. However, the states have flexibility to control other source categories outside of EPA’s recommended approach of controlling large EGUs, large non-EGUs, cement kilns, and large IC engines that were utilized to determine the size of the 2007 ozone-season budgets. Based on EPA’s approach the NO_x SIP Call 2007 budget for the eastern one-third of Missouri is 61,406 tons per ozone season and represents the sum of EGU, Non-EGU Point, Area, Off-Road and Mobile source emissions.

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

The State has proposed changes to the inventory that affect the budget demonstration. In its demonstration the

state provides documentation that due to errors in the NO_x SIP Call emissions inventory, EPA inadvertently misidentified applicable units that led to a miscalculation in the final emissions budget. EPA is proposing to approve the necessary changes to correct the inventory and to provide clarification on which sources are affected. All modifications to the inventory and supporting information are provided for by Missouri as part of its budget demonstration document found in the docket for this rulemaking.

The category of large industrial boilers has a number of corrections. In EPA’s inventory two units were incorrectly classified as industrial boilers, and three units were wrongly identified as having a maximum design heat input exceeding 250 mmBtu/hr. Doe Run-Buick Resource Recovery Center (emission point 36) and River Cement Company (emission point 94) are process heating devices, and EPA agrees that they do not meet the criteria of the source type that EPA considered when identifying highly cost-effective controls for non-EGUs (including industrial boilers). Boilers at Ashley Street Station units 2 through 4 do not meet the size requirement of having a maximum design heat input exceeding 250 mmBtu/hr. These units have a maximum design heat input, as reported to the MDNR by the St. Louis Local Agency, of 108, 101, and 101 mmBtu/hr., respectively. Therefore, these units are not subject to the state’s large industrial boiler rule described previously in this document. The large industrial boiler portion of Missouri’s trading budget has been reduced to reflect the exclusion of these units from the category of large industrial boilers.⁴

Missouri has requested and EPA proposes to approve modifications to the cement kiln inventory. One of these modifications includes the addition of Lone Star Industries, Inc., now referred to as Buzzi Unicem Cape. This facility was in operation during the 1995 and 1996 time frame and meets the applicability requirements of the state’s rule. Also, EPA proposes to approve the state’s request to remove emission point 30 at Continental Cement Company from the list of controlled units. EPA

⁴ In addition, Missouri believes that the projected uncontrolled emissions for large EGUs (including large industrial boilers) in the fine grid portion of the state, and thus the projected controlled emissions for such units, are lower than the amounts originally stated by EPA in the NO_x SIP Call. Missouri requests that the lower amounts be used. Under these circumstances, EPA proposes that these lower amounts be used and that the large non-EGU portion of the trading budget be 59 tons, rather than the larger amount originally stated by EPA.

inadvertently included emission point 30 as a cement kiln. Continental Cement Company only has one kiln at this facility, and that kiln is correctly reported as emission point 32. For budget demonstration purposes, Missouri continues to include emission point 30 in the inventory as an uncontrolled unit. The state also has requested and EPA proposes to approve the modification of the base year emissions that were used to derive the 2007 budgeted emissions for the cement kiln class. This modification is necessary in order to correctly reflect a level of uncontrolled emissions in the base year inventory that were used to determine the reduction targets in 2007. The final EPA base year inventory contained actual emissions that were representative of controlled emissions for each kiln. Therefore, after applying growth estimates, the resulting application of a 30 percent cost-effective reduction created an overly strict emissions budget for the cement kiln class. In order to make the necessary correction, the state has submitted and EPA proposes to accept the use of the stack test data, throughput information, and related emissions calculations supplied by each individual kiln that were used to calculate the uncontrolled cement kiln emissions for 2007 provided for in the state’s revised budget.

Missouri has requested and EPA proposes to approve a correction to a unit (emission point 002) that was misidentified as a large IC engine in the EPA inventory. In the NO_x SIP Call, EPA attempted to identify large IC units as those that emitted on average greater than one ton per ozone season day. EPA identified DePaul Health Center in St. Louis as a large source based on data in the EPA inventory that indicated emissions of 335 tons per ozone season in the year 1995. However, emissions inventory information provided by the state shows that the actual emissions in 1995 from this unit were less than one ton per ozone season. This facility has not emitted more than 25 tons of NO_x in any year from 1994 to 2004. Because this unit emits less than one ton per ozone season day, EPA agrees that this source should be reclassified from an affected large source to a non-affected source in the inventory and that this source is not subject to the state’s IC engine rule.

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

As explained above and in more detail in the NO_x SIP Call, the NO_x SIP Call requires that states revise their SIPs to assure that sources in the state reduce

their NO_x emissions sufficiently to eliminate the amounts of NO_x emissions that contribute significantly to ozone nonattainment, or that interfere with maintenance, downwind. The amount of NO_x emissions reductions required is the amount of emissions reductions that would be achieved by applying available, highly cost-effective controls to large EGUs, large non-EGUs, large stationary IC engines, and cement kilns. However, EPA structured the rule to give the upwind states a choice of which mix of measures to adopt in order to eliminate the significant amount of NO_x emissions. To this end, EPA developed an emissions budget that was based on the aforementioned application of highly cost-effective controls. The emissions budget represents the amount of NO_x emissions

remaining after the state prohibits the significant amount. To demonstrate compliance with the NO_x SIP Call, a state must adopt and implement control measures that are projected to achieve the emissions reductions that would be equal to or greater than those predicted to be achieved by EPA's recommended approach.

Missouri has provided a full budget demonstration that accounts for all of the inventory modifications EPA proposes to approve today. All of the necessary changes described above led to a change in the overall emissions budget. The new budget represents the predicted emissions in 2007 that are reflective of the state's adoption of cost-effective measures recommended by EPA. EPA proposes to accept a new budget of 60,235 tons of NO_x per ozone

season for the NO_x SIP Call affected area of the eastern one-third of Missouri. Table II provides a breakdown of each NO_x category after all corrections have been made.

With the exception of the trading portion of the budget that includes large EGUs and large non-EGUs, the remainder of the source categories are not required to remain within the mass emission caps described herein. Rather, the NO_x SIP Call budgets are an accounting mechanism for ensuring that the upwind states have adopted and implemented control measures that prohibit the significant amount of NO_x emissions targeted under CAA 110(a)(2)(D)(i)(I) as implemented by the NO_x SIP Call.

TABLE II.—CORRECTED NO_x BUDGET FOR MISSOURI

Source category	2007 budget emissions (tpos)
Large EGUs (>25 MW)	13,400
Other EGUs ⁵	241
Other non-EGUs	5,903
Large non-EGUs (including large industrial boilers) (>250 MMBtu)	59
Cement Kilns	7,483
Area	2,199
On-Road Mobile	21,318
Off-Road Mobile	9,632
Total	60,235

As elaborated below with regard to large EGUs and large non-EGUs, EPA believes that Missouri has demonstrated compliance with the budget demonstration, and thus the NO_x SIP Call, by adopting control measures that are modeled after EPA's recommended approach for controlling large EGUs, large non-EGUs, large IC engines, and cement kilns, and that implementation of these rules will achieve the emissions reductions necessary to eliminate the "significant contribution" to downwind ozone nonattainment identified under CAA 110(a)(2)(D)(i)(I) as implemented by the NO_x SIP Call.

As discussed above, under EPA's model trading program for large EGUs and large non-EGUs, the size criteria for determining the applicability of the trading program are based on a generator's "nameplate capacity" for EGUs and a unit's "maximum design heat input" for non-EGUs (such as

industrial boilers), which parameters are determined on a one-time basis as of initial installation by the manufacturer.

The owner of one of the large industrial boilers has informally, apart from this rulemaking, raised an issue with respect to whether sources could be "derated" by physically restricting heat input, in order to be exempt from the Missouri rule as it relates to that source category. For the reasons stated above, and because this source category is included in the budget demonstration, EPA does not believe that sources may be "derated" to avoid applicability of the rule. Exempting large industrial boilers from the rule would require a revision to the rule and a revision to the budget demonstration. If large non-EGUs (e.g., large industrial boilers) were able to "derate" themselves out of the trading program and did so, then the Missouri state plan would not be achieving emissions reductions from the "derating" units and would have to instead get, from other NO_x sources in the fine grid portion of the state, the reductions projected to be achieved by these units.

EPA also notes the NO_x SIP Call requires that, to the extent a state chooses to participate in the NO_x Budget Trading Program administered by EPA, the applicability provisions of the state's trading rule must cover at least the "core" source categories set forth in the applicability provisions of the model trading rule, i.e., large EGUs and large non-EGUs. Missouri's trading rule does not expressly cover the entire category of large non-EGUs and instead addresses only large industrial boilers, which are the only existing large non-EGUs in the state. In order for Missouri to participate in the EPA-administered trading program, the applicability provisions of Missouri's rule should apply to all large non-EGUs, and not just large industrial boilers.

For several reasons, EPA is proposing to approve Missouri's rule despite the omission. First, Missouri recognizes this deficiency and has informed EPA that the state intended that the trading rule cover all large non-EGUs and will act to ensure that this intent is realized. Missouri stated that, while there are no existing large industrial combustion turbines or large industrial combined

⁵ The summary table in Missouri's budget demonstration excluded the emissions figure for small EGUs, which was included in Missouri's supporting documentation. EPA proposes to include this figure and to make a parallel increase in the total budget figure for Missouri.

cycle systems in Missouri, it will revise the applicability of its trading rule to cover explicitly all large non-EGUs. Missouri also stated that in the meantime the state will ensure, through its permitting process, that any future large fossil-fuel-fired industrial combustion turbines and large fossil-fuel-fired industrial combined cycle systems will be subject to the requirements of Missouri's trading rule.

Second, EPA also considered that Missouri's program will end after the 2008 ozone season because the CAIR provides that, when EPA begins to administer the CAIR NO_x ozone season trading program in 2009, EPA will no longer administer the NO_x Budget Trading Program. Because of the lead time necessary to permit and construct a new large industrial combustion turbine or combined cycle system, EPA believes that it is unlikely that there will be any such new units before 2009. Under these circumstances and in light of Missouri's statements, EPA is proposing to approve Missouri's rule.

Finally, EPA notes that, after EPA stops administering the NO_x Budget Trading Program, Missouri will need to revise its SIP to demonstrate that it is adopting control measures that will achieve the reductions attributed in Missouri's current trading rule to large industrial boilers (or in a revised Missouri trading rule to large non-EGUs). Under CAIR and the CAIR Federal Implementation Plan (FIP), one available option will be for Missouri to include, in the CAIR NO_x ozone season trading program, all large non-EGUs covered by the trading program under the NO_x SIP Call. If Missouri takes this option of expanding the applicability of the CAIR NO_x ozone season trading program to include any large non-EGUs in the fine grid portion of Missouri, EPA expects that Missouri will include in the CAIR program all existing and new large non-EGUs (not just existing and new large industrial boilers) in that portion of the state. This will have the practical effect of ensuring that any new large industrial combustion turbines and combined cycle systems in the fine grid portion of Missouri will be subject to Missouri's large non-EGU cap consistent with the NO_x SIP Call. In addition, if Missouri chooses not to take this option for achieving the NO_x SIP Call emission reductions currently attributed to large industrial boilers, EPA expects that Missouri will adopt other control measures that will achieve these reductions consistent with NO_x SIP Call requirements.

E. What Guidance Did EPA Use To Evaluate Missouri's NO_x Control Program?

EPA evaluated Missouri's NO_x SIP Call submittal using the documents in EPA's "NO_x SIP Call Checklist" (the checklist), issued on April 9, 1999. The checklist reflects the requirements of the NO_x SIP Call set forth in 40 CFR 51.121 and 51.122. The checklist outlines the criteria for determining the completeness and approvability of Missouri's submittal.

As noted in the checklist, the key elements of an approvable submittal under the NO_x SIP Call are: A budget demonstration; enforceable measures for control; legal authority to implement and enforce the control measures; 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 checklist can be found in the docket.

As described above, the final NO_x SIP Call rule included a model trading program (See 40 CFR part 96). EPA used the model rule to evaluate rule 10 CSR 10-6.360. Additionally, EPA used the October 1998 final NO_x SIP Call rulemaking notice and subsequent technical amendments, the October 1998 proposed Federal Implementation Plan, and the Phase II NO_x SIP Call rulemaking notice of April 2004 to evaluate the state's submittal.

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, EPA believes that the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. Proposed Action

EPA has reviewed Missouri's November 3, 2005, SIP submittal using the NO_x SIP Call rulemaking notices and checklist. EPA has reviewed Missouri's control measures and projected reductions and believes they are approvable. Therefore, EPA is proposing to approve Missouri's rules 10 CSR 10-6.360, 10 CSR 10-6.380, 10 CSR 10-6.390 and Missouri's budget demonstration and SIP narrative at this time. EPA's proposed approval is premised on Missouri's commitment to include any large industrial combustion turbines and large industrial combined cycle systems in the Missouri trading rule.

IV. Statutory and Executive Order Reviews

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. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 23, 2006.

Betty J. Berry,

Acting Regional Administrator, Region 7.
[FR Doc. E6-8661 Filed 6-2-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 655

[Docket No. FTA-2006-24592]

RIN 2132-AA86

Controlled Substances and Alcohol Misuse Testing

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Transit Administration (FTA) proposes to eliminate duplicative requirements for safety-sensitive employees of some public (mass) transportation systems, who are subject to the alcohol and controlled substances (D&A) testing requirements of both FTA and the United States Coast Guard (USCG), or FTA and the Federal Motor Carriers Safety Administration (FMCSA). Recipients could concurrently comply with FTA's D&A testing program as they comply with the testing requirements of the USCG or FMCSA. However, FTA's post-accident and reasonable suspicion testing requirements would continue to apply when accidents occur while

performing public (mass) transportation activities.

DATES: Comments must be received on or before August 4, 2006. Late filed comments will be considered to the extent practicable.

ADDRESSES: *Written Comments:* Submit written comments to the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. You may submit comments identified by the docket number (FTA-2006-24592) by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2478.
- Hand Delivery: To the Docket Management System, Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For program issues, Gerald Powers, Office of Safety and Security, (202) 366-1080 (telephone); (202) 366-7951 (fax); or Gerald.Powers@dot.gov (e-mail). For legal issues, Bruce Walker, Office of the Chief Counsel, (202) 366-4011 (telephone); (202) 366-3809 (fax); or Bruce.Walker@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

Authority for This Proposal

Section 3030 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, August 10, 2005), provides the Secretary of the Department of Transportation (DOT) discretion to determine whether a public transportation provider is adequately covered for drug and alcohol (D&A) testing purposes, by the D&A alcohol testing requirements of the USCG or another DOT agency.

Previous Action by FMCSA and FTA

FMCSA published a **Federal Register** notice on August 17, 2001 which eliminated duplicative D&A testing

requirements for holders of Commercial Drivers Licenses (CDLs) who provide public transportation services. These motor carrier operators are subject to FMCSA regulations; however, because they receive Federal funding for public transportation activities, they are also subject to FTA's D&A regulation. FMCSA stated that its testing requirements do not apply to transit employers who are required to comply with FTA testing requirements (*see* 49 CFR 382.103(d)). However, FMCSA made a policy determination that CDL holders would remain subject to its rule for specific violations; hence, the potential for duplicative oversight may continue to exist.

Subsequently, FTA undertook administrative steps to eliminate duplicative testing requirements for ferry operators by revising its policy for these operators with its **Federal Register** notice dated April 22, 2002. Before the notice, ferry operators receiving Federal transit funds were required to comply with the testing requirements of both FTA and USCG.

FTA consulted with the USCG and both agencies agreed that ferries were primarily regulated by the USCG. FTA determined that for safety purposes, it was sufficient for these operators to comply with USCG's D&A testing requirements. However, because the USCG does not require random alcohol testing, it was determined the operators would remain subject to FTA's random alcohol testing requirements.

FTA now proposes to adopt a regulatory provision that parallels FMCSA's rule for motor carrier operators who receive Federal transit funding and to codify its previously published policy guidance for ferry operators. FTA seeks comments on this proposed rule which would allow safety-sensitive employers to concurrently comply with FTA testing requirements when they comply with FMCSA or USCG D&A requirements.

II. Overview and General Discussion of the Proposed Rule

A. This notice of proposed rulemaking (NPRM) would provide regulatory relief to public transportation providers by eliminating duplicative testing requirements. The NPRM proposes to amend the applicability section of the FTA's D&A regulation at 49 CFR 655.3 by revising the introductory text of paragraph (a) and adding new paragraphs (c), (d), and (e).

Specifically, FTA proposes that a private or nonprofit motor-carrier employer, with employees who perform safety-sensitive functions regulated by both FTA and FMCSA, may determine