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**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. 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. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 30, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 93

[EPA-HQ-OAR-2011-0393; FRL-9477-9]

RIN 2060-AR03

### Transportation Conformity Rule: MOVES Regional Grace Period Extension

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to extend the grace period before the Motor Vehicle Emission Simulator model (currently MOVES2010a) is required for regional emissions analyses for transportation conformity determinations ("regional conformity

analyses"). This proposal would provide an additional year to the previously established two-year conformity grace period, so that MOVES2010a would not be required for regional conformity analyses until March 2, 2013. This proposal would not affect EPA's previous approval of the use of MOVES in official state air quality implementation plan (SIP) submissions or the existing grace period before MOVES2010a is required for carbon monoxide and particulate matter hot-spot analyses for project-level conformity determinations.

**DATES:** Written comments on this proposal must be received on or before November 14, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-OAR-2011-0393, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov)
- *Fax:* (202) 566-9744
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2011-0393. Please include a total of two copies.
- *Hand Delivery:* Air Docket, Environmental Protection Agency: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA-HQ-OAR-2011-0393. Please include two copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2011-0393. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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](http://www.regulations.gov) or e-mail. The <http://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 e-mail comment directly to EPA without going through [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) your e-mail 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://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 <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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 and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4842; fax number: (734) 214-4052; e-mail address: [patulski.meg@epa.gov](mailto:patulski.meg@epa.gov); or Astrid Larsen, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4812; fax number: (734) 214-4052; e-mail address: [larsen.astrid@epa.gov](mailto:larsen.astrid@epa.gov).

**SUPPLEMENTARY INFORMATION:** The content of this preamble are listed in the following outline:

I. General Information

- II. Background  
 III. Extension of MOVES2010a Regional  
 Conformity Grace Period  
 IV. Conformity SIPs  
 V. Statutory and Executive Order Reviews

### Availability of MOVES2010a and Support Materials

Copies of the official version of the MOVES2010a motor vehicle emissions model, along with user guides and supporting documentation, are available on EPA's MOVES Web site: <http://www.epa.gov/otaq/models/moves/>

[index.htm](#). Guidance on how to apply MOVES2010a for SIPs and transportation conformity purposes, including "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA-420-B-09-046, December 2009) and "Technical Guidance on the Use of MOVES2010 for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity" (EPA-420-B-10-023, April 2010) can be found on

the EPA's transportation conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/policy.htm>.

### I. General Information

#### A. Does this action apply to me?

Entities potentially regulated by the transportation conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Chapter 53. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government .....	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government .....	State transportation and air quality agencies.
Federal government .....	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### B. What should I consider as I prepare my comments for EPA?

##### 1. Submitting CBI

Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

##### 2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Make sure to submit your comments by the comment period deadline identified.

##### 3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

#### C. How do I get copies of this proposed rule and other documents?

##### 1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OAR-2011-0393. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and

other information related to this action at the official public docket. See the **ADDRESSES** section for its location.

##### 2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at <http://www.epa.gov/otaq/stateresources/transconf/index.htm>. You may also access this document electronically under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the official public docket is available through <http://www.regulations.gov>. You may use <http://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available

electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the electronic public docket along with a brief description written by the docket staff.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

## II. Background

### A. What is transportation conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs), and federally supported highway and transit projects are consistent with the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standard (NAAQS) or required interim milestones.

Transportation conformity (hereafter, “conformity”) applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (“maintenance areas”) for transportation-related criteria pollutants: Ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>)<sup>1</sup>, carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). EPA’s conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the conformity rule on November 24, 1993 (58 FR 62188) and subsequently published several other amendments. The Department of Transportation (DOT) is EPA’s federal partner in implementing the conformity regulation. EPA has coordinated with

DOT, and they concur with this proposal.

### B. What is MOVES2010a, and how has it been implemented to date?

The MOtor Vehicle Emission Simulator model (MOVES) is EPA’s state-of-the-art model for estimating emissions from highway vehicles, based on analyses of millions of emission test results and considerable advances in the Agency’s understanding of vehicle emissions. MOVES is currently EPA’s official emissions model for state and local agencies to estimate volatile organic compounds (VOCs), nitrogen oxides (NO<sub>x</sub>), PM, CO, and other precursors from cars, trucks, buses, and motorcycles for SIP purposes and conformity determinations outside of California. MOVES’ database-centered design allows EPA to update emissions data more frequently and allows users much greater flexibility in organizing input and output data.

MOVES2010a is the latest official version of MOVES that EPA has approved for SIP and conformity purposes. EPA originally announced the release of MOVES2010 in the **Federal Register** on March 2, 2010 (75 FR 9411) and subsequently released MOVES2010a on September 8, 2010. MOVES2010a includes minor revisions that enhance model performance and did not significantly affect criteria pollutant emissions results. Since these are minor revisions to MOVES2010, MOVES2010a is not considered a “new model” under section 93.111 of the conformity rule, as described further below.

MOVES2010a is a significant improvement over the previous emissions model, MOBILE6.2,<sup>2</sup> in terms of quality of results and overall functionality. It incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities. While these changes improve the quality of on-road mobile source inventories, the overall degree of change in the model’s function also adds to the start-up time required for the transition from MOBILE6.2 to MOVES2010a.

EPA developed MOVES as a completely new model. Whereas MOBILE6.2 was written in FORTRAN and used simple text files for data input and output, MOVES2010a is written in JAVA and uses a relational database structure in MYSQL to handle input and output as data tables. These changes make MOVES more flexible, and the

analysis of new data incorporated within MOVES will enhance state and local agency understanding of how on-road mobile sources contribute to emissions inventories and the relative effectiveness of various control strategies. However, this new model framework has created a significant learning curve for state and local agency staff that are required to use MOVES.<sup>3</sup>

In addition to the challenges of learning new software, state and local agencies also have to make substantial changes in the processes they have developed to create model input and apply model output. While there were incremental changes between each previous version of the MOBILE model, the basic input and output structure of that model was essentially unchanged since the early 1980s. Over time, state and local agencies developed their own methods for incorporating local inputs in MOBILE format and for post-processing MOBILE results for inventory development and air quality modeling. To help state and local agencies with this part of the current transition, EPA created a number of tools that take input data formatted for MOBILE6.2 and convert that data for use in MOVES2010a.

EPA anticipated many of these challenges when it released MOVES. In order to assist in this model transition, EPA and DOT have already provided hands-on MOVES training in many states.<sup>4</sup> Additional MOVES training for regional inventories has been requested, and will continue to be offered for the foreseeable future. EPA continues to provide other technical assistance to state and local agencies via on-going conference calls with user groups, e-mail and phone support, a frequently asked questions web page, and web-based presentations. All of these efforts are helping state and local agencies make the transition to MOVES2010a, and many agencies are making significant progress in applying the model for official purposes. However, other state and local agencies are still developing the technical capacity to use MOVES2010a, and need more time to transition to the model and then evaluate whether SIPs and their motor vehicle emissions budgets, or transportation plans and TIPs, should be

<sup>3</sup> Some states also purchased computers with additional capacity and features for running MOVES.

<sup>4</sup> To date, EPA and DOT staff have provided a 2-day hands-on MOVES course for regional emissions inventories (including regional conformity analyses) at over 30 locations around the country.

<sup>1</sup> 40 CFR 93.102(b)(1) defines PM<sub>2.5</sub> and PM<sub>10</sub> as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

<sup>2</sup> EPA announced the release of MOBILE6.2 in 2004 (69 FR 28830).

revised for future conformity determinations.

### *C. Why is EPA conducting this rulemaking?*

If finalized, today's action would provide additional time that may be critical for nonattainment and maintenance areas to learn and apply MOVES2010a for regional conformity analyses.<sup>5</sup> EPA has been contacted by several state and local transportation and air quality agencies and associations that are concerned that there has not been sufficient transition time for using MOVES2010a in regional conformity analyses. These concerns revolve around the time needed to build technical capacity for using MOVES2010a as well as completing necessary SIP and/or transportation plan/TIP changes to assure conformity in the future. Further details on today's action are provided below.

Today's proposal would not affect EPA's previous approval of MOVES2010a for official SIP submissions developed outside of California.<sup>6</sup> Today's rulemaking would also not affect the existing grace period before MOVES2010a is required for PM<sub>2.5</sub>, PM<sub>10</sub>, and CO hot-spot analyses for project-level conformity determinations (75 FR 79370). EPA coordinated closely with DOT in developing today's action, and DOT concurs on this proposed rule.

## **III. Extension of MOVES2010a Regional Conformity Grace Period**

### *A. Background*

CAA section 176(c)(1) states that “\* \* \* [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates \* \* \*.” To meet this requirement, section 93.111 of the conformity rule requires that conformity determinations be based on the latest motor vehicle emissions model approved by EPA. When EPA approves a new emissions model, EPA consults with DOT to establish a grace period before the model is required for conformity analyses (40 CFR 93.111(b)). EPA must consider many factors when

establishing a grace period for conformity determinations (40 CFR 93.111(b)(2)). The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary for MPOs in order to assure conformity. The conformity rule provides for a grace period for new emissions models of between three and 24 months (40 CFR 93.111(b)(1)).

In the preamble to the original 1993 conformity rule, EPA articulated its intentions for establishing the length of conformity grace period for a new emissions model (58 FR 62211):

“EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, states should have an opportunity to revise their SIPs before MPOs must use the model's new emissions factors. EPA encourages all agencies to inform EPA of the impacts of new emissions models in their area, and EPA may pause to seek such input before determining the length of the grace period.”

Section 93.111 conformity requirements have not changed since 1993, and have been implemented successfully for many previous model transitions.

On March 2, 2010, EPA announced the official release of MOVES2010 and established a two-year grace period before this model was required for new regional conformity analyses (75 FR 9411). Although the original grace period was established for MOVES2010, EPA clarified in September 2010 that the same grace period for regional conformity analyses also applies to MOVES2010a.<sup>7</sup> EPA based its decision to establish a two-year conformity grace period on the factors under section 93.111(b)(2), and advised areas to use the interagency consultation process to examine the impact of using MOVES in their future regional conformity analyses.

Without further EPA action, MOVES2010a would be required for regional conformity analyses that begin after March 2, 2012. As discussed further in today's action, the special circumstances of the transition from MOBILE to MOVES2010a require a reevaluation of the length of this conformity grace period.

### *B. Description of Proposed Rule*

In today's action, EPA is proposing to provide an additional year before

MOVES2010a is required for regional conformity analyses. If finalized, MOVES2010a would be required for new regional conformity analyses that begin after March 2, 2013. State and local agencies outside California would use MOVES2010a for regional conformity analyses earlier than March 2, 2013, if desired, and would be required to do so under limited circumstances such as after MOVES2010a SIP motor vehicle emissions budgets have been found adequate or approved for conformity purposes.

Due to the unique circumstances presented by the transition from MOBILE6.2 to MOVES2010a, EPA is proposing to add a new paragraph (b)(3) to section 93.111 of the conformity rule. This provision would only apply to MOVES2010a and any future minor revisions to this model that EPA releases before March 2, 2013. Such minor revisions would not start a new grace period for regional conformity analyses and could include performance enhancements that reduce MOVES run time or model improvements to reduce errors in operating the model. Any major model updates, such as an update that significantly changes MOVES results for criteria pollutant emissions, would be evaluated separately as a “new model” under conformity rule section 93.111, pursuant to previously established requirements.

Before the end of the extended conformity grace period (March 2, 2013), areas would use the interagency consultation process to examine how MOVES2010a would impact their future MPO transportation plan/TIP conformity determinations. Isolated rural areas would also consider the impact of using MOVES2010a on future regional conformity analyses. If finalized, agencies should carefully consider whether the SIP and its motor vehicle emissions budgets should be revised with MOVES2010a or if transportation plans and TIPs should be revised before the end of the conformity grace period, since doing so may be necessary to ensure conformity in the future.

The proposal would allow regional conformity analyses that are started during the grace period to be based on either MOBILE6.2 or MOVES2010a. If the grace period ended on March 2, 2013, MOVES2010a would become the only approved motor vehicle emissions model for regional conformity analyses outside California at that time. This would mean that all new regional conformity analyses started after the end of the grace period must be based on MOVES2010a, even if the SIP is based

<sup>5</sup> MPOs conduct regional conformity analyses to demonstrate that transportation plans and TIPs are consistent with the air quality purposes of the SIP. Regional conformity analyses are also conducted in “isolated rural nonattainment and maintenance areas” (defined by 40 CFR 93.101).

<sup>6</sup> MOVES is not approved for use in California. EPA approved and announced the latest version of California's EMFAC model (EMFAC2007) for SIP development and regional conformity analyses in that state on January 18, 2008 (73 FR 3464).

<sup>7</sup> See “EPA Releases MOVES2010a Mobile Source Emissions Model Update: Questions and Answers” (EPA-420-F-10-050, August 2010) at: <http://www.epa.gov/otaq/models/moves/MOVES2010a/420f10050.pdf>.

on MOBILE6.2 or earlier versions of MOBILE.

For complete explanations of how MOVES2010a is to be implemented for transportation conformity, including details about using MOVES2010a during the grace period, refer to EPA's existing MOVES policy guidance.<sup>8</sup>

#### C. Rationale

MOVES2010a is EPA's best tool for estimating criteria pollutant emissions, and it is a significant improvement over previous MOBILE models. State and local agencies have made significant progress to date in using MOVES2010a, and EPA supports these efforts and encourages that they continue. However, as discussed above, challenges related to start-up and model application have been much greater in the transition to MOVES2010a, compared to past transitions between MOBILE model versions. As a result, EPA has determined that a one-year extension of the MOVES2010a grace period is necessary for state and local agencies to complete the current transition. Today's action would ensure that state and local governments have the necessary time to implement the conformity rule as originally intended.

Since 1993, the fundamental purpose of section 93.111(b) of the conformity rule has been to provide a sufficient amount of time for MPOs and other state and local agencies to adapt to using new emissions tools. As discussed above, the transition to a new emissions model for conformity involves more than learning to use the new model and preparing input data and model output. After model start-up is complete, state and local agencies also need to consider how the model affects regional conformity analysis results and whether SIP and/or transportation plan/TIP changes are necessary to assure future conformity determinations. EPA believes that the proposed one-time extension of the current MOVES2010a regional grace period is critical to assure future conformity determinations based on MOVES2010a.

EPA has the discretion to establish an extended grace period for MOVES2010a, and today's action is consistent with CAA section 176(c)(1) requirements. EPA believes that the proposal to provide one additional year is appropriate due to this unique transition from MOBILE6.2 to

MOVES2010a. This decision is consistent with the existing conformity criteria in section 93.111(b)(2) of the conformity rule that requires the length of the grace period to be based on "the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity."

Today's proposal would not delay the use of MOVES2010a in SIP development or slow down past progress toward using the new model for regional conformity analyses. As noted above, many state and local agencies are already learning and applying MOVES2010a. Some are revising existing SIP budgets using the new model, while others may be incorporating MOVES2010a into new maintenance plans or clean data determinations. Under EPA's existing MOVES policy guidance, new or revised SIP budgets must still be based on MOVES2010a. For example, MOVES2010a continues to be required for attainment SIPs for the 2006 24-hour PM<sub>2.5</sub> NAAQS. Under the proposal, MOVES2010a would also be required for any regional conformity analyses prior to March 2, 2013 if SIP budgets based on MOVES2010 or MOVES2010a are approved or found adequate sooner.<sup>9</sup>

In addition, today's action would not change the current MOVES2010a grace period for new PM<sub>2.5</sub>, PM<sub>10</sub>, and CO hot-spot analyses for project-level conformity determinations. EPA noted previously that a two-year conformity grace period was necessary to apply MOVES2010a for hot-spot analyses (75 FR 79370). However, the transition to MOVES2010a for project-level hot-spot analyses does not involve the complexity associated with the regional level, where SIP budgets and/or transportation plans/TIPs may need to be revised before regional conformity analyses based on MOVES2010a can be completed.

Finally, in issuing this proposal, EPA is not proposing to proceed pursuant to or reopen as a general matter the process and length of conformity grace periods for future emissions model approvals, which were previously established in 1993 (58 FR 62211). The unique set of circumstances involved in the current transition warrants the proposed additional state and local flexibility before MOVES2010a is required for regional conformity analyses.

#### IV. Conformity SIPs

The proposed MOVES2010a regional grace period extension would apply on the effective date of a final rule in all nonattainment and maintenance areas. Section 51.390(a) of the conformity rule states that the federal rule applies for the portion of the requirements that are not included in a state's approved conformity SIP.<sup>10</sup> Section 51.390(b) further allows state conformity provisions to contain criteria and procedures that are more stringent than the federal requirements. However, in the case of states with conformity SIPs that include the grace period provision in 40 CFR 93.111(b)(1), EPA concludes that such states did not intend to require a shorter grace period than EPA, in consultation with DOT, believes is needed. Therefore, since the MOVES2010a grace period extension would be a new provision being added to the conformity rule, it is not included in any current state conformity SIP and therefore would apply immediately, if finalized, in all areas pursuant to section 51.390(a).

In addition, section 51.390(c) of the conformity rule requires states to submit a new or revised conformity SIP to EPA within 12 months of the **Federal Register** publication date of final conformity rules in certain situations. States with approved conformity SIPs that are prepared in accordance with current CAA requirements would not be required to submit new conformity SIP revisions under a final rule, since section 93.111 of the conformity rule is not contained in these SIPs. A conformity SIP prepared in accordance with current CAA requirements contains only the state's criteria and procedures for interagency consultation (40 CFR 93.105) and two additional provisions related to written commitments for certain control and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)). However, states with approved conformity SIPs that include section 93.111 from a previous rulemaking would be required to submit a SIP revision within 12 months of the publication date of any final rule, although EPA strongly encourages these states to submit a SIP revision with only the three required provisions.<sup>11</sup> A state without an approved conformity SIP would not be required to submit a new conformity SIP

<sup>8</sup> "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA-420-B-09-046, December 2009) can be found on the EPA's transportation conformity Web site at: <http://www.epa.gov/otaq/stateresources/transconf/policy.htm>.

<sup>9</sup> See Questions 5, 6, and 11 of "Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes" (EPA-420-B-09-046, December 2009).

<sup>10</sup> A conformity SIP is required by the CAA and contains a state's conformity requirements, including the state's specific interagency consultation procedures.

<sup>11</sup> The conformity SIP may contain provisions more stringent than the federal requirements, and in these cases, states would specify this intention in its original conformity SIP submission.

within one year of a final rule, but previous conformity SIP deadlines continue to apply.

For additional information on conformity SIPs, please refer to the January 2009 guidance entitled, "Guidance for Developing Transportation Conformity State Implementation Plans" available on EPA's Web site at: <http://www.epa.gov/otaq/stateresources/transconf/policy/420b09001.pdf>.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

### B. Paperwork Reduction Act

This action would not impose any new information collection burden. The information collection requirements of EPA's existing transportation conformity regulations and the proposed revisions in today's action are already covered by EPA information collection request (ICR) entitled, "Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects." OMB has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 93 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060-0561. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's proposal on small entities,

small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities. This proposal would directly affect federal agencies and MPOs that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the RFA. Therefore, this proposal would not impose any requirements on small entities.

### D. Unfunded Mandates Reform Act (UMRA)

This proposal does not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule would merely implement already established law that imposes conformity requirements and would not itself impose requirements that may result in expenditures of \$100 million or more in any year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

This proposal is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposal would not significantly or uniquely impact small governments because it directly affects federal agencies and MPOs that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000.

### E. Executive Order 13132: Federalism

This proposal does not have federalism implications. It would not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA requires conformity to apply in certain

nonattainment and maintenance areas as a matter of law, and today's action would merely revise one provision for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this proposal.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The CAA requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Because today's proposal would not significantly or uniquely affect the communities of Indian tribal governments, Executive Order 13175 does not apply to this action.

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

This proposal is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposal is not a "significant energy action" as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. This action is not subject to Executive Order 13211 because it does not have any adverse energy effects.

### I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods,

sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. The proposed rule involves a minor revision that provides administrative relief but does not change the conformity rule's underlying requirements for regional conformity analyses.

**List of Subjects in 40 CFR Part 93**

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: October 4, 2011.

**Lisa P. Jackson,**  
*Administrator.*

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**FEDERAL MARITIME COMMISSION**

**46 CFR Parts 530 and 531**

**[Docket No. 11-17]**

**RIN 3072-AC47**

**Certainty of Terms of Service Contracts and NVOCC Service Arrangements**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to amend its rules regarding certainty of terms of service contracts and non-vessel-operating common carrier service arrangements. The proposed rule is intended to provide common carriers and their customers with certainty and flexibility if they decide to use long-term contracts that adjust based on a freight rate index that reflects changes in market conditions.

**DATES:** Comments or suggestions due on or before November 28, 2011.

**ADDRESSES:** Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, Phone: (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** *Submit Comments:* Submit an original and five (5) copies in paper form, and if possible, send a PDF of the document by e-mail to [secretary@fmc.gov](mailto:secretary@fmc.gov). Include in the subject line: Docket No. 11-17, Comments on Certainty of Terms of Service Contracts and NSAs.

**Background**

The Federal Maritime Commission (FMC or Commission) has found that an increasing number of service contracts filed with the Commission reference freight rate indices. These indices include, for example, the China Containerized Freight Index (CCFI), the Shanghai Containerized Freight Index (SCFI), the Drewry Freight Insight Index, and the Transpacific Stabilization Agreement (TSA) Index. The ocean freight rates in these negotiated service contracts adjust in increments based upon the changes in the referenced index levels or their annual or quarterly averages. It appears that some carriers and shippers in the ocean transportation industry are seeking stability through long-term contracts, while trying to preserve flexibility to adjust contract rates reflecting changes in market conditions.

Questions have arisen, however, whether references to these indices in service contracts are consistent with the

Commission's current regulations. The Commission's regulations with respect to terms of service contracts and Non-Vessel-Operating Common Carrier (NVOCC) service arrangements (NSAs) state that the terms, if they are not explicitly contained in the contracts, must be "contained in a publication widely available to the public and well known within the industry." 46 CFR 530.8(c)(2), 531.6(c)(2).

The Commission has received inquiries from the industry as to whether certain freight rate indices meet the Commission's standard, particularly its "widely available to the public" requirement. For example, until August 2011, the TSA index was not available to the public, even though some service contracts referenced TSA index before its publication. In addition, CCFI, SCFI, and Drewry indices make their current index levels available to the public without charge, but access to their historical data requires payment of subscription fees that can reach several thousand dollars per year.

As the Commission began to consider whether these service contracts referencing freight indices comport with its regulation, it decided to do a more fundamental assessment of whether the regulation in its current form is more restrictive than is necessary to protect the shipping public and carry out the purposes of the Shipping Act.

When adopting the rules for "[c]ertainty of terms" of service contracts, the Commission recognized that through the Ocean Shipping Reform Act of 1998, Congress intended, by lifting the requirements that tariffs be filed with the Commission, to allow parties to service contracts more freedom and flexibility in their commercial arrangements. *See* 63 FR 71062, 71066 (Dec. 23, 1998). More recently, the President has directed federal agencies to review their regulations and to reduce burdens and promote flexibility where appropriate. *See* Exec. Order 13563, 76 FR 3821 (Jan. 21, 2011); Exec. Order 13579, 76 FR 41587 (Jul. 14, 2011).

**Proposed Change**

Consistent with Congressional intent and the President's directives in Executive Orders 13563 and 13579, the Commission seeks to revise its regulations so that they are not unnecessarily burdensome and do not impede innovation and flexibility in commercial arrangements, while ensuring continued compliance with the Shipping Act's requirements.

The proposed change would facilitate references to indices in service contracts and NSAs so that contracting parties can