

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R05-OAR-2012-0536; FRL-9761-1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; South Bend/Elkhart, Indiana Ozone Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: EPA is approving Indiana's request to revise the South Bend/Elkhart, Indiana 1997 8-hour ozone maintenance state air quality implementation plan (SIP) by replacing the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) emissions model. EPA proposed approval on October 4, 2012, and did not receive any public comments on the proposal.

DATES: This final rule is effective on January 16, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2012-0536. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Patricia Morris, Environmental Scientist, at (312) 353-8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8656, morris.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What public comments were received?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this action?

On June 15, 2012, Indiana submitted to EPA replacement budgets based on MOVES2010a for the South Bend/Elkhart, Indiana area. This SIP revision, if approved, would replace MOBILE6.2-based approved budgets in the 1997 8-hour ozone maintenance plan for South Bend/Elkhart, Indiana with MOVES2010a-based budgets. Indiana supplemented the SIP revision request on August 17, 2012. The August 17, 2012, submittal letter with the state public comment documentation completed the requirements for the SIP submittal. On October 4, 2012, EPA proposed to approve the Indiana SIP revision request (see 77 FR 60661). Additional explanatory information is contained in EPA's October 4, 2012, proposal.

Under section 176(c) of the Clean Air Act (CAA), transportation plans, Transportation Improvement Programs (TIPs), and transportation projects must "conform" to (i.e., be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or delay an interim milestone. The transportation conformity regulations can be found at 40 CFR parts 51 and 93. The South Bend/Elkhart area must use the updated budgets to demonstrate transportation conformity. On the effective date of EPA's approval of the submitted budgets, the budgets must be used by local, state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA.

The MOVES model is EPA's state-of-the-art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE6.2.

States that revise their existing SIPs to include MOVES budgets must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. The transportation conformity rule (40 CFR 93.118(e)(4)(iv)) requires that "the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission)."

EPA has determined, based on its evaluation, that the area's maintenance plan continues to serve its intended purpose with the MOVES2010a-based budgets and that the budgets themselves meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4). The basis for this conclusion is contained in the proposed approval (77 FR 60661).

II. What public comments were received?

The State public comment period on the proposal ended on July 18, 2012. The State offered to hold a public hearing on request but one was not requested. The State received no public comments during the comment period.

EPA had a 30 day public comment period on the proposed approval. The public comment period closed on November 5, 2012. EPA received no comments during the public comment period.

III. What action is EPA taking?

EPA is approving new MOVES2010a-based budgets for the South Bend/Elkhart, Indiana 1997 ozone maintenance area because the submitted budgets should continue to keep emissions below the attainment level and maintain air quality. On the effective date of this rulemaking, the submitted MOVES2010a-based budgets will replace the existing, MOBILE6.2-based budgets in the State's 1997 8-hour ozone maintenance plan and will be used in future transportation conformity analyses for the area. The previously approved MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes. The table below contains the MOVES2010a-based budgets for the South Bend/Elkhart, Indiana area which are being approved in this action.

MOTOR VEHICLE EMISSION BUDGETS FOR SOUTH BEND/ELKHART, INDIANA
[MOVES-based onroad emissions]

Year	2020
Nitrogen oxides tons/day	13.95
Volatile organic compounds tons/day	6.73

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 dioxides, Ozone, Volatile organic compounds.

Dated: November 29, 2012.
Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

- 2. The table in § 52.770 paragraph (e) is amended by adding an entry in alphabetical order for "South Bend-Elkhart 1997 8-hour ozone maintenance plan" to read as follows:

§ 52.770 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * * * *	* * * * *	* * * * *	* * * * *
South Bend-Elkhart 1997 8-hour ozone maintenance plan.	12/17/12, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS].		Revision to motor vehicle emission budgets.
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- 3. Section 52.777 is amended by redesignating paragraph (hh) as paragraph (hh)(1), and by adding paragraph (hh)(2) to read as follows

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbons).

* * * * *
(hh)(1) * * *

(2) Approval—On August 17, 2012, Indiana submitted a request to revise the approved MOBILE6.2 motor vehicle

emission budgets (budgets) in the 1997 8-hour ozone maintenance plan for the South Bend/Elkhart, Indiana area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2020 budgets for South Bend/Elkhart, Indiana are 6.73 tons per

day volatile organic compounds (VOCs) and 13.95 tons per day nitrogen oxides (NO_x).

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[FR Doc. 2012-30107 Filed 12-14-12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2011-0542; FRL-9760-2]

Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program From Grain Sorghum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a supplemental rule associated with the Renewable Fuel Standard (RFS) program. This final rule contains a lifecycle GHG analysis for grain sorghum ethanol and a regulatory determination that grain sorghum ethanol qualifies as a renewable fuel under the RFS Program. EPA’s analysis indicates that ethanol made from grain sorghum at dry mill facilities that use natural gas for process energy meets the lifecycle greenhouse gas emissions reduction threshold of 20 percent compared to the baseline petroleum fuel it would replace, and therefore qualifies as renewable fuel. It also contains our regulatory determination that grain sorghum ethanol produced at dry mill facilities using specified forms of biogas for both process energy and most electricity production, has lifecycle GHG emission reductions of more than 50 percent compared to the baseline petroleum fuel it would replace, and that such grain sorghum ethanol qualifies as an advanced biofuel under the RFS Program.

DATES: This final rule is effective on December 17, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2011-0542. All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Jefferson Cole, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 (MC: 6041A); telephone number: 202-564-1283; fax number: 202-564-1177; email address: *cole.jefferson@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline of This Preamble

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 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act
- IV. Statutory Provisions and Legal Authority

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as biodiesel and renewable diesel. Regulated categories include:

Category	NAICS ¹ codes	SIC ² codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

¹ North American Industry Classification System (NAICS).

² Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to engage in activities that may be affected

by today’s action. To determine whether your activities would be affected, you should carefully examine the applicability criteria in 40 CFR part 80,

subpart M. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.