

### 8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that may disproportionately affect children.

### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing regulations for a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant

Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0171.1.

■ 2. Add § 165.T17-1088 to read as follows:

#### § 165.T17-1088 Safety Zone; MODU KULLUK, Ocean Bay, Sitkalidak Island and Shelikof Strait, Alaska.

(a) *Location*. The following areas are safety zones: All navigable waters, from the surface to the seabed, within one nautical mile of the MODU KULLUK, a large ocean-going drill vessel, while it is aground in the vicinity of Ocean Bay and Partition Cove, Sitkalidak Island, Alaska, in approximate position 57 degrees, 05.4' N; 153 degrees, 06.1' W and all navigable waters, from surface to seabed, within 500 yards of the MODU KULLUK, once it is floating free from the seabed including times that it is under tow and at anchor in the vicinity of Kodiak Island and Kiliuda Bay, Alaska.

(b) *Effective date*. The safety zone is effective beginning January 6, 2013, and terminates at 11:59 p.m. on March 31, 2013. Enforcement of this safety zone may end earlier if ordered by the Captain of the Port, Western Alaska.

(c) *Regulations*. The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the areas described in paragraph (a). In addition to the general regulations, the following provisions apply to this safety zone:

(1) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant,

and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(2) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(3) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(4) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force including notification that the MODU KULLUK is free from the ocean bottom and the subsequent reduction in size of the safety zone by providing notice in accordance with 33 CFR 165.7.

(d) *Penalties*. Persons and vessels violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: January 6, 2013.

**P. Mehler, III,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

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**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R05-OAR-2012-0648; EPA-R05-OAR-2012-0834; FRL-9773-5]

### Approval and Promulgation of Air Quality Implementation Plans; Ohio and Indiana; Cincinnati-Hamilton, OH; Ohio and Indiana 1997 8-Hour Ozone Maintenance Plan Revisions to Approved Motor Vehicle Emissions Budgets

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the request by Ohio and Indiana to revise the Cincinnati-Hamilton 1997 8-hour ozone maintenance air quality State Implementation Plans (SIPs) to replace the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor

Vehicle Emissions Simulator (MOVES) emissions model. The Ohio and Indiana portions of the Cincinnati-Hamilton area include the Ohio Counties of Butler, Clermont, Clinton, Hamilton and Warren, Ohio, and Lawrenceburg Township in Dearborn County, Indiana. Ohio submitted the SIP revision request to EPA on June 29, 2012. Indiana submitted the SIP revision request for parallel processing in a letter dated October 12, 2012, and followed up with a final submittal on December 11, 2012. Ohio and Indiana have submitted identical budgets which cover the Ohio and Indiana portions of the Cincinnati-Hamilton 1997 ozone maintenance area.

**DATES:** This direct final rule will be effective April 1, 2013, unless EPA receives adverse comments by February 28, 2013. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID Nos. EPA-R05-OAR-2012-0648 for Ohio and EPA-R05-OAR-2012-0834 for Indiana, by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *Email*: [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov).

3. *Fax*: (312) 692-2450.

4. *Mail*: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery*: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R05-OAR-2012-0648 and EPA-R05-OAR-2012-0834. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you

consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the 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 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 Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8777, [maietta.anthony@epa.gov](mailto:maietta.anthony@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 EPA approving?
- II. What is the background for this action?
  - a. SIP Budgets and Transportation Conformity
  - b. Prior Approval of Budgets

- c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period
- d. Submission of New Budgets Based on MOVES2010a

III. What are the criteria for approval?

IV. What is EPA's analysis of the State's submittal?

- a. The Revised Inventories
- b. Approvability of the MOVES2010a-based Budgets
- c. Applicability of MOBILE6.2-based Budgets

V. What action is EPA taking?

VI. Statutory and Executive Order Reviews

**I. What is EPA approving?**

EPA is approving new MOVES2010a-based budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana, 1997 8-hour ozone maintenance area. The Ohio and Indiana portions of the Cincinnati-Hamilton area were redesignated to attainment of the 1997 8-hour ozone standard effective May 11, 2010 (75 FR 26118), and MOBILE6.2-based budgets were approved in that action. The newly submitted MOVES2010a-based budgets will replace the existing MOBILE6.2-based budgets in the Ohio and Indiana 1997 8-hour ozone maintenance plans and must then be used in future transportation conformity analyses for the area. At that time, the previously approved MOBILE6.2 based budgets would no longer be applicable for transportation conformity purposes.

The Ohio and Indiana portions of the Cincinnati-Hamilton 1997 8-hour ozone maintenance area must use the MOVES2010a-based budgets starting on the effective date of this rulemaking. See the official release of the MOVES2010 emissions model (75 FR 9411-9414, March 2, 2010) for background, and section II.(c) below for details.

**II. What is the background for this action?**

*a. SIP Budgets and Transportation Conformity*

Under the Clean Air Act (CAA), states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given National Ambient Air Quality Standard (NAAQS). These emission control strategy SIP revisions (e.g., reasonable further progress (RFP) and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars, trucks, and other on-road vehicles. These mobile source SIP budgets are the portions of the total emissions that are allocated to on-road vehicle use that,

together with emissions from other sources in the area, will provide for attainment or maintenance if they are not exceeded. The budget serves as a ceiling on emissions from an area's planned transportation system. For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the 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 part 51 subpart T, and part 93.

In general, before budgets can be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, budgets that are replacing approved budgets must be found adequate and approved before budgets can replace older budgets. If the submitted SIP budgets are meant to replace budgets for the same purpose, as is the case with Ohio's and Indiana's MOVES2010a 1997 8-hour ozone maintenance plan budgets, EPA must approve the revised SIP and budgets, and must affirm that they are adequate at the same time. Once EPA approves revised budgets into the SIP, they must be used by state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

#### b. Prior Approval of Budgets

EPA had previously approved budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton, 8-hour ozone maintenance area for volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) for the year 2015 and 2020 on May 11, 2010 (75 FR 26118). These budgets were based on EPA's MOBILE6.2 emissions model. The ozone maintenance plan established 2015 and 2020 budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton, area. The 2015 approved budgets of 31.73 tons per day (tpd) for VOCs and 49.00 tpd for NO<sub>x</sub> and the 2020 budgets of 28.82 tpd VOCs and 34.39 tpd NO<sub>x</sub> were approved in the May 11, 2010, rulemaking. These budgets demonstrated a reduction in emissions

from the monitored attainment year and included a margin of safety.

#### c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period

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.

EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). EPA subsequently released two minor model revisions: MOVES2010a in September 2010 and MOVES2010b in April 2012. Both of these minor revisions enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010. MOVES will be required for new regional emissions analyses for transportation conformity determinations ("regional conformity analyses") outside of California that begin after March 2, 2013, or when EPA approves MOVES-based budgets, whichever comes first.<sup>1</sup> The MOVES grace period for regional conformity analyses applies to both the use of MOVES2010 and approved minor revisions (e.g., MOVES2010a and MOVES2010b). For more information, see EPA's "Policy Guidance on the Use of MOVES2010 and Subsequent Minor Model Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (April 2012), available online at: [www.epa.gov/otaq/stateresources/transconf/policy.htm#models](http://www.epa.gov/otaq/stateresources/transconf/policy.htm#models).

EPA has encouraged areas to examine how MOVES would affect future transportation plan and TIP conformity determinations so, if necessary, SIPs and budgets could be revised with MOVES or transportation plans and TIPs could be revised (as appropriate) prior to the end of the regional transportation conformity grace period. EPA has also encouraged state and local air agencies to consider how the release

of MOVES would affect analyses supporting SIP submissions under development (77 FR 9411, March 2, 2010 and 77 FR 11394, February 27, 2012).

The Ohio, Kentucky, Indiana Regional Council of Governments (OKI), which is the Metropolitan Planning Organization (MPO) for the Cincinnati-Hamilton area, has used MOVES2010a emission rates with the transportation network information to estimate emissions in the years of the transportation plan and also for the SIP. The budgets have been revised using the latest planning assumptions including population and employment updates. In addition, newer vehicle registration data has been used to update the age distribution of the vehicle fleet. Since MOVES2010 (or a minor model revision) will be required for conformity analyses after the grace period ends, OKI has concluded that updating the budgets with MOVES2010a will prepare the area for the transition to using MOVES for conformity analyses and determinations. The interagency consultation group has had extensive consultation on the requirements and need for new budgets.

#### d. Submission of New Budgets Based on MOVES2010a

On June 29, 2012, Ohio submitted in final replacement budgets based on MOVES2010a that cover the Ohio portion of the Cincinnati-Hamilton area. Ohio received no comments during the public review and comment period. On October 12, 2012, Indiana submitted for parallel processing replacement budgets based on MOVES2010a that cover the Indiana portion of the Cincinnati-Hamilton area. Indiana received no comments during their subsequent public review and comment period. Indiana submitted the final SIP revision request to EPA on December 11, 2012.

The MOVES2010a-based budgets will replace the prior approved MOBILE6.2-based budgets and are for the same years and pollutants/precursors. The new MOVES2010a-based budgets are for the years 2015 and 2020 for both VOCs and NO<sub>x</sub> and are detailed in Table 3 of this notice. Ohio and Indiana have also provided total emissions including mobile emissions based on MOVES2010a, for the attainment year of 2005, the 2015 budget year, and the 2020 maintenance year. The safety margin is defined as the reduction in emissions from the base year (in this case the 2005 attainment year) to the final year of the maintenance plan (in this case the 2020 year). The total emissions include point, area, non-road mobile and on-road mobile sources. The

<sup>1</sup> Upon the release of MOVES2010, EPA established a two-year grace period before MOVES is required to be used for regional conformity analyses (75 FR 9411, March 2, 2010). EPA subsequently promulgated a final rule on February 27, 2012 to provide an additional year before MOVES is required for these analyses (77 FR 11394). In this case the grace period ends on March 2, 2013.

available safety margin is shown in Table 1.

TABLE 1—TABLE OF TOTAL EMISSIONS WITH MOVES2010A MOBILE EMISSIONS CINCINNATI-HAMILTON  
[Tons per summer day]

Year	2005	2015	2020	Safety Margin
VOC ..	237.77	174.59	162.47	65.39
NO <sub>x</sub> ..	389.99	309.41	289.20	38.10

OKI has added only a small portion of the overall safety margin available for NO<sub>x</sub> and VOCs to the budgets for 2015 and 2020. The submittal demonstrates how all emissions decline from the attainment year of 2005. In 2005, the total estimated NO<sub>x</sub> emissions from all sources (including mobile, point, area, and non-road sources) is 389.99 tpd and the total VOC emissions, for the 2005 attainment year, from all sources is 237.77 tpd. The 2020 estimated emissions for total NO<sub>x</sub> from all sources is 289.20 tpd and the total VOC emissions from all sources is 162.47 tpd. This reduction in emissions demonstrates that the area will continue below the attainment level of emissions and maintain the 1997 8-hour ozone standard. The mobile source emissions, when included with point, area, and non-road sources continue to demonstrate maintenance of the attainment level of emissions in the Ohio and Indiana portions of the Cincinnati-Hamilton area.

No additional control measures were needed to maintain the 1997 ozone standard in the Cincinnati-Hamilton area. An appropriate safety margin for NO<sub>x</sub> and VOCs was decided by the interagency consultation group (the interagency consultation group as required by the state conformity agreement consists of representatives from the Federal Highway Administration, Ohio Environmental Protection Agency (OEPA), Ohio Department of Transportation, Indiana Department of Transportation, Indiana Department of Environmental Management (IDEM) and EPA). The submitted budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton area are 94.25 tpd for NO<sub>x</sub> and 56.06 tpd for VOCs in the year 2015; and 73.13 tpd for NO<sub>x</sub> and 42.81 tpd for VOCs in the year 2020 (see Table 3). These budgets will continue to keep emissions in the Cincinnati-Hamilton area below the calculated attainment year of emissions.

### III. What are the criteria for approval?

EPA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (e.g., RFP, attainment, or maintenance). States that revise their existing SIPs to include MOVES budgets must therefore show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. The SIP must also meet any applicable SIP requirements under CAA section 110.

In addition, the transportation conformity rule (at 40 CFR 93.118(e)(4)(iv)) requires that “the budgets, when considered together with all other emissions sources, is consistent with applicable requirements for RFP, attainment, or maintenance (whichever is relevant to the given implementation plan submission).” This and the other adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate and approve them for conformity purposes.

In addition, areas can revise their budgets and inventories using MOVES without revising their entire SIP if (1) the SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories, and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP. For example, the first criterion could be satisfied by demonstrating that the emissions reductions between the baseline/attainment year and maintenance year are the same or greater using MOVES than they were previously. The Ohio and Indiana submittals meet this requirement as described below in section IV.

For more information, see EPA’s latest “Policy Guidance on the Use of MOVES2010 for SIP Development, Transportation Conformity, and Other Purposes” (April 2012), available online at: [www.epa.gov/otaq/stateresources/transconf/policy.htm#models](http://www.epa.gov/otaq/stateresources/transconf/policy.htm#models).

### IV. What is EPA’s analysis of the state’s submittal?

#### a. The Revised Inventories

The Ohio SIP revision and the Indiana SIP revision requests for the Cincinnati-Hamilton 1997 ozone maintenance plans seek to revise only the on-road mobile source inventories and not the non-road inventories, area source inventories or point source inventories

for the 2015 and 2020 years for which the SIP revises the budgets. OEPA and IDEM have certified that the control strategies remain the same as in the original SIP, and that no other control strategies are necessary. This is confirmed by the monitoring data for the Cincinnati-Hamilton area, which continues to monitor attainment for the 1997 8-hour ozone standard. Thus, the current control strategies are continuing to keep the area in attainment of the NAAQS.

EPA has reviewed the emission estimates for point, area, and non-road sources and concluded that no major changes to the projections need to be made. Ohio and Indiana find that growth and control strategy assumptions for non-mobile sources (i.e., area, non-road, and point) have not changed significantly from the original submittal for the years 2005, 2015, and 2020. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2005, 2015, and 2020 continue to be valid and do not affect the overall conclusions of the plan.

Ohio’s and Indiana’s submissions confirm that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions from mobile sources) are 389.99 tpd for NO<sub>x</sub> and 237.77 tpd for VOCs in the 2005 attainment year. The total emissions from all sources in the 2015 year are 309.41 tpd for NO<sub>x</sub> and 174.59 tpd for VOCs. These totals demonstrate that emissions in the Cincinnati-Hamilton area are continuing to decline and remain below the attainment levels.

Ohio and Indiana have submitted MOVES2010a-based budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton area that are clearly identified in the submittals. The on-road budgets for 2015 are 94.25 tpd for NO<sub>x</sub> and 56.06 tpd for VOCs. The on-road budgets for 2020 are 73.13 tpd for NO<sub>x</sub> and 42.81 tpd for VOCs. The budgets are also displayed in Table 3.

#### b. Approvability of the MOVES2010a-based Budgets

EPA is approving the MOVES2010a-based budgets submitted by Ohio and Indiana for use in determining transportation conformity in the Ohio and Indiana portions of the Cincinnati-Hamilton 1997 ozone maintenance area. EPA is making this approval based on our evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and our in-depth evaluation

of the State's submittals and SIP requirements. EPA has determined, based on its evaluation, that the area's maintenance plans would continue to serve its intended purpose with the submitted MOVES2010a-based budgets and that the budgets themselves meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4).

The adequacy criteria found in 40 CFR 93.118(e)(4) are as follows:

- The submitted SIP was endorsed by [the Governor/Governor's designee] and was subject to a state public hearing (§ 93.118(e)(4)(i));
- Before the control strategy implementation plan was submitted to EPA, consultation among Federal, state, and local agencies occurred, and the state fully documented the submittal (§ 93.118(e)(4)(ii));
- The budgets are clearly identified and precisely quantified (§ 93.118(e)(4)(iii));
- The budgets, when considered together with all other emissions sources, are consistent with applicable requirements for RFP, attainment, or maintenance (§ 93.118(e)(4)(iv));
- The budgets are consistent with and clearly related to the emissions inventory and control measures in the control strategy implementation plan (§ 93.118(e)(4)(v)); and
- The revisions explain and document changes to the previous budgets, impacts on point and area source emissions and changes to established safety margins and reasons for the changes (including the basis for any changes related to emission factors or vehicle miles traveled) (§ 93.118(e)(4)(vi)).

We find that Ohio and Indiana have met all of the adequacy criteria. Public hearing materials were submitted with the formal SIP revision request. The interagency consultation group, which is composed of the state air agencies, state departments of transportation, Federal Highway Administration, EPA, and the MPO for the area, has discussed and reviewed the budgets developed with MOVES2010a and the safety margin allocation. The budgets are clearly identified and precisely quantified in the submittals. The budgets when considered with other emissions sources (point, area, non-road) are consistent with continued maintenance of the 1997 ozone standard. The budgets are clearly related to the emissions inventory and control measures in the SIP. The changes from the previous budgets are clearly explained with the change in the model from MOBILE6.2 to MOVES2010a and the revised and updated planning assumptions. The inputs to the model

are detailed in the Appendix to the submittal. EPA has reviewed the inputs to the MOVES2010a modeling and participated in the consultation process. The Federal Highway Administration and the Ohio and Indiana Departments of Transportation have taken a lead role in working with the MPO to provide accurate, timely information and inputs to the MOVES2010a model runs. The OKI network model provided the vehicle miles of travel and other necessary data from the travel demand network model.

The CAA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (in this case, maintenance). Therefore, states that revise existing SIPs with MOVES must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model.

To that end, Ohio's and Indiana's submitted MOVES2010a based budgets meet EPA's two criteria for revising budgets without revising the entire SIP:

- (1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES2010a base year and milestone, attainment, or maintenance year inventories, and
- (2) The state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.

Indiana and Ohio have documented that growth and control strategy assumptions continue to be valid and do not change the overall conclusions of the maintenance plan. The emission estimates for point, area, and non-road sources have not changed. Indiana and Ohio find that growth and control strategy assumptions for non-mobile sources (i.e. area, non-road, and point) from the original submittal for the years 2005, 2015, and 2020 were developed before the downturn in the economy over the last several years. Because of this, the factors included in the original submittal may project more growth than actual into the future. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2005, 2015, and 2020 continue to be valid and do not affect the overall conclusions of the plan.

Ohio's and Indiana's submissions confirm that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total

emissions in the revised SIP (which includes MOVES2010a emissions for mobile sources) decrease from the 2005 attainment year to the year 2020 (the last year of the maintenance plan). These totals demonstrate that emissions in the Cincinnati-Hamilton area are continuing to decline and remain below the attainment levels. Table 2 displays total emissions in the Ohio and Indiana portions of the Cincinnati-Hamilton area including point, area, non-road, and mobile sources and demonstrates the declining emissions from the 2005 attainment year.

TABLE 2—TABLE OF TOTAL EMISSIONS WITH MOVES2010A MOBILE EMISSIONS

[Tons per summer day]			
Year	2005	2015	2020
VOC .....	237.77	174.59	162.47
NO <sub>x</sub> .....	389.99	309.41	289.20

The following table (Table 3) displays the submitted budgets (Ohio and Indiana submitted budgets that cover both the Ohio and Indiana portions of the area) that are proposed in the notice to be approved. The budgets include an appropriate margin of safety while still maintaining total emissions below the attainment level.

TABLE 3—TABLE OF MOTOR VEHICLE EMISSION BUDGETS (MOVES) FOR THE OHIO AND INDIANA PORTIONS OF THE CINCINNATI-HAMILTON 1997 OZONE AREA

[Tons per summer day]		
Year	2015	2020
VOC .....	56.06	42.81
NO <sub>x</sub> .....	94.25	73.13

Based on our review of the SIPs and the new budgets provided, EPA has determined that the SIPs will continue to meet the requirements if the revised motor vehicle emissions inventories are replaced with MOVES2010a inventories.

*c. Applicability of MOBILE6.2-based Budgets*

Pursuant to the state's requests, EPA's approval of the revised budgets means that the existing MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes upon the effective date of this approval.

In addition, upon this EPA approval of the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOBILE6 instead of MOVES2010 (and subsequent minor

revisions) for the pollutants included in these budgets ends for the Ohio and Indiana portions of the Cincinnati-Hamilton ozone maintenance area.<sup>2</sup>

#### V. What action is EPA taking?

EPA is approving the 2015 and 2020 submitted budgets for the Ohio and Indiana portions of the Cincinnati-Hamilton 1997 ozone maintenance plans. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective April 1, 2013 without further notice unless we receive relevant adverse written comments by February 28, 2013. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective April 1, 2013.

#### VI. 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 April 1, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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 dioxide, Ozone, Volatile organic compounds.

Dated: January 11, 2013.

**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 "Cincinnati-Hamilton, OH-KY-IN 1997 8-hour ozone maintenance plan" to read as follows:

#### § 52.770 Identification of plan.

\* \* \* \* \*  
(e) \* \* \*

<sup>2</sup>For more information, see EPA's "Policy Guidance on the Use of MOVES2010 and Subsequent Minor Revisions for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (April 2012).

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA Approval	Explanation
* * * * * Cincinnati-Hamilton, OH-KY-IN 1997 8-hour ozone maintenance plan.	1/29/12,	[INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS].	Revision to motor vehicle emission budgets.
*	*	*	*

■ 3. Section 52.777 is amended by redesignating paragraph (oo) as paragraph (oo)(1) and by adding paragraph (oo)(2) to read as follows:

**§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).**

(oo)(1) \* \* \*  
 (2) Approval—On December 11, 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 Indiana portion of the Cincinnati-Hamilton, OH-KY-IN maintenance area. The budgets are being revised with budgets developed with the

MOVES2010a model. The 2015 motor vehicle emissions budgets for the Ohio and Indiana portions are 56.06 tpd VOC and 94.25 tpd NO<sub>x</sub>. The 2020 motor vehicle emissions budgets for the Ohio and Indiana portions of the area are 42.81 tpd VOC and 73.13 tpd for NO<sub>x</sub>.

■ 4. Section 52.1885 is amended by adding paragraph (ff)(12) to read as follows:

**§ 52.1885 Control strategy: Ozone.**

(ff) \* \* \*  
 (12) Approval—On June 29, 2012, Ohio submitted a request to revise the approved MOBILE6.2 motor vehicle

emission budgets (budgets) in the 1997 8-hour ozone maintenance plan for the Ohio and Indiana portions of the Cincinnati-Hamilton, OH-KY-IN 8-hour ozone area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2015 motor vehicle emissions budgets for the Ohio and Indiana portions are 56.06 tpd VOC and 94.25 tpd NO<sub>x</sub>. The 2020 motor vehicle emissions budgets for the Ohio and Indiana portions of the area are 42.81 tpd VOC and 73.13 tpd for NO<sub>x</sub>.

\* \* \* \* \*  
 [FR Doc. 2013-01733 Filed 1-28-13; 8:45 am]

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