

2 eligible for energy efficiency and renewable energy allowances. Anaerobic digesters are closed, air-tight systems that use bacteria to break down organic matter and produce gases through this natural decomposition. One of the gases produced is methane, a combustible gas which is used to power engines to produce electricity. The purpose of this revision is to expand the number of types of projects eligible for energy efficiency renewable energy "set-asides." Indiana has the flexibility to add to this program projects which it believes will have a positive effect on energy efficiency and generation output, and EPA agrees with this addition.

B. What Additional Changes Has Indiana Made?

IDEM has added three new formulas to the energy efficiency and renewable energy set aside provisions in 326 IAC 10-4-9(e). The reason for this revision is to make allowances available, during the ozone control period, to producers of electricity using systems which are highly efficient.

In addition, the rule has revised dates for compliance, changed from May 1, 2003 to May 31, 2004 as a result of a court decision affecting the NO_x SIP call, *Appalachian Power Co. et al. v. EPA*, F.3d (D.C. Cir 2001). Finally, IDEM has made minor wording changes and corrected typographical errors.

C. What Public Review Opportunities Did Indiana Provide?

Public notices were published in November 2002 and April 2003 for the two Indiana Air Pollution Control Board hearings in December 2002 and May 2003, respectively. At both of these hearings, Indiana provided the public and the affected sources with an opportunity to comment on the changes to the Indiana NO_x rules. Indiana also provided copies of the record as part of the submittal of the Indiana NO_x plan.

D. Do the Changes Continue To Meet the NO_x Budget for Indiana?

Indiana provided a revised budget demonstration which takes into account the changes to the rule including the addition of the Ispat Inland, U.S. Steel and Purdue boilers to the trading program. The budget revisions affect only the non-EGU source category, and show a net decrease in the overall Indiana NO_x budget.

The changes for the three sources affect the set-asides for new large units at 326 IAC 10-4-9(e)(1)(A)(ii) and at 326 IAC 10-4-9(e)(1)(B) for energy efficiency and renewable energy projects. The Indiana analysis also

demonstrates a net change to the overall Phase I budget to be a negative 85 tons during the ozone season. This decrease is the result of including the Purdue boilers in the trading program and allocating NO_x allowances based on a controlled emissions level. In EPA's November 8, 2001 approval of the 2007 Indiana NO_x SIP, the budget was set at 233,633 tons. In this action, following the implementation of these rule changes, the Indiana revised NO_x budget for the 2007 ozone season is 233,548 tons.

IV. EPA Action

EPA is taking final action to approve revisions to the NO_x SIP submitted by Indiana on June 25, 2003, and August 4, 2003. These revisions: shift certain existing sources from the general NO_x reduction rule to the NO_x trading rule; add additional sources to the NO_x trading rule; change the definition of energy efficiency projects to include anaerobic digestion systems; add three new formulas to the energy efficiency and renewable set aside provisions; change compliance dates in accordance with the 2001 court decision; and make some minor wording and typographical changes and corrections. Indiana's NO_x SIP continues to meet the Phase I budget for EPA's NO_x SIP Call.

In meeting this emissions budget, EPA believes the State will achieve reductions in emissions of NO_x which will have a significant impact on ozone air quality in-state and downwind from sources in Indiana.

In the event we receive meaningful written adverse comment, this direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on a proposal published elsewhere in today's **Federal Register**.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13175: Coordination With Indian Tribal Governments

This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer and Advancement Act

In reviewing SIP submissions, USEPA'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),