facility. This spreadsheet does not include the other changes listed above that affect point sources. Documentation is provided in the spreadsheet on the location of the data used for computing the condensable $PM_{2.5}$ emissions in the 2005 point inventory.

Additionally, EPA seeks comment on whether or not to revise projected non-EGU emissions inventories for 2014 to reflect sulfur dioxide (SO_2) and $PM_{2.5}$ reductions from the proposed National Emissions Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (75 FR 32006), hereafter referred to as the "Major Source Boiler Rule." The information included in the docket reflects reductions that would be expected if the rule were finalized as proposed. If the projected reductions associated with the final Major Source Boiler Rule were to differ from the projected reductions associated with the proposal, EPA would use the projections for the final rule if they become available in time for use in EPA's modeling for the final Transport Rule.

In addition, EPA requests comment on the following modified approaches to calculating emissions inventories that we intend to use in the modeling for the final Transport Rule.

• EPA proposes to use the latest public release of the Motor Vehicle Emissions Simulator (MOVES) (*http://www.epa.gov/otaq/models/moves/index.htm*) to estimate on-road mobile emissions data in 2005, 2012, and 2014 for all modeled pollutants and emissions processes in all States, except California. Future-year vehicle miles traveled will be revised from proposal to reflect the latest available data. This approach differs from the proposal in the following significant ways: (1) EPA will use a newer version of MOVES which has different emissions values from the version of MOVES used for the proposal; (2) EPA will use MOVES instead of the Mobile Source Emission Factor Model version 6.2 (MOBILE6) for diesel vehicles and motorcycles; (3) EPA will use MOVES instead of MOBILE6 for additional pollutants, including SO_2, ammonia (NH_3), and $PM_{2.5}$ from brake and tire wear; (4) the revised MOVES reflects NH_3 decreases in future years that were not reflected by MOBILE6; and, (5) EPA will use actual MOVES runs for 2012 and 2014 rather than scaling 2005 MOVES emissions. With the exception of these changes, EPA intends to continue to apply MOVES using the same approaches described in the Emission Inventory Technical Support Document released with the Transport Rule proposal (*http://www.epa.gov/airquality/transport/pdfs/TR_Proposal_Emissions_TSD.pdf;* Section 3.3.1). The revised approach will be similar to the approach described in the Technical Support Document for the proposed rule in the following key ways: (1) EPA will allocate State-total MOVES results to counties by pollutant and process using results from MOBILE6 and the National Mobile Inventory Model; and (2) EPA will use MOVES defaults rather than State-specific or county-specific MOVES inputs.

• EPA proposes to use the final projections from 2002 to 2005, 2012, and 2014 emissions for the category 3 commercial marine sector to reflect the final category 3 commercial marine Emissions Control Area proposal to the International Maritime Organization (EPA–420–F–10–041, August 2010).

• EPA proposes to reduce the boundaries used to allocate category 3 commercial marine emissions to States from 200 nautical miles to reflect State waters (3–10 nautical miles) based on Mineral Management Service State-federal boundary data consistent with approaches used for the 2005 and 2008 National Emissions Inventories.

• EPA proposes to include the data revisions identified above in the final Transport Rule, modified to address any comments that EPA receives as part of the transport rulemaking effort. Changes in the emissions data could impact the final rulemaking in a number of ways including, but not limited to:

1. Changing base year emissions and emissions projections could impact which downwind areas have projected air quality concerns absent this rulemaking (i.e., non-attainment or maintenance).

2. Changing emissions projections could impact EPA assessment of which States contribute to those problems.

Between now and the time that EPA finalizes the Transport Rule, additional information used to support the final transport rulemaking may be placed in the docket. As noted above, EPA is requesting comment only on the data and revisions explicitly identified in this document. EPA requested comment on all aspects of its emissions inventories in the proposed Transport Rule. The comment period for that proposal closed on October 1, 2010. EPA has not yet reviewed all comments received on the proposed Transport Rule and notes that emission inventory data may be further revised based on comments received on the proposed Transport Rule or on additional information that becomes available before the rule is finalized.

Dated: October 20, 2010.

Mary Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–27171 Filed 10–26–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1244

[Docket No. EP 646 (Sub-No. 3)]

Waybill Data Released in Three-Benchmark Rail Rate Proceedings

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is republishing its April 2, 2010 proposal to amend its rules with respect to the Three-Benchmark methodology used to adjudicate simplified rate case complaints, to include an expanded discussion of its rationale and regulatory objectives. This proposal provides for release to the parties to a Three-Benchmark proceeding of the unmasked Waybill Sample data of the defendant carrier for the 4 years that correspond with the most recently published Revenue Shortfall Allocation Method (RSAM) figures. The parties would then use the released Waybill Sample data to form their traffic comparison groups. The Board seeks comments concerning the amount of data that would be available under the proposed rule, and the proposal that the parties would be permitted to draw from all 4 years of waybill data to form their comparison groups.

DATES: Comments on this proposal are due by November 26, 2010; replies are due by December 27, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 646 (Sub-No. 3), 395 E Street, SW., Washington, DC 20423–0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: In *Simplified Standards for Rail Rate Cases* (*Simplified Standards*), EP 646 (Sub-No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB* (*CSX Transp. I*), 568 F.3d 236 (DC Cir. 2009), *and vacated in part on reh'g, CSX Transp., Inc.* v. *STB* (*CSX Transp. II*), 584 F.3d 1076 (DC Cir. 2009), the Board modified its simplified rail rate guidelines, creating a simplified stand-alone cost approach for medium-size rail rate disputes and revising its Three-Benchmark approach for smaller rail rate disputes.

The Three-Benchmark method compares a challenged rate of the "issue traffic" to the rates of a comparison group of traffic drawn from the Waybill Sample data of the defendant carrier. The Waybill Sample is a statistical sampling of railroad waybills of the carrier's shipments that is collected and maintained for use by the Board. *See* 49 CFR 1244.1(c). The proposed rule in *Simplified Standards* would have required parties to draw their traffic comparison groups from the most recent year of Waybill Sample data of the carrier's other shipments. *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1), slip op. at 32–33 (STB served July 28, 2006). The final rule, however, allowed parties to form comparison groups using Waybill Sample data from the 4 most recent years. *Simplified Standards,* slip op. at 80.

Several railroads [1] and the Association of American Railroads challenged the final rule in court on the basis that, under 5 U.S.C. 553(b)(3), the Board had not provided adequate notice and opportunity to comment on the change from 1 to 4 years of data from which the parties could draw to form their proposed comparison groups. *CSX Transp. I,* 568 F.3d at 246. Initially, the court determined that it would not address the merits of petitioners' argument, because the issue had not been presented to the Board prior to seeking judicial review and, therefore, had been waived. *Id.* at 246–47.

On rehearing, however, the court reversed its waiver determination and considered the merits of petitioners' argument. The court concluded that the Board had failed to provide adequate notice of the final rule regarding the available range of Waybill Sample data. Accordingly, the court vacated that portion of *Simplified Standards. CSX Transp. II,* 584 F.3d at 1078. As a result, there is currently a gap in the Board's rules; *i.e.,* there is no defined period for which unmasked Waybill Sample data is to be released in a Three-Benchmark proceeding.

On April 2, 2010, the Board, through a notice of proposed rulemaking, proposed to provide for release to the parties in Three-Benchmark proceedings of the unmasked Waybill Sample data of the defendant carrier for the 4 years that correspond with the most recently published RSAM figures. The parties would then draw their comparison groups in any combination they choose from the released Waybill Sample data. The Board solicited comments on this proposal.

The Board received comments from shippers, railroads, the U.S. Department of Agriculture, and other interested organizations. Some commenters expressed concern that the Board did not provide the rationales and regulatory objectives behind the proposed rules. In response, this decision will provide the Board's rationales and regulatory objectives. This notice of proposed rulemaking proposes rules that are identical to those proposed on April 2, 2010.

The use of multiple years of data for the Waybill Sample would be consistent with the Board's current practice in other contexts in Three-Benchmark cases. The Board already uses a 4-year averaging period to determine the other two benchmark components used in a Three-Benchmark case: The RSAM and $R/VC_{>180}$ benchmarks. *See Rate Guidelines—Non-Coal Proceedings,* (*Rate Guidelines*) 1 S.T.B. 1004, 1032–33 (1996). The reason for using this 4-year averaging period is to "smooth out annual variations and minimize the impact of any year that may have been aberrational for that carrier." *Rate Guidelines,* 1032–33.

A similar rationale applies to the rule proposed here. The availability of 4 years of Waybill Sample data would allow parties more flexibility to choose a comparison group that is a reasonable reflection of the traffic at issue and to avoid having to use data that may be aberrational. Giving the option to choose movements over a multi-year period would provide the parties with more data from which to choose, which should assist the parties in selecting a comparison group that more closely resembles the issue traffic. At the same time, limiting the pool of data to the 4 years that correspond with the most recently published RSAM figures would prevent the use of data that are too old to be reliable. By contrast, a shorter period, such as the 1-year time span envisioned earlier, could cause the comparison groups to be too small.

If the proposed rules are adopted, parties would not have incentive to specifically choose only the most favorable data from the 4-year data set because the Board will choose the comparison group that more closely resembles the traffic at issue. Thus, if a party selects a group that heavily favors its position at the expense of a reasonable comparison, then it is less likely that the Board would choose that comparison group.

The Board will now provide an opportunity for additional input regarding the rules proposed here. While we will consider the comments and replies previously submitted in this proceeding, interested parties (whether or not they have already participated in this proceeding) may file additional comments and replies.

The Board has authority to promulgate rules to meet statutory objectives. *See* 49 U.S.C. 721(a). The Board is issuing this notice of proposed rulemaking pursuant to the mandate to "establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case." 49 U.S.C. 10701(d)(3). This proposed rule, if implemented, will be part of the framework for the simplified and expedited method of challenging rail rates.

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, a notice of proposed rulemaking must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or a certification that the proposed rule will not have a "significant economic impact on a substantial number of small entities," 5 U.S.C. 605(b). The proposed rule fills in a gap in the Three-Benchmark rate complaint framework by specifying the number of years of Waybill Sample data that will be made available to the parties in those cases. By providing clarity on that issue, the proposed rule would have a positive economic effect on small entities because it would allow Three-Benchmark rate cases to proceed more efficiently. Moreover, while the proposed rule delineates the range of data that would be made available, it does not require the parties to use any particular quantum of data. Accordingly, pursuant to 5 U.S.C.

[1] Canadian Pacific Railway Co., Soo Line Railroad Company, Delaware & Hudson Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company.

605(b), the Board certifies that the regulations proposed herein would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 721(a); 49 U.S.C. 10701(d)(3).

Decided: October 21, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–27167 Filed 10–26–10; 8:45 am]

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