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 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 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.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective December 10, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 25, 2001.

Jo Lynn Traub,

Acting Deputy Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(157) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(157) On May 8, 2001, the Illinois Environmental Protection Agency submitted revisions to 35 Ill. Adm. Code 217, Subpart W: NO[x] Trading Program for Electrical Generating Units with a request that these rules be incorporated into the Illinois State Implementation Plan. On June 11, 2001, the Illinois EPA submitted Section 9.9(f) of the Illinois Environmental Protection Act as revised by Public Act 92–012 (formerly House Bill 1599) which was approved by both Houses of the Illinois General Assembly on June 7, 2001, approved by the Governor on June 22, 2001, and became effective on July 1, 2001. Section 9.9(f) requires a May 31, 2004 final compliance date for 35 Ill. Adm. Code 215, Subparts T, U and W. This compliance date replaces the compliance date contained in Section 217.756(d)(3).

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 217 Nitrogen Oxides Emissions, Subpart W: NO[x] Trading Program for Electrical Generating Units except for 217.756(d)(3) which has been superseded by Section 9.9(f) of the Illinois Environmental Protection Act. Added at 25 Ill. Reg. 128, January 25, 2001, effective December 26, 2000.

(B) Section 9.9(f) of the Illinois Environmental Protection Act. Adopted by both Houses of the Illinois General Assembly as part of Public Act 92–0012 (previously House Bill 1599) on May 31, 2001, approved by the Governor of Illinois on June 22, 2001, effective July 1, 2001.

[FR Doc. 01–27932 Filed 11–7–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 131b; FRL–7077–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On March 30, 2001, Indiana submitted and requested parallel processing of its proposed plan to control emissions of oxides of nitrogen (NO_X) throughout the State. On July 2, 2001, through parallel processing, EPA proposed approval of the plan provided Indiana revise its proposed rule consistent with the discussion in EPA's proposal. Indiana did so and submitted its final plan to EPA on August 20, 2001 with a supplement on September 19, 2001. The plan consists of two rules, a budget demonstration, and supporting documentation. The plan will contribute to attainment and/or maintenance of the 1-hour ozone standard in several 1-hour ozone nonattainment areas including the Chicago-Gary-Lake County and Louisville areas. Indiana developed its plan, which focuses on electric generating units, large industrial boilers, turbines and cement kilns, 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 (CAA) Section 126 rulemaking. EPA is approving this plan as a SIP revision fulfilling the NO_X SIP Call ''Phase I'' requirements. EPA is also finding Indiana's submittal on August 20, 2001 and supplemented on September 19, 2001 complete in this **Federal Register** action. Through this action, both the sanctions clock and EPA's Federal Implementation Plan (FIP) obligation are terminated.

EFFECTIVE DATE: This rule will be effective December 10, 2001.

ADDRESSES: Copies of the State's submittals and materials relevant to this 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.*

SUPPLEMENTARY INFORMATION:

Overview

The EPA is approving the Indiana Department of Environmental Management's (IDEM's) NO_X SIP Call SIP revision. The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

Table of Contents

I. Summary of the State submittal
- A. When did Indiana develop and submit the NO_X emission control plan to the EPA?
- B. What are the basic components of the State's final plan?
- C. How does Indiana address its statewide NO_X budget?
  1. What NO_X budget did EPA determine for the State in the NO_X SIP Call?
  2. What changes did the State request to the NO_X budget and are those changes approvable?
  3. How does Indiana demonstrate that it is meeting the budget?
- D. What public review opportunities did the State provide?
- E. What documents did EPA use to evaluate Indiana's NO_X control program?
- F. Does Indiana's NO_X emissions control plan meet all of the federal NO_X SIP Call requirements?
- G. What changes did Indiana make to its proposed NO_X emissions control regulations before finalizing?
  1. Changes made regarding units affected under the Section 126 Rulemaking
  2. The 25-ton exemptions
  3. Definition of ''maximum design heat input''
  4. Definition of '' NO_X budget trading program''
  5. Definition of ''percent monitoring data availability''
  6. Monitoring requirements
  7. Indiana's new source and energy efficiency and renewable energy ''set-asides''
  8. Penalties
  9. 326 IAC 10–3, Nitrogen Oxide Reduction Program for Specific Source Categories
  10. General SIP requirements
  11. Definition of ''repowered natural gas-fired units''
  12. Utilization correction for new units
  13. Centralized recordkeeping
  14. Allocation methodology

II. What are the public comments on EPA's proposal?

III. Final Action
- A. What action is EPA approving today?
- B. What is the impact of today's action on EPA's finding under the Clean Air Act section 126 rule?

IV. Administrative Requirements

In the following questions and answers, whenever the term ''you'' is used it refers to the reader of this final rule and ''we,'' ''us,'' or ''our'' refers to the EPA.

I. 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 plan and requested parallel processing, which allows a state to submit a draft plan for approval prior to actual adoption by the state. On July 2, 2001, through parallel processing, EPA proposed approval of the plan. On August 20, 2001 and September 19, 2001, IDEM submitted its final NO_X emission control plan to the EPA.

IDEM had originated its rulemaking process on regional NO_X reductions in 1999. EPA reviewed and provided extensive comments on several previous drafts of the rules. The State addressed all issues raised before adopting its final rules. The State did not, however, address some of the issues before it proposed rules. Since our proposal was based on the State's proposed rules, EPA discussed these issues at length in our proposed approval. Indiana's final resolution of each of these issues is consistent with our comments in our proposed rule, as discussed in this **Federal Register** action.

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

Indiana's final plan includes a budget demonstration, supporting materials and two NO_X rules: 326 IAC 10–3, pertaining to cement kilns and blast furnace gas boilers, and 326 IAC 10–4, a trading program focusing on reductions from electric generating units (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 EPA to allocate to each EGU unit for 2004—2006 and each large affected non-EGU unit for 2004—2009 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. ''Phase I'' NO_X budgets reflect controls on EGUs subject to the acid rain program, large boilers and turbines, and cement kilns. The tables below summarize the requirements of Indiana's two final rules and highlight some key differences between 326 IAC 10–4 and the model rule in the NO_X SIP Call (40 CFR Part 96). 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 rules, please see the applicable rulemaking package which is available at the locations listed in the **ADDRESSES** section of this final approval.

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 and ''Blast furnace gas boilers.''
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 percent reductions. • Blast furnace gas boilers—.17 lb/mmBtu.
326 IAC 10–3–4	Monitoring and Testing Requirements. • Technology Requirements—preventative maintenance plan. • Ozone Season Emission Averages or Approved alternatives to achieve 30 percent 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
	• Blast furnace gas boilers—monitor fuel usage and percentage heat input.
326 IAC 10–3–5	Recordkeeping and Reporting (a) Recordkeeping—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 percent reductions—emissions in pounds per ton of clinker. • Blast furnace gas units—fuel information and emissions in lb/mmBtu. • For any of the above—startup, shutdown, and malfunction information and any CEMS data if CEMS are used. (b–e) Reporting • For cement kilns, by May 31, 2004 submit initial information to IDEM. • For cement kilns and blast furnace gas boilers, 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 and blast furnace gas boilers, 326 IAC 10–3, Indiana adopted a rule to implement the Nitrogen Oxides Budget Trading Program at 40 CFR part 96.

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

Cite/section	Title/subject	Comparable section in 40 CFR part 96 model rule/note
326 IAC 10–4–1	Applicability	§ 96.4—Indiana's rule includes same core sources (EGUs, including EGUs not subject to the acid rain program, and large non utility boilers and turbines) as the NO_X SIP Call, except for blast furnace gas boilers covered under 326 IAC 10–3 and internal combustion engines which will be addressed under Phase II of the NO_X SIP Call. It allows for opt-ins. It also contains 2 additional 25-ton exemptions.
326 IAC 10–4–2	Definitions	§ 96.2—Indiana adds pertinent definitions, including a definition for ''energy efficient or renewable energy projects.'' Indiana also adjusts some definitions to account for 2004 compliance date and units affected under Section 126 rulemaking.
326 IAC 10–4–3	Retired Unit Exemption	§ 96.5.
326 IAC 10–4–4	Standard Requirements	§ 96.6.
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 10–4–8	Compliance Certification	§ 96.30, § 96.31.
326 IAC 10–4–9	Allowance Allocations	§ 96.40, § 96.41, § 96.42—IDEM is establishing a total trading program budget of 53,960 tons of NO_X per control period. IDEM requested changes to the SIP Call budget as discussed in the budget demonstration. The State also provides a mechanism which could potentially allow for a transition from the Section 126 petitions to the SIP Call. The State has developed an allocation methodology, utilizing the flexibility under the NO_X SIP Call.
326 IAC 10–4–10	NO_X allowance tracking system	§ 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.
326 IAC 10–4–13	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 Allowance Banking	§ 96.55 (a) and (b).
326 IAC 10–4–15	Compliance Supplement Pool	§ 96.55(C)—The State has made several changes to this section to allow for an easier transition from the Section 126 rulemaking.

Two sections of the 40 CFR part 96 model rule, namely 40 CFR 96.1 and 40 CFR 96.3, were not addressed by a specific section in Indiana's rule. 40 CFR 96.1 describes the purpose of the model rule and establishes the general framework. It provides that a unit needs to comply only after a state with proper jurisdiction adopts and submits a rule

and the EPA approves that rule as part of the SIP. 40 CFR 96.1 also requires that, to the extent a state adopts specified parts of the rule, that state needs to authorize the EPA to assist in the implementation. Indiana addressed this requirement in its rule's definition of EPA in 326 IAC 10–4–2(73), where it authorizes EPA to assist in operating the trading program. 40 CFR 96.3 is simply a list of acronyms that were used in the model rule. Unlike the model rule, instead of defining the acronyms in one section, Indiana's rule usually defines those acronyms the first time they are used in the document.

C. How Does Indiana Address Its Statewide NO_X Budget?

1. What NO_X Budget Did EPA Determine for the State in the NO_X SIP Call?

EPA finalized a NO_X budget for each affected state on October 27, 1998, in its NO_X SIP Call (63 FR 57355). Since that time, EPA has also published two technical amendments. In addition, the D.C. Circuit Court of Appeals rendered an opinion on March 3, 2000, that, while generally upholding the NO_X SIP Call, slightly changed states' NO_X SIP Call budgets. 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 consistent with the amendments as upheld by the Court. Consistent with the Court's opinion, these budgets, referred to as the ''Phase I NO_X budgets,'' reflect controls on EGUs 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 corresponding compliance supplement pool was 19,915 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 provide additional allowances that sources may use to cover emissions during the 2004 and 2005 ozone control periods.

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

In the 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 approving in this action is 233,633 tons. These changes also affect the portion of the budget being used to ensure that the appropriate reductions are 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 final rule and submittal, is 53,960 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.

For the EGU inventory, IDEM started with the inventory from the March 2, 2000 technical amendment(65 FR 11222). In doing so, IDEM has considered all the reductions assumed for EGUs, including assumed reductions from the EGUs not currently covered under the acid rain program. 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 percent (to account for 60 percent 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 approving the shifting of these units 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 mmBtu/hr. 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 percent. 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 approving these inventory corrections. More information on these changes is available in the Docket.

The following table shows how IDEM's final inventories differed from those used by EPA in the April 11, 2000, notification to states of EPA's approach to implementing the NO_X SIP Call in light of the March 3, 2000 court decision.

TABLE 3.—EPA AND IDEM INVENTORIES

Source category	EPA NO_X SIP call April 11, 2000, inventory		IDEM final SIP inventory	
	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 approving the changes submitted by IDEM in its budget demonstration. Based on these changes, the State's NO_X budget is 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 percent (326 IAC 10–3), and reductions equivalent to 0.15 pounds of NO_X per million BTU (lb/mmBtu) heat input for EGUs and a 60 percent 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 budget demonstration, that it will meet its 2007 budget.

TABLE 4.—IDEM'S FINAL 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:				
10—4 Units > 250 mmBtu/hr	21,616	8,008	13,608	8,008
Controlled cement kilns	5,572	3,900	1,672	.....
Blast Furnace Gas Boilers	3,099	3,099	0	.....
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	[1] 105,274	53,960

[1] 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 percent of the EGU portion of the budget and 1 percent of the non-EGU portion until 2006, with 2 percent and 1 percent respectively, thereafter. The State also included an energy efficiency set aside of 1 percent from the non-EGU category. The concept of a set aside was discussed in NO_X SIP Call Rulemaking **Federal Register** actions. It is a tool to help states manage their budgets. A state may establish set-asides where a portion of the trading budget is reserved for a special purpose. In this case, the result is that the total trading budget is 53,960, including the set-asides. The following table illustrates the total Indiana budget, the trading portion and the set-asides.

TABLE 5.—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

EPA is approving the trading budget and set-asides reflected in Table 7 above as contained in Indiana's final adopted rules and its submitted plan.

D. 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 discussions 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. (The State of Indiana requires at least three written public comment periods 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 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 discussed several changes to the rules, significant and otherwise, that were made in response to comments. The significant issues that were addressed after the State's proposal are discussed in today's action.

Indiana adopted final rules on June 6, 2001. Indiana submitted its NO_X plan to

EPA, including its response to comments, on August 20, 2001, with a supplemental submittal on September 19, 2001. EPA has determined that the State's submittal is complete and approvable.

E. What Documents Did EPA Use To Evaluate Indiana's NO_X Control Program?

In evaluating Indiana's 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) EPA's ''Responses to Significant Comments on the Proposed Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group (OTAG) Region for Purposes of Reducing Regional Transport of Ozone,'' dated September 1998.

(2) EPA's ''Air Quality Modeling Technical Support Document for the NO_X SIP Call,'' dated September 23, 1998 [Docket Number A–96–56, VI–B–11].

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

(4) ''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 57355). This **Federal Register** is referred to as ''The NO_X SIP Call'' in today's action.

(5) ''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).

(6) EPA's ''Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport'' dated April 1999 [Docket Number A–97–43, VI–C–01].

(7) 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.

(8) ''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.

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

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

(11) 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 United States Court of Appeals for the District of Columbia Circuit on March 3, 2000.

(12) ''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.

(13) 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.

(14) 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.*

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

Based on EPA's review, Indiana's plan meets the Phase I NO_X SIP Call requirements.

EPA is also finding Indiana's submittal on August 20, 2001 and supplemented on September 19, 2001 complete in this **Federal Register** action. EPA had previously determined, on December 26, 2000, that Indiana had failed to submit a SIP in response to the NO_X SIP Call, thus starting an 18-month clock for the mandatory imposition of sanctions and the obligation for EPA to promulgate a FIP within 24 months(65 FR 81366). Through this action, both the sanctions clock and EPA's FIP obligation are terminated.

G. What Changes Did Indiana Make To Its Proposed NO_X Emissions Control Regulations Before Finalizing?

In our July 2, 2001, proposal, we discussed changes that the State had made or intended to make to its proposed NO_X emissions control plan including the rules at 326 IAC 10–3 and 10–4. Each of these changes is approvable, as discussed below. For additional information on these issues, please see the July 2, 2001, proposed rulemaking (66 FR 34864).

1. Changes Made Regarding Units Affected Under the Section 126 Rulemaking

Today's final rulemaking does not have any direct bearing on the applicability of the Section 126 rulemaking. We are not amending the Section 126 rule at this time. However, based upon coordination with EPA, Indiana made changes to its proposed NO_X rule so that the rule could potentially supplant the Section 126 rule as of May 1, 2004. In order to make a transition of this sort, EPA would need to complete a future proposal and final rulemaking to amend the Section 126 rule.

IDEM made the following changes to its proposed rule to make it more compatible with the Section 126 rulemaking. These changes and how they comport with the Section 126 rule are discussed in additional detail in EPA's proposal.

a. IDEM's proposed rule included a provision at 326 IAC 10–1, which stated that ''A unit subject to 40 CFR [Part] 97 shall be subject to the requirements of this rule on May 1, 2004 and shall no longer be subject to 40 CFR [Part] 97 as of that date.'' An Indiana State rule can not operate to withdraw the Section 126 findings which are codified at 40 CFR Part 97. The findings can only be modified through further rulemaking under the Section 126 rule. In the final rule, IDEM removed the provision pertaining to the applicability of 40 CFR Part 97.

b. Indiana's proposed rule did not contemplate how compliance supplement pool (CSP) allowances would be allocated under the Section 126 rulemaking. In EPA's proposal, we noted that, in order for us to contemplate a future action to amend the Section 126 rule, the State NO_X rule would need to take into consideration the number of CSP allowances that are available under the Section 126 rule and

limit source's usage of CSP allowances in a manner at least as stringent. In its final rule, IDEM limits the number of compliance supplement pool allowances that can be used in 2003 to 2,454—the number of compliance supplement pool allowances available under the Section 126 rulemaking.

c. Indiana's proposed rule only allowed sources to apply for early reduction credits (ERCs) for reductions made in 2002 and 2003. Since the Section 126 rulemaking allows sources to apply for ERCs for reductions made in 2001, Indiana revised its final rule to also allow sources to apply for ERCs based on 2001 reductions. EPA addressed a second point regarding ERCs in our July 2, 2001 proposal. We pointed out that if IDEM were to have sole responsibility for distribution of the CSP and correspondingly the ERC distribution, Section 126 sources could not be granted ERCs for reductions made in 2003 in response to the Section 126 rule. In both the proposed and final rule, IDEM included a restriction on ERCs that the reductions could not be otherwise required by the Clean Air Act. In addition, as explained below, Indiana revised its rule to specify that for units subject to Section 126, all CSP allowances must be allocated by March 31, 2003 (i.e., before the start of the 2003 ozone control period).

d. IDEM's proposal allowed distribution of CSP allowances up to March 31 of the year after control measures were implemented. In EPA's proposal, we noted that 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 could distribute compliance supplement pool allowances up to May 30, 2004. The State's final rule specifies that the issuance of CSP allowances shall be completed by March 31, 2003 for Section 126 sources and March 31, 2004, for non-Section 126 sources.

2. The 25-Ton Exemptions

Indiana's rule, 326 IAC 10–4, Nitrogen Oxides Budget Trading Program Section, includes in subsection 10–4–1(b), the 25-ton exemption from the NO_X SIP Call model rule and two additional exemptions. One of these alternatives relies on Continuous Emission Monitoring System (CEMS) data. In this exemption, units can use CEMS data to demonstrate that the unit is not emitting more than 25 tons during an ozone season. In Indiana's proposed rule, it was not clear that, if units were exempted based upon CEMS, those units would be required to continue monitoring with CEMS. For this exemption to provide sufficient assurance that these units will not emit more than 25 tons per season, Indiana revised the final rule to require these units to monitor according to 40 CFR Part 75, subpart H, even while they have the exemption.

Indiana's second alternative exemption provides for consideration of how much natural gas and/or fuel oil was burned during the ozone control period, as opposed to assuming that all of a unit's heat input is from the fuel with the higher emission factor. Indiana allows units this flexibility by requiring recordkeeping verifying the amount of each fuel being burned during the ozone control period. This satisfies EPA's concern discussed in the proposal that this alternative must effectively limit a unit's potential NO_X emissions to less than 25 tons during an ozone control period.

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. IDEM's final rule specifies the mechanism that will be used to ensure that the emissions from these sources are removed from the trading budget. Indiana has accounted for this by establishing that, once a unit is exempt, EPA will deduct a number of allowances from a general account specified by the owner and operator equal to the unit's permitted limit until the three-year allocation period has ended. When Indiana determines allocations for the next three-year period, it will deduct ''off the top'' from the trading budget a number of tons equal to the permitted limits of the exempt units.

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

Indiana's final rule revises the definition of ''maximum design heat input'' so that it is consistent with the NO_X SIP Call in that it is based solely on physical characteristics and not permitted limits.

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

Indiana's final rule adds 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.

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

Indiana revised the definition ''percent monitoring data availability'' so that it is based on a unit's actual total operating hours instead of the total potential operating hours in the season. The definition in the State's proposed rule was 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 proposed rule 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 percent monitoring data availability requirement even if its monitors were available 90 percent of the time it operated. Thus, Indiana revised the definition as described above.

6. Monitoring Requirements

In its final rule, Indiana revised the date that monitoring is required to begin to May 1, 2003. Beginning monitoring at the beginning of the ozone season a year before compliance is required will ensure that when Indiana updates its allocations, it has a full year of data to use. Requiring monitoring a year earlier than compliance also allows sources 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.

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

In its final rule, IDEM clarified that the allowances for the new source and energy efficiency and renewable energy ''set-asides'' outlined in 326 IAC 10–4–9(e) come from the trading program budget.

8. Penalties

Indiana added language equivalent to the following from 40 CFR Section 96.54(d)(3)(i) to its final 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 establishes the maximum number of days in which penalties could be sought for a violation. However, EPA notes that if an agency were to seek penalties for a violation, an owner or an operator may demonstrate that a lesser number of days should be considered.

9. 326 IAC 10–3 Nitrogen Oxide Reduction Program for Specific Source Categories

326 IAC 10–3 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 (63 FR 56393). Since much of the analysis and background materials for the proposed FIP are germane to cement kilns, as noted below, EPA also used these materials in its review of the State's submittal.

326 IAC 10–3–1 Applicability

Indiana's proposed rule contained a provision, 326 IAC 10–3–1(b), that would have exempted 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 informed 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 asserted 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 exempt during the ozone control period.

Based on the expected emissions achievable for cement kilns with low-NO_X burners installed, emissions are expected to be less than required for the same type of 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 6.—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 from installation of low-NO_X burners (based on proposed NO_X FIP materials and 30 day averaging.
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 percent of the daily RACT requirement for preheater kilns and 47 percent of the daily RACT requirement for long dry kilns. Low-NO_X burners are a type of technology that, once installed, cannot 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. Therefore, EPA believes that the significantly lower expected emissions from cement kilns with low-NO_X burners installed in Clark and Floyd Counties should ensure that 326 IAC 10–3 is as stringent as the applicable emission limits in 326 IAC 10–1.

326 IAC 10–3–3 Emission Limits

In its proposed rule, 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 percent 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 based on a 30-day average. The State's rationale for providing seasonal limits for these sources was based on the fact that the NO_X SIP Call addresses 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) of its proposed rule, IDEM included an emission limit option which would allow a reduction equivalent to 30 percent 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 State's proposed 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, in our proposed rule we noted that Indiana must require sources to establish baseline emissions with a CEMS or require in its rule that the 30 percent reduction be measured from the 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. As a result, 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 Recordkeeping and Reporting

Under Indiana's proposed rule, sources that could comply by meeting emission limits on a pound of NO_X per ton of clinker basis were not required to keep daily cement kiln production records needed to ensure compliance with the emission limits. EPA noted this deficiency in our proposal and also noted the revised language that Indiana had included in its final adopted rule to address this issue. IDEM added language to its final adopted rule to require sources meeting emission limits to report their daily cement kiln production records.

Blast Furnace Gas Units

The final adopted rule includes 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. Likewise, IDEM has set the emission factor in 326 IAC 10–3 based on NO_X SIP Call uncontrolled emissions. Since, as discussed further in the proposal, this modification does not impact the reductions being achieved under IDEM's rule, EPA is approving this rule modification as part of Indiana's submittal.

10. General SIP Requirements

Indiana's final submittal fully addressed the general requirements required under the NO_X SIP Call for a SIP revision including: that resources are available to implement the program, that the State meets the data availability requirements of 40 CFR 51.116, that the SIP provides for compliance with the annual and triennial reporting requirements set forth in 40 CFR 51.122, that the State has the legal authority to carry out the SIP revision, and 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.

11. 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 is acceptable.

12. 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 have potentially removed NO_X allowances permanently 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 from that used in the model trading rule, it should ensure the integrity of both the trading program and Indiana's NO_X budget.

13. Centralized Recordkeeping

IDEM's final adopted rules allow recordkeeping at a central location under specific conditions. EPA discussed these recordkeeping requirements at length with the State. These provisions are only acceptable, as indicated in our proposal, under certain circumstances, *i.e.*, for sources not participating in the trading program and not exempted from the trading program based on Part 75 monitoring. The State chose to retain the provisions throughout the rule (since it had determined that the centralized recordkeeping could be acceptable for 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 of 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, EPA is approving the limited centralized recordkeeping requirements.

14. 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 are being approved as part of Indiana's NO_X SIP Call Phase I submittal.

II. What Are the Public Comments on EPA's Proposal?

EPA published a proposed rulemaking on July 2, 2001, (66 FR 34864) to approve, as a SIP revision, the plan Indiana submitted in response to the NO_X SIP Call. The proposal provided a 30-day public comment period, which ended on August 1, 2001. EPA received comments from the following parties: A citizen; Indianapolis Power and Light Company (IPL); and the Natural Resources Defense Council and the Hoosier Environmental Council.

Comment 1: Comment received from a citizen. The commentor asserts that the definition of ''ozone control period'' should be inclusive of every day in the year. The commentor notes that nitrogen dioxide and other oxides of nitrogen are harmful at all times and it is not appropriate to only require controls to be used during the ozone control period. Furthermore, the commentor claims, once EGUs demonstrate the ability to operate at 0.15 lb/mmBtu, they have an obligation to equal or better that performance on a 365-day averaging period. The commentor believes there is an inequity with mobile sources which are required to maintain their controls over broad ranges of operation.

Response 1: EPA recognizes that control of NO_X emissions would likely produce non-ozone benefits, as well as ozone benefits. However, the commentor's suggestion that EPA define a control period on an annual basis is outside the scope of this rulemaking. EPA issued the NO_X SIP call to address the failure of certain SIPs to prohibit sources from emitting NO_X in amounts that contribute significantly to nonattainment (or interfere with maintenance of attainment) of the ozone National Ambient Air Quality Standards (NAAQS) during the ozone season. Because ozone formation is a summer season problem, the rule focuses on obtaining the necessary reductions during those months when a potential public health problem exists due to high concentrations of ambient ozone.

Comment 2: Comments received from Indianapolis Power and Light (IPL). The commentor notes that changes to the Indiana SIP were made in response to the SIP Call and that the SIP Call was based on EPA models of regional ozone transport. The commentor claims that EPA's modeling is unreliable and inconsistent. The commentor questions the linkage between Indiana and New York nonattainment areas. The linkage from Indiana to New York was found to be significant, but the linkages from Indiana to Pittsburgh and Philadelphia (which are both closer to Indiana than New York) were not found to be significant. The commentor claims that ozone passes over Kentucky, Ohio, and Pennsylvania without having a significant effect. The commentor states that the modeled predictions for Indiana are ''statistically meaningless'' and concludes that the Agency is ''pushing the computer-generated data beyond the limits of its reliability.'' The commentor asserts that these issues are at the core of the SIP Call, and that EPA is not authorized to lock in requirements for NO_X reductions in Indiana based on this modeling analysis.

Response 2: Most fundamentally, Indiana's obligation to submit the present SIP revision derives from the NO_X SIP Call rulemaking. That rulemaking was premised on air quality modeling conclusions that were subjected to notice and comment. The U.S. Court of Appeals for the D.C. Circuit, in *Michigan* v. *EPA*, 213 F.3d 663, 673 (D.C. Cir. 2000), *cert. den.*, 121 S. Ct. 1225, 149 L. Ed. 135 (2001), generally upheld the rulemaking, as well as the air quality modeling conclusions. As a result, EPA does not consider air quality impacts to be an open issue in the present rulemaking. In any event, IPL made a very similar comment regarding the modeling results in the Section 126 rulemaking. EPA's response is provided on pages 79–83 of the ''Responses to Significant Comments on the Proposed Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport'' (April 1999).[1]

Comment 3: Comment received from IPL. The commentor claims that Indiana statutes provide that a person who violates air pollution control laws is liable for a civil penalty not to exceed twenty-five thousand dollars, and that IDEM does not have the authority to implement a rule where each ton of NO_X per day is a violation and where that violation can be spread across the entire 153 days of the ozone control period. It was arbitrary for the EPA to require the State to adopt these provisions.

Response 3: The State rule defines what constitutes a violation in the same manner as the federal law at 40 CFR 96.6(c)(2) and 96.54(d)(3). Authority to incorporate these provisions into State rules can be found in IC 13–17–3–4, which provides that the Air Pollution Control Board (Board) shall adopt rules that are necessary to implement the CAA, and in IC 13–17–3–11, which provides that the Board has the authority to adopt rules under discretionary authority granted to the State under the CAA and its regulations. Finally, IC 13–30–4–1 provides explicitly that a person who violates any provision of a rule adopted by the Board is liable for a penalty *per day per violation* (italics added for emphasis).

EPA did not arbitrarily determine that these requirements needed to be included in state SIPs. EPA has required the State to adopt these provisions because of the nature and inherent flexibilities of the NO_X SIP Call. Because the State's NO_X rule at 326 IAC 10–4 is based on a trading program that caps emissions, it is appropriate that every ton of emissions over a source's available allowances should be considered a separate violation. Otherwise, the penalty might not be sufficient to remove the economic benefit of noncompliance and deter excess emissions. Furthermore, it makes sense that a source that emits fifty excessive tons should pay a higher

[1] It should be noted that IPL asserts that the model predicts that ozone passes over Kentucky, Ohio, and Pennsylvania without causing a signficant effect. In fact, both the UAM–V model and CAM_X model showed that Indiana emissions contribute to 1–hour ozone exceedances in the Cincinnati-Hamilton area, which, at thet ime, was a bi-state nonattainment area in Ohio and Kentucky. It was the only nonattainment area in Ohio. In Kentucky, there was on additoinal nonattainment area, the Louisville area. The Louisville area is a bi-state area with a portion in Kentucky and a portion in Indiana. It did not make sense to analyze contributions from Indiana to the Louisville area since the area includes two Indiana counties. See EPA's September 23, 1998 Air Quality Modeling Technical Support Document Appendix C, page C–15 [Docket Number A–96–56, VI–B–11].

penalty than a source that emits one excessive ton.

Additionally, the rule provides that each day of the ozone season constitutes a violation because the rule caps emissions on an ozone season basis and does not assign the emissions of discrete tons to a particular day. If the source exceeds its allowances for the ozone season, then each day of that season is a separate violation. However, the rule does provide flexibility by allowing the owners and operators of the unit to demonstrate that a lesser number of days should be considered.

EPA believes that financial penalties along with an automatic allowance offset are sufficient and appropriate for ensuring compliance with the NO_X budget and the emission limit. The allowance deduction is designed to ensure that non-compliance is a more expensive option than compliance. However, in addition to the allowance offset, the states must also be able to impose financial penalties if necessary in response to violations of the NO_X Budget Program. In fact, some violations (e.g., of monitoring requirements) may not result in any excess emissions nor any offset. In a multi-state program, it is important that each individual state's regulation include the same provisions in order to encourage similar treatment of similar instances of non-compliance regardless of location and to provide a level playing field for all NO_X Budget units. Thus, if a state chooses to adopt the model rule's approach, the SIP submission must include the offset provisions and the financial penalty provisions contained in the model rule. Criteria for SIP approvability are outlined in section VI.A.2 of the preamble to the October 27, 1998 NO_X SIP Call (63 FR 57355).

A NO_X Budget unit with excess emissions for a control period may be charged, under the model rule, with 153 days in violation. However, the owners or operators of these units have the option of demonstrating that the number of days of violation was less than 153 days.

Comment 4: Comments received from The Natural Resources Defense Council and Hoosier Environmental Council. The commentor states that the Indiana NO_X SIP Call appears to waive the May 1, 2003 compliance date of the Section 126 rulemaking. The commentor requests that EPA clarify the overlap between Section 126 and the NO_X SIP Call.

Response 4: Final approval of the Indiana NO_X SIP call does not amend the applicability of the Section 126 rulemaking in any way. Units that are affected under the Section 126 rulemaking must comply with the applicable compliance date in the Section 126 rulemaking. Only if EPA takes action to amend the Section 126 rule would the applicability of that rule change. EPA is not taking that action today. Because of the adjustments that IDEM made to its NO_X rule, EPA may be able to take an action to amend the Section 126 rule in the future so that it is only applicable to those sources for at most one year, until May 1, 2004; at which point Indiana's NO_X rule would take over and require reductions as stringent as those required by the Section 126 rule.

III. Final Action

A. What Action Is EPA Approving Today?

EPA is approving revisions to Indiana's ground level ozone SIP which Indiana submitted in final on August 20, 2001 and supplemented on September 19, 2001. These SIP revisions include two new regulations, a budget demonstration and supporting materials. The two new regulations are 326 Indiana Administrative Code (IAC) 10–3, the ''Nitrogen Oxide Reduction Program for Specific Source Categories,'' and 326 IAC 10–4, the ''Nitrogen Oxides Budget Trading Program.'' EPA has determined that Indiana's submittal is fully approvable as meeting the Phase I NO_X SIP Call requirements.

EPA is also finding Indiana's submittal on August 20, 2001 and supplemented on September 19, 2001 complete in this **Federal Register** action. EPA had previously determined, on December 26, 2000, that Indiana had failed to submit a SIP in response to the NO_X SIP Call, thus starting a 18-month clock for the mandatory imposition of sanctions and the obligation for EPA to promulgate a FIP within 24 months(65 FR 81366). This finding stops both the sanctions clock and EPA's FIP obligation.

B. What Is the Impact of Today's Action on EPA's Finding Under the Clean Air Act Section 126 Rule?

Today's action does not have any impact on EPA's finding under Section 126 of the Clean Air Act. Indiana's submittal does require reductions at sources covered under the Section 126 rulemaking and will be evaluated in the future to determine if it is appropriate for EPA to take action to amend the applicability of the Section 126 rulemaking. However, today's action does not address this issue.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: September 27, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(144) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(144) On August 20, 2001 and September 19, 2001, Indiana submitted a plan in response to Phase I of the NO_X SIP Call. The plan includes Indiana's Phase I NO_X Budget Demonstration and supporting documentation including initial unit allocations and two new rules: 326 IAC 10–3 and 326 IAC 10–4.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 10; Ozone rules, Rule 3: Nitrogen Oxide Reduction Program for Specific Source Categories (326 IAC 10–3). Adopted June 6, 2001. Submitted August 20, 2001 and September 19, 2001. State effective September 16, 2001.

(B) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 10; Ozone rules, Rule 4: Nitrogen Oxides Budget Trading Program (326 IAC 10–4). Adopted June 6, 2001. Submitted August 20, 2001 and September 19, 2001. State effective September 16, 2001.

[FR Doc. 01–27931 Filed 11–7–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–059–RECL, FRL–7093–4]

Clean Air Act Reclassification, San Joaquin Valley Nonattainment Area; Designation of East Kern County Nonattainment Area and Extension of Attainment Date; California; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to change the boundary for the San Joaquin Valley (SJV) serious ozone nonattainment area by separating out the eastern portion of Kern County into its own nonattainment area. EPA is extending the attainment deadline for the new East Kern County serious ozone nonattainment area from November 15, 1999 to November 15, 2001.

EPA is taking final action to find that the SJV area did not attain the 1-hour ozone national ambient air quality standard (NAAQS) by the November 15, 1999 Clean Air Act (CAA) deadline. As a result, the SJV ozone nonattainment area with its revised boundaries is reclassified by operation of law as a severe area. The State must submit by May 31, 2002, a severe area ozone nonattainment plan for the SJV (now excluding the East Kern County ozone nonattainment area) that provides for the attainment of the ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. This plan must meet the specific provisions of CAA section 182(d).

EPA is taking final action to find that the approved serious area ozone State Implementation Plan (SIP) for the SJV has not been fully implemented. As a result of this finding, the State must adopt and implement the specified measures by November 15, 2002 or be subject to sanctions pursuant to sections 179(a) and (b) of the CAA. This finding and any potential sanctions do not apply to the newly established East Kern County ozone nonattainment area, where the SIP is being fully implemented.

EFFECTIVE DATE: December 10, 2001.

ADDRESSES: The rulemaking docket is available for inspection during normal business hours in the Air Docket, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. This rule and the Technical Support Documents for the proposed actions are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1286, or *ungvarsky.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 19, 2000, EPA proposed to find that the SJV serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the attainment deadline for serious ozone nonattainment areas under CAA section 181(a). 65 FR 37926. The current SJV nonattainment area includes the counties of San Joaquin, Kern, Fresno, Kings, Madera, Merced, Stanislaus and Tulare. 40 CFR 81.301. EPA also proposed to find that the SJV SIP had not been fully implemented, because the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) had failed to adopt and implement six measures by the deadlines in the SIP.