

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility   | Address                                  | Waste description  |
|--|--|--|
| <p>* *<br/>Babcock &amp; Wilcox Nuclear Operations Group, Inc., current owner, and BWX Technologies, Inc., predecessor in interest to the current owner, identified collectively hereafter as “B&amp;W NOG”.</p> | <p>* *<br/>Lynchburg, Virginia .....</p> | <p>* *<br/>Wastewater treatment sludge from electroplating operations (Hazardous Waste Number F006) generated at the Mt. Athos facility near Lynchburg, VA and currently deposited in two on-site surface impoundments designated as Final Effluent Ponds (FEPs) 1 and 2. This is a one-time exclusion for 148 cubic yards of sludge and is effective after March 24, 2011.<br/>(1) <i>Reopener language.</i><br/>(A) If B&amp;W NOG discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then B&amp;W NOG must report any information relevant to that condition or assumption, in writing, to the Regional Administrator and the Virginia Department of Environmental Quality within 10 calendar days of discovering that information<br/>(B) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Regional Administrator will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment<br/>(2) <i>Notification Requirements</i><br/>In the event that the delisted waste is transported off-site for disposal, B&amp;W NOG must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported at least 60 calendar days prior to the commencement of such activities. Failure to provide such notification will be deemed to be a violation of this exclusion and may result in revocation of the decision and other enforcement action</p> |

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**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**49 CFR Part 1155**

[Docket No. EP 684]

**Solid Waste Rail Transfer Facilities**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Clean Railroads Act of 2008 amended the law to restrict the jurisdiction of the Surface Transportation Board (Board or STB) over solid waste rail transfer facilities. The Clean Railroads Act also added three new statutory provisions that address the Board’s regulation of such facilities, which is now limited to issuance of “land-use-exemption permits” in certain circumstances. Upon receiving a land-use-exemption permit issued by the Board, a solid waste rail transfer facility need not comply with State laws, regulations, orders, and

other requirements affecting the siting of the facility, except to the extent that the Board requires compliance with any of those requirements. The Clean Railroads Act provides that a solid waste rail transfer facility must comply with all applicable Federal and State requirements respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, in the same manner as any similar solid waste management facility not owned or operated by or on behalf of a rail carrier, except for laws affecting the siting of the facility that are covered by the land-use-exemption permit. As required by the Clean Railroads Act, on January 14, 2009, the Board issued interim rules that were published in the **Federal Register** on January 27, 2009 (2009 interim rules). Based on the comments received and further evaluation, the Board now modifies the review process for land-use-exemption permits under the Clean Railroads Act and modifies other aspects of the 2009 interim rules, in the interest of clarity and efficiency. The Board requests comments on the modifications contained in the interim rules.

**DATES:** *Effective date:* March 24, 2011.

*Comment date:* Comments are due May 23, 2011. Reply comments are due by June 22, 2011.

**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 684, 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 (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** Under 49 U.S.C. 10501(a), the Board has jurisdiction over “transportation by rail

carrier.” Section 10501(b), as modified by the ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803 (1995), provides that both “the jurisdiction of the Board over transportation by rail carriers” (which includes the carriers’ rail facilities, see 49 U.S.C. 10102(9)), and the “remedies provided under [49 U.S.C. 10101–11908]” are “exclusive,” and “preempt the remedies provided under Federal and State laws.” Prior to enactment of the Clean Railroads Act of 2008, Public Law 110–432, 122 Stat. 4848 (Clean Railroads Act or CRA), on October 16, 2008, the Board’s preemptive jurisdiction extended to solid waste rail transfer facilities owned or operated by rail carriers. Accordingly, State permitting or preclearance requirements (including environmental, zoning, and often land-use requirements) that, by their nature, could be used to deny a railroad the right to conduct its operations or proceed with transportation activities at rail transfer facilities, including solid waste rail transfer facilities, as authorized by the Board, were preempted. See 49 U.S.C. 10501(b); *N.Y. Susquehanna & W. Ry. v. Jackson*, 500 F.3d 238, 252–55 (3d Cir. 2007); *Green Mountain R.R. v. Vermont*, 404 F.3d 638, 641–43 (2d Cir. 2005). Other State actions related to these facilities were preempted if, as applied, they would have the effect of unreasonably burdening or interfering with transportation by rail carrier. See *N.Y. Susquehanna*, 500 F.3d at 252; *Green Mountain*, 404 F.3d at 643.

The CRA modified the Board’s jurisdiction over solid waste rail transfer facilities. The CRA provides that solid waste rail transfer facilities, as defined in 49 U.S.C. 10908(e)(1)(H), must now comply with all applicable Federal and State requirements (including environmental requirements) that apply to similar solid waste management facilities that are not owned or operated by or on behalf of a rail carrier, except as otherwise provided in the Clean Railroads Act.<sup>1</sup> The CRA gives the Board the authority, if petitioned, to issue land-use-exemption permits that preempt State and local laws and regulations “affecting the siting” of such facilities (except to the extent that the Board requires the facility to comply with such provisions). 49 U.S.C. 10909(f).<sup>2</sup>

<sup>1</sup> The CRA does not affect the Board’s jurisdiction, or the scope of Federal preemption, over a rail carrier’s transportation-related activities involving commodities other than solid waste. 49 U.S.C. 10908(d).

<sup>2</sup> The decision accompanying the *2009 interim rules* contains a more detailed discussion of the

The Board received numerous comments on the *2009 interim rules*. We now revise the original rules to streamline the application process based on suggestions made in the parties’ comments and on the Board’s own review of the current interim regulations. We have made several significant revisions to the process set forth in the *2009 interim rules* in order to streamline and improve the application process for a land-use-exemption permit. These revisions include: (a) Eliminating the requirement to identify all laws that affect the siting of a facility; (b) incorporating the provisions of original<sup>3</sup> § 1155.23 into other sections; (c) generally requiring a full Environmental Impact Statement (EIS)<sup>4</sup> that includes an analysis of the environmental factors listed in 49 U.S.C. 10909(d); and (d) providing a post-EIS comment period that would allow parties to use the information contained in the EIS to comment on whether the land-use-exemption permit should be granted and any conditions that could be imposed. The major revisions to the *2009 interim rules* are discussed in Section I of the Board’s complete decision posted on the Board’s Web site, <http://www.stb.dot.gov>.

In Section II of the Board’s complete decision, the Board also addresses other comments received on the *2009 interim rules* and revisions made in response to the comments. Other changes were made that are not substantive, and were not precipitated by comments. The Board is inviting interested parties to comment, but we request parties limit their comments to new issues raised by the revisions.

Good cause exists for the interim rules to become effective while further notice and comment proceeds. See 5 U.S.C. 553(b)(3)(B). The CRA mandated that the Board quickly establish rules to provide a process for facilities to obtain a land-use-exemption permit pending the final rules. Although the Board sought comment on the original rules, those rules were codified as interim rules. While we seek further comment on aspects of the regulations that were not part of the *2009 interim rules*, we believe that all of the revisions should

CRA and the Board’s initial implementation of that act.

<sup>3</sup> The use of “original” is to signify the CFR numbering as it appeared in the *2009 interim rules* where the addition or subtraction of sections has required these interim rules to have a different numbering.

<sup>4</sup> An EIS refers to the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4321–4347 (NEPA), for a major Federal action significantly affecting the quality of the human environment. The Board’s EIS process is described at 49 CFR 1105.10.

now be implemented as interim rules. The public would be better served by placing these refined regulations in effect on an interim basis, rather than leaving in place the rules issued in *2009*, which were drafted without any input from industry and other interested parties. As discussed below, the revised interim rules provide the Board with a framework for a more informed decision-making process if the agency is called upon to decide whether to issue a land-use-exemption permit before final rules are issued. The Board will expeditiously move toward issuing final regulations following the public comment period.

Additional information is contained in the Board’s decision to be served on March 24, 2011. A copy of the Board’s decision is available for inspection or copying at the Board’s Public Docket Room, Room 131, 395 E Street, SW., Washington, DC 20423–0001, and is posted on the Board’s Web site, <http://www.stb.dot.gov>. Copies of the decision may also be purchased by contacting the Board’s Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0236.

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether the collection of information associated with the land-use-exemption-permit application in the interim rules at CFR part 1155, and further described in the Appendix, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board’s burden estimate; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in the Appendix. The collection of information associated with these proposed interim rules will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

In accordance with the Regulatory Flexibility Act at 5 U.S.C. 605(b), we certify that the interim rules would not have a significant economic impact on a substantial number of small entities. The basis for this determination is as follows. While applicants for land-use-exemption permits could be small entities, as defined in 13 CFR part 121, under neither the statute nor the interim

rules could the Board, on its own, require a party to apply for a Board permit. See 49 U.S.C. 10908(b)(2)(B), 10909(a). In general, that decision is solely within the control of the entity. The one exception is that a governor of the State in which an existing facility is located could petition the Board, under 49 U.S.C. 10908(b)(2)(B) and 49 CFR part 1155 subpart B, to require that facility to obtain a land-use-exemption permit in order for it to continue to operate. Even in that circumstance, the authority lies with the State governors—not the Board—to initiate the Board's processes. In all other scenarios, a party can avoid being subject to the Board's rules regarding land-use-exemption permits by complying with State requirements. Therefore, the interim rules will not circumscribe or mandate the conduct of a substantial number of small entities.

Moreover, there are no alternatives to the interim rules that would adequately achieve the objectives of the CRA. The only scenario in which a small entity might be compelled to avail itself of the new Board processes (when a State governor has properly petitioned the Board under 49 CFR part 1155 subpart B) must be included in the rules because it is specifically required under the CRA. 49 U.S.C. 10908(b)(2)(B). Finally, we have provided a waiver provision that could mitigate any significant negative impact on small entities—an applicant may request a waiver of any particular part of the application procedures. See 49 CFR 1155.22(d)(4) (original 49 CFR 1155.24(d)(2)). A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

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

#### List of Subjects in 49 CFR Part 1155

Administrative practice and procedure, Railroad, Solid waste rail transfer facility.

Decided: March 14, 2011.

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

**Andrea Pope-Matheson,**  
Clearance Clerk.

■ For the reasons set forth in the preamble, the Surface Transportation Board revises part 1155 of title 49, chapter X, of the Code of Federal Regulations to read as follows:

### PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

#### Subpart A—General

Sec.

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Appendix A to Part 1155—Form Notice Of Intent To Apply

Appendix B to Part 1155—Form **Federal Register** Notice

**Authority:** 49 U.S.C. 721(a), 10908, 10909, 10910.

### PART 1155—SOLID WASTE RAIL TRANSFER FACILITIES

#### Subpart A—General

##### § 1155.1 Purpose and scope.

49 U.S.C. 10501(c)(2)(B) excludes solid waste rail transfer facilities from the Board's jurisdiction except as provided under 49 U.S.C. 10908 and 10909. Sections 10908 and 10909 provide the Board authority to issue land-use-exemption permits for solid waste rail transfer facilities when certain conditions are met. The regulations in this part concern land-use-exemption permits and the Board's standard for review.

##### § 1155.2 Definitions.

(a) Unless otherwise provided in the text of these regulations, the following definitions apply in this part:

(1) *Commercial and retail waste* means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

(2) *Construction and demolition debris* means waste building materials,

packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(3) *Environmental Impact Statement* or "EIS" means the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), for a major Federal action significantly affecting the quality of the human environment.

(4) *Household waste* means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

(5) *Industrial waste* means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, nonhazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 *et seq.*), mining or oil and gas waste.

(6) *Institutional waste* means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

(7) *Municipal solid waste* means household waste, commercial and retail waste, and institutional waste.

(8) *Office of Environmental Analysis* or "OEA" means the Board staff that prepares the Board's environmental documents and analyses.

(9) *Solid waste* means construction and demolition debris; municipal solid waste; household waste; commercial and retail waste; institutional waste; sludge; industrial waste; and other solid waste, as determined appropriate by the Board, but not waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles), or waste generated as a result of a railroad accident, incident, or derailment.

(10) *Solid waste rail transfer facility*—  
(i) Means the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in 49 U.S.C. 10102) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but

(ii) Does not include—

(A) The portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

(B) A facility where solid waste is transferred or transloaded solely from a tank truck directly to a rail tank car.

(11) *Sludge* means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(b) *Exceptions*. Notwithstanding paragraph (a) of this section, the terms *household waste*, *commercial and retail waste*, and *institutional waste* do not include yard waste and refuse-derived fuel; used oil; wood pallets; clean wood; medical or infectious waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

(c) "*Land-use-exemption permit*" means the authorization issued by the Board pursuant to the authority of 49 U.S.C. 10909(a) and includes the term "siting permit" in 49 U.S.C. 10909(e).

(d) "*State laws, regulations, orders, or other requirements affecting the siting of a facility*," as used in 49 U.S.C. 10909(f) and 49 CFR 1155.27(d), include the requirements of a State or a political subdivision of a State, including a locality or municipality, affecting the siting of a facility.

(e) "*State requirements*" as used in 49 U.S.C. 10908 does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a State, including a locality or municipality, unless a State expressly delegates such authority to such political subdivision.

#### **Subpart B—Procedures Governing Petitions To Require a Facility in Existence on October 16, 2008, To Apply for a Land-Use-Exemption Permit**

##### **§ 1155.10 Contents of petition.**

A petition to require a solid waste rail transfer facility in existence on October 16, 2008, to apply for a land-use-exemption permit, submitted by the Governor of the State or that Governor's designee, shall contain the following information:

(a) The Governor's name.

(b) The State's name and the name of any agency filing on behalf of the Governor.

(c) The full address of the solid waste rail transfer facility, or, if not available, the city, State, and United States Postal Service ZIP code.

(d) The name of the rail carrier that owns or operates the facility or the rail carrier on whose behalf the facility is operated.

(e) A good-faith certification that the facility qualified as a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2, on October 16, 2008.

(f) Relief sought (that the rail carrier that owns or operates the facility be required to apply for a land-use-exemption permit).

(g) Name, title, and address of representative of petitioner to whom correspondence should be sent.

##### **§ 1155.11 Filing and service of petition.**

(a) When the petition is filed with the Board, the petitioner shall serve concurrently, by first class mail, a copy of the petition on the rail carrier that owns or operates the solid waste rail transfer facility and on the facility if the address is different than the rail carrier's address. A copy of the certificate of service shall be filed with the Board at the same time.

(b) Upon the filing of a petition, the Board will review the petition and determine whether it conforms to all applicable regulations. If the petition is substantially incomplete or its filing otherwise defective, the Board will reject the petition without prejudice for stated reasons by order within 15 days from the date of filing of the petition.

(c) If the petition is rejected, a revised petition may be resubmitted, and the Board will determine whether the resubmitted application conforms with all prescribed regulations.

##### **§ 1155.12 Participation in petition proceedings.**

(a) An interested person may file a reply to the petition challenging any of the information contained in the petition that is required by 49 CFR 1155.10(c) through (e) and may offer evidence to support its contention. The petitioner will have an opportunity to file a rebuttal.

(b) A facility can acknowledge that it was a solid waste rail transfer facility on October 16, 2008, but no longer operates as such and therefore is not required to seek a land-use-exemption permit. To do so, a facility must file with the Board a certification stating that it:

(1) No longer operates as a solid waste transfer facility;

(2) Understands that by certifying that it no longer operates as a solid waste transfer facility, it no longer qualifies as

a facility in existence on October 16, 2008 for purposes of the Clean Railroad Act and these regulations; and

(3) Understands that if it seeks a land-use-exemption permit in the future, it would be required to do so as a proposed facility.

(c) Filing and service of replies.

(1) Any reply shall be filed with the Board (the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 20 days of the filing with the Board of the petition.

(2) A copy of the reply shall be served on petitioner or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(3) Any rebuttal to a reply shall be filed and served by petitioner no later than 30 days after the filing of the petition.

##### **§ 1155.13 Board determination with respect to a Governor's petition.**

The Board shall accept the Governor's complete petition on a finding that the facility qualified as a solid waste rail transfer facility, as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2, on October 16, 2008. If the Board finds that the facility currently does not qualify for or require a land-use-exemption permit, any future use of the facility as a solid waste rail transfer facility would require an application for a land-use-exemption permit as a proposed facility and/or the proper State permits. In a decision granting the Governor's petition, the Board shall require that the rail carrier that owns or operates the facility, or the operator of the facility, file a land-use-exemption-permit application within 120 days of the service date of the decision.

#### **Subpart C—Procedures Governing Applications for a Land-Use-Exemption Permit**

##### **§ 1155.20 Notice of intent to apply for a land-use-exemption permit.**

(a) *Filing and publication requirements*. An applicant (*i.e.*, a solid waste rail transfer facility, or the rail carrier that owns or operates the facility) shall give its Notice of Intent to file a land-use-exemption-permit application by complying with the following procedures:

(1) *Filing*. Applicant must serve its Notice of Intent on the Board in the format prescribed in part 1155 Appendix A. The Notice of Intent shall be filed in accordance with the time requirements of paragraph (b) of this section.

(2) *Service.* Applicant must serve, by first-class mail (unless otherwise specified), its Notice of Intent upon:

(i) The Governor of the State where the facility is located;

(ii) The municipality, the State, and any relevant Federal or State regional planning entity in the jurisdiction of which the solid waste rail transfer facility is located or proposed to be located; and

(iii) The appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2).

(3) *Newspaper publication.* Applicant must publish its Notice of Intent at least once during each of 3 consecutive weeks in a newspaper of general circulation in each county in which any part of the proposed or existing facility is located.

(b) *Time limits.* (1) The Notice of Intent must be served on the parties discussed above at least 15 days, but not more than 30 days, prior to the filing of the land-use-exemption-permit application;

(2) The three required newspaper Notices must be published within the 30-day period prior to the filing of the application; and

(3) The Notice of Intent must be filed with the Board either concurrently with service on the required parties or when the Notice is first published (whichever occurs first).

(c) *Environmental and Historic Reports.* Applicant must also submit an Environmental and/or Historic Report containing the information described at 49 CFR 1155.25(b), 1105.7, and 1105.8, to the extent applicable, at least 45 days prior to filing an application. OEA may reject any report that it deems inadequate. The environmental and historic reporting requirements that would otherwise apply are waived, however, if the applicant or the Board hires a third-party consultant, OEA approves the scope of the consultant's work, and the consultant works under OEA's supervision to prepare an EIS or other environmental documentation. In such a case, the consultant acts on behalf of the Board, working under OEA's direction to collect the needed environmental information and compile it into an EIS or other appropriate environmental documentation. See 49 U.S.C. 10909(h); 49 CFR 1155.25(c).

#### § 1155.21 Contents of application.

Applications for land-use-exemption permits for the facility, and any proposed future expansion within 10 years of the application date, shall contain the following information, including supporting documentation:

(a) *General.* (1) Exact name of applicant.

(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

(3) Summary of why a land-use-exemption permit is being sought.

(4) The full address of the solid waste rail transfer facility, or, if not available, the city, State, and United States Postal Service ZIP code.

(5) The name of the rail carrier that owns or operates the facility or the rail carrier on whose behalf the facility is operated, the line of railroad serving the facility, the milepost location of the facility, and the milepost and names of the stations that the facility is located between.

(6) Name, title, and address of representative of applicant to whom comments should be sent.

(7) Copies of the specific State, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the solid waste rail transfer facility from which the applicant requests entire or partial exemption, any publicly available material providing the criteria for the application of the State, local, or municipal laws, regulations, orders, or other requirements affecting the siting, and a description of any action that the State, local, or municipal authority has taken affecting the siting of the facility. The applicant shall state whether each law, regulation, order or other requirement from which an exemption is sought is an environmental, public health, or public safety standard that falls under the traditional police powers of the State. If the applicant states that the requirement is not such a standard, it shall explain the reasons for its statement.

(8) Certification that the laws, regulations, orders or other requirements from which the applicant requests exemption are not based on Federal laws, regulations, orders, or other requirements.

(9) Certification that the facility complies with all State, local, or municipal laws, regulations, orders, or other requirements affecting the siting of the facility except for those from which it seeks exemption.

(10) Certification that the applicant has applied or will apply for the appropriate State permits not affecting siting.

(11) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation

System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. For facilities in existence as of October 16, 2008, state whether the facility is located in any of these types of lands.

(12) For facilities not in existence as of October 16, 2008, certification that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law 108-421, for which a State has implemented a conservation management plan, or, that the facility is consistent with the restrictions implemented by the applicable State under The Highlands Conservation Act, Public Law 108-421, placed on its proposed location. For facilities in existence as of October 16, 2008, state whether the facility is located on any of these lands, and, if so, address whether the facility is consistent with the restrictions placed on the location by the applicable State under that law.

(13) An explanation of how the facility comes within the Board's jurisdiction under 49 U.S.C. 10501.

(14) The owner and operator of the facility.

(15) The interest of the rail carrier in the facility.

(16) An explanation of how the facility meets the definition of a solid waste rail transfer facility at 49 U.S.C. 10909(e)(1)(H).

(17) A statement whether the applicant has sought permission from the applicable State, local, or municipal authority with respect to some or all of the facility in its application and received an unsatisfactory result affecting the siting of the facility. The applicant shall provide information about the unsatisfactory result and shall include all relevant orders, decisions, or other notices of the denial.

(18) A detailed description of the operations and activities that will occur/are occurring at the facility.

(19) Detailed map showing the subject facility on sheets not larger than 11x17 inches, drawn to scale, and with the scale shown thereon. The map must show, in clear relief, the exact location of the facility on the rail line and its relation to other rail lines in the area, highways, water routes, population centers and any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1).

(20) Detailed drawing of the subject facility on sheets not larger than 11x17 inches, drawn to scale, and with the scale shown thereon. The drawing must

show, in clear relief, the exact boundaries of the facility, structures at the facility, the location and type of the operations taking place at the facility, the proposed traffic configuration for the solid waste entering and leaving the facility, reasonable future expansion planned for the next 10 years that the applicant requests to be included in the land-use-exemption permit, any geographic features that should be considered in determining whether the facility would pose an unreasonable risk to public health, safety, or the environment, pursuant to 49 U.S.C. 10909(c)(1), and any other information that the applicant believes would be relevant.

(21) A detailed justification for why any future expansion planned for the next 10 years should be covered by the land-use-exemption permit.

(b) *Statement.* A statement that sets forth, based on currently available information, the reasons why the Board should grant a land-use-exemption permit to the applicant under the standards in 49 U.S.C. 10909(c), (d) and these regulations. Specifically, the applicant shall include an explanation of whether the laws, regulations, or other requirements affecting siting of the facility from which exemption is sought, on their face or as applied, unreasonably burden the interstate transportation of solid waste by railroad or discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility, and, if so, why.

(c) *Environmental impact.* The applicant shall certify that it has submitted an environmental and/or historical report containing the information in 49 CFR 1155.25(b), 1105.7, and 1105.8, to the extent relevant, if an environmental and/or historic report is required.

(d) *Additional information.* The applicant shall submit such additional information to support its application as the Board may require.

(e) *Draft Federal Register notice.* The applicant shall submit a draft notice of its application to be published by the Board. In addition to the regular number of copies that must be filed with the Board, the applicant must submit a copy of the draft notice as data contained on a computer diskette compatible with the Board's current word processing capabilities. The Board will publish the notice in the **Federal Register** within 20 days of the application's filing with the Board. The draft notice shall be in the form set forth in pt. 1155 Appendix B.

(f) *Verification.* The original application shall be executed and verified in the form set forth below by an officer of the applicant having

knowledge of the facts and matters relied upon.

Verification

State of \_\_\_\_\_ ss.

County of \_\_\_\_\_

\_\_\_\_\_  
(Name of affiant)  
makes oath and says that (s)he is the  
\_\_\_\_\_  
(title of affiant) of the  
\_\_\_\_\_  
(name of applicant)  
applicant herein; that (s)he has been authorized by the applicant (or as appropriate, a court) to verify and file with the Surface Transportation Board the foregoing application in Finance Docket No. \_\_\_\_ (Sub-No. \_\_\_\_); that (s)he has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that (s)he has knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of his/her knowledge, information, and belief.

(Signature)

Subscribed and sworn to before me  
\_\_\_\_\_  
in and for the State  
and County above named, this \_\_ day of  
\_\_\_\_, 20 \_\_.

My commission expires

#### § 1155.22 Filings and service of application.

(a) The applicant shall tender with its application an affidavit attesting to its compliance with the notice requirements of 49 CFR 1155.20. The affidavit shall include the dates of service, posting, and newspaper publication of the Notice of Intent.

(b) When the application is filed with the Board, the applicant shall serve concurrently, by first-class mail, a copy on the Governor of the State where the facility is located; the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located or proposed to be located; and the appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2). A copy of the certificate of service shall be filed with the Board at the same time.

(c) The applicant shall promptly furnish by first class mail a copy of the application to any interested person proposing to file a comment upon request. A copy of the certificate of service shall be filed with the Board at the same time.

(d)(1) Upon the filing of a land-use-exemption-permit application, the Board will review the application and determine whether it conforms to all applicable regulations. If the application

is substantially incomplete or its filing otherwise defective, the Board shall reject the application for stated reasons by order within 20 days from the date of filing of the application. If the Board does not reject the application, notice of the filing of the application shall be published in the **Federal Register** by the Board, through the Director of the Office of Proceedings, within 20 days of the filing of the application.

(2) If the application is rejected, a revised application may be submitted and the Board will determine whether the resubmitted application conforms with all prescribed regulations. A properly revised application submitted within 60 days of the order rejecting the incomplete or improper application need not be subject to new notice and publication under § 1155.20, unless the defect causing the rejection was in the notice and/or publication. A revised application submitted after such 60-day period must be newly published and noticed.

(3) The resubmission of a complete and properly filed land-use-exemption-permit application shall be considered a de novo filing for the purposes of computation of the time periods prescribed in the regulations contained in this part.

(4) An applicant may seek waiver of specific regulations listed in subpart C of this part by filing a petition for waiver with the Board. When the petition is filed with the Board, the applicant shall serve, by first-class mail, a copy on the Governor of the State where the facility is located; the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located or proposed to be located; and the appropriate managing government agencies responsible for the groups of land listed in 49 U.S.C. 10909(c)(2). A copy of the certificate of service shall be filed with the Board at the same time. A decision by the Director of the Office of Proceedings granting or denying a waiver petition will be issued within 30 days of the date the petition is filed. Appeals from the Director's decision will be decided by the entire Board. If waiver is not obtained prior to the filing of the application, the application may be subject to rejection.

#### § 1155.23 Participation in application proceedings.

(a) *Initial comments.* Interested persons may become parties to a land-use-exemption-permit proceeding by filing initial comments with the Board within 45 days of the filing of the

application. Comments should contain the following information, as appropriate:

(1) Name, address, and organizational affiliation.

(2) A statement describing commenter's interest in the proceeding, including information concerning any organization or public interest it represents.

(3) Reasons, in general, why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c) and (d) and this part.

(4) Any rebuttal to the evidence and argument submitted by applicant.

(b) *Final comments.* Interested persons, including the applicant, within 30 days after the close of OEA's environmental review, may comment on how the information developed during OEA's environmental review concerning the considerations at 49 U.S.C. 10909(d)(1) through (5) should be weighed with the remaining transportation and other relevant considerations at 49 U.S.C. 10909(d)(6) and (7). The parties will have an additional 15 days to respond to other parties' arguments. All pleadings shall be limited to weighing the information developed during OEA's environmental review with transportation and other concerns, and should not be directed towards the adequacy of OEA's environmental review. (Interested persons may comment on the adequacy of OEA's environmental review during the normal comment period for the EIS as provided in 49 CFR 1105.10(a)(4). See 49 CFR 1155.24(a).) All comments under this paragraph shall contain the information required in paragraphs (a)(1) and (2) of this section.

(c) *Filing and service of comments and replies (including evidence and argument).* (1) Initial comments shall be filed with the Board (addressed to the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423) within 45 days of the filing with the Board of a land-use-exemption-permit application. An original and 10 copies of each comment shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

(2) Final comments shall be filed and served on all parties within 30 days of the close of the environmental review. An original and 10 copies of such comments shall be filed with the Board. A copy of each comment shall be served on applicant or its representative at the

time of filing with the Board. Each filing shall contain a certificate of service.

(3) Replies to final comments shall be filed and served on all parties no later than 45 days after the close of the environmental review. An original and 10 copies of such replies shall be filed with the Board. A copy of each reply to comments shall be served on applicant or its representative at the time of filing with the Board. Each filing shall contain a certificate of service.

#### § 1155.24 Environmental review.

(a) A land-use-exemption permit generally will require the preparation of an EIS. OEA may reclassify the environmental review requirements of land-use-exemption proceedings on a case-by-case basis, pursuant to 49 CFR 1105.6(d).

(b) An applicant for a land-use-exemption permit must submit an environmental report, at least 45 days prior to filing a land-use-exemption-permit application, containing the information described at 49 CFR 1105.7 to the extent applicable to solid waste rail transfer facilities. Applicants shall concurrently file an historic report containing the information at 49 CFR 1105.8 if applicable. The environmental report must also contain a discussion of the five factors for consideration listed at 49 U.S.C. 10909(d)(1) through (5) and address any associated environmental impacts as they relate to the facility for which a land-use-exemption permit is sought.

(c) The Board strongly encourages applicants to use third-party contractors to assist OEA in preparing the appropriate environmental documentation in land-use-exemption-permit proceedings. See 49 CFR 1105.10(d). The environmental reporting requirements outlined above that would otherwise apply are waived if an applicant hires a third-party contractor, OEA approves the scope of the contractor's work, and the contractor works under OEA's direct supervision. See 49 CFR 1105.10(d). If an applicant does not hire an independent third-party contractor, the Board may hire a third-party contractor and charge the costs for the contractor to the applicant. See 49 U.S.C. 10909(h).

(d) The Board's procedures set forth in 49 CFR 1105.10 for implementation of environmental laws are controlling unless superseded by provisions in this Part.

(e) An applicant for a land-use-exemption permit must follow the Board's procedures at 49 CFR 1105.9 for compliance with the Coastal Zone Management Act, 16 U.S.C. 1451–65, if that act is applicable.

#### § 1155.25 Transfer and termination of a land-use-exemption permit.

(a) A land-use-exemption permit may be transferred from a rail carrier to an acquiring rail carrier without the need for a new application for a land-use-exemption permit if the rail line associated with the solid waste rail transfer facility is transferred to another rail carrier or to an entity formed to become a rail carrier pursuant to authority granted by the Board under 49 U.S.C. 10901, 10902, or 11323. When seeking Board authority under 49 U.S.C. 10901, 10902, or 11323, the applicant(s) shall specifically advise the Board, the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, of the intended transfer. The **Federal Register** notice concerning the acquisition shall include a statement that a solid waste rail transfer facility with a Board-issued land-use-exemption permit is included in the acquisition.

(b) When a carrier plans to cease using a facility as a solid waste rail transfer facility, or when a facility is transferred to any party in any manner other than that described in paragraph (a) of this section, the entity that received the land-use-exemption permit must notify the Board, the municipality, the State, and any relevant Federal or State regional planning entity of the jurisdiction in which the solid waste rail transfer facility is located, in writing no later than 60 days prior to the proposed cessation or transfer. Upon receipt of that notice, the Board will publish notice in the **Federal Register** that the land-use-exemption permit will be terminated on the 60th day unless otherwise ordered by the Board.

#### § 1155.26 Board determinations under 49 U.S.C. 10909.

(a) *Schedule.* (1) The schedule in paragraph (a)(2) of this section shall govern the process for Board consideration and decisions in land-use-exemption-permit application proceedings from the time the application is filed until the time of the Board's decision on the merits.

(2) At least 45 days prior to filing of application—Environmental report (and/or historic report, if applicable) filed and environmental process initiated pursuant to 49 CFR 1155.24.

(i) Day 0—Application filed.

(ii) Day 20—Due date for Notice of Application to be published in the **Federal Register**.

(iii) Day 45—Due date for initial comments.

(iv) 30 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for final comments.

(v) 45 days after the Final EIS (or other final environmental documentation) is issued by OEA—Due date for replies to final comments.

(3) A decision on the merits will be due 90 days after a full record is developed.

(b) *Standard for review.* (1) The Board will issue a land-use-exemption permit only if it determines that the facility at the existing or proposed location would not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility's potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument.

(3) The Board will not grant a land-use-exemption permit for a solid waste rail transfer facility proposed to be located on land within any unit of or land affiliated with lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a State has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(4) The Board will reject an application from a person who is not a rail carrier, but is instead operating on behalf of a rail carrier unless:

(i) The applicant has sought permission from the applicable State, local, or municipal authority with respect to some or all of the property in the application and received an unsatisfactory result affecting the siting of the facility; or

(ii) The Governor of the State has petitioned the Board to require the facility to apply under 49 CFR part 1155 subpart B.

(5) The Board will issue a land-use-exemption permit to an applicant that has received an unsatisfactory result from a State, local or municipal

authority affecting the siting of the facility only if it finds that the laws, regulations, or other requirements affect the siting of the facility, on their face or as applied, either:

(i) Unreasonably burden the interstate transportation of solid waste by railroad; or

(ii) Discriminate against the railroad transportation of solid waste and a solid waste rail transfer facility.

(6) A land-use-exemption permit will not exempt a State requirement that a rail carrier comply with an environmental, public health, or public safety standard that falls under the traditional police powers of the State unless the requirement is unreasonably burdensome to interstate commerce or discriminates against rail carriers.

(7) A land-use-exemption permit will only exempt State, local, or municipal laws, regulations, orders, other requirements, or portions thereof, affecting the siting of the solid waste rail transfer facility.

(c) *Considerations.* As required by 49 U.S.C. 10909(d), the Board will consider and give due weight to the following, as applicable:

(1) The land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;

(2) The land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;

(3) Regional transportation planning requirements developed pursuant to Federal and State law;

(4) Regional solid waste disposal plans developed pursuant to Federal or State law;

(5) Any Federal and State environmental protection laws or regulations applicable to the site;

(6) any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and

(7) Any other relevant factors, as determined by the Board.

(d) *Permits.* If the Board grants a land-use-exemption permit for a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. Inasmuch as the Board has

discretion to require compliance with State requirements affecting the siting of a facility pursuant to 49 U.S.C. 10909(f), a Board-issued land-use-exemption permit will require compliance with such State laws, regulations, orders, or other requirements not otherwise expressly exempted in the permit unless the Board determines otherwise.

#### **§ 1155.27 Petitions to modify, amend, or revoke a land-use-exemption permit.**

*General rule.* Petitions to modify, amend, or revoke land-use-exemption permits shall be decided in accordance with the Board's normal standard of review for petitions to reopen administratively final Board actions at 49 CFR 1115.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requested action, and is subject to these additional conditions:

(a) An entity that petitions for a modification or amendment requesting an expansion of Federal preemption or the facility's operations or physical size is subject to the notice and application requirements in this subpart C. The language of the notifications shall be modified to note that the petition is for a modification or amendment.

(b) The Board will approve or deny petitions to modify, amend, or revoke a land-use-exemption permit within 90 days after the full record for the petition is developed.

#### **APPENDIX A to Part 1155—Form Notice of Intent to Apply**

Docket No. FD \_\_\_\_ (Sub-No. \_\_\_\_)

Notice of Intent to apply for a land-use-exemption permit for a solid waste rail transfer facility.

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility as defined in 49 U.S.C. 10908(e)(1)(H) and 49 CFR 1155.2. The solid waste rail transfer facility, owned by (name of owner), and operated by (name of operator), is located at (full address, or, if not available, provide city, State, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a (name of rail carrier) line of railroad known as \_\_\_\_ at milepost \_\_\_\_ between (station name) at milepost \_\_\_\_ and (station name) at milepost \_\_\_\_.

The reason(s) for the proposed permit application is (are) \_\_\_\_ (explain briefly and clearly the activities undertaken, or proposed to be undertaken, by the applicant at the solid waste rail transfer facility. Describe the specific State and local laws, regulations, orders or other requirements affecting siting from which the applicant requests entire or partial exemption and any



action that the State, local, or municipal authority has taken affecting the siting of the facility. Also, if applicant is not the rail carrier, provide the name of the rail carrier that owns or operates the facility or has the facility operated on its behalf.)

(Include this paragraph for facilities not in existence on October 16, 2008). Applicant certifies that, based on information in its possession, the facility is not proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. Applicant further certifies that the facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a State has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (State) under The Highlands Conservation Act, Public Law 108–421, placed at its proposed location). Any relevant documentation in the railroad's possession on these issues will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

The application containing the information set forth at 49 CFR 1155.21 will include the applicant's case for the granting of the land-use-exemption permit. Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board initial comments concerning the application within 45 days after the application is filed.

The party's initial comments should contain that party's initial arguments in support or opposition based on the information available at that point including the following, as appropriate:

- (1) Name, address, and organizational affiliation.
- (2) A statement describing commenter's interest in the proceeding, including information concerning the organization or public interest the commenter represents.
- (3) Specific reasons why commenter supports or opposes the application, taking into account the standards for the Board's review and consideration provided in 49 U.S.C. 10909(c), (d) and the Board's regulations at 49 CFR 1155.27.
- (4) If applicant files under 49 CFR 1155.22, specific reasons why commenter supports or opposes the Board's accepting the application.
- (5) Any rebuttal of material submitted by applicant.

The parties' initial comments will be considered by the Board in determining what disposition to make of the application. Parties seeking further information concerning the filing of comments should refer to 49 CFR 1155.24.

Interested persons also will have the opportunity to provide detailed comments during the Board's environmental review

under the National Environmental Policy Act. 49 CFR 1105.10 and 49 CFR 1155.25. Questions concerning the environmental review process or potential environmental issues may be directed to the Board's Office of Environmental Analysis (OEA). After the close of the environmental review, interested parties may file final comments on how the information developed during the environmental review should be weighed by the Board in determining whether to grant the requested land use exemption permit. See 49 CFR part 1155 for details on these processes.

All comments should indicate the proceeding designation Docket No. FD \_\_\_\_ (Sub-No. \_\_\_\_). Initial comments must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR part 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. See 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, and the full land-use-exemption-permit regulations at 49 CFR part 1155.

A copy of the application will be available for public inspection on or after (insert date the land-use-exemption-permit application is to be filed with Board) and will be available on the Board's Web site at <http://www.stb.dot.gov>. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

#### APPENDIX B—Form Federal Register Notice

Docket No. FD \_\_\_\_ (Sub-No. \_\_\_\_)

Notice of Application for a land-use-exemption permit for a solid waste rail transfer facility

On (insert date application was filed with the Board) (name of applicant) filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, an application for a land-use-exemption permit for a solid waste rail transfer facility. The solid waste rail transfer facility, owned by (name of owner), and operated by (name of operator), is located at (full address, or, if not available, provide city, State, and United States Postal Service ZIP code). The solid waste rail transfer facility is located on a line of (name of rail carrier) railroad known as \_\_\_\_ at milepost \_\_\_\_ between (station name) at milepost \_\_\_\_ and (station name) at milepost \_\_\_\_ . The application explains why applicant believes its request for a land-use-exemption permit should be granted.

(Include this paragraph for facilities not in existence on October 16, 2008). The facility is not proposed to be located on land within any unit of or land affiliated with the

National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Reserve, or a National Monument. The facility is not proposed to be located on lands referenced in The Highlands Conservation Act, Public Law 108–421, for which a State has implemented a conservation management plan (or, The facility is consistent with the restrictions implemented by (State) under The Highlands Conservation Act, Public Law 108–421, placed on its proposed location). Any relevant documentation in the railroad's possession will be made available promptly to those requesting it.

(For facilities already in existence on October 16, 2008, address the extent to which the facility is or is not located in any of these types of lands, and to the extent that it is so located address any relevant criteria, and so certify.)

Any interested person may file with the Surface Transportation Board initial comments concerning the application within 45 days of the filing of the application. Persons seeking information concerning the filing of initial comments should refer to 49 CFR 1155.23.

All comments should indicate the proceeding designation Finance Docket No. \_\_\_\_ (Sub-No. \_\_\_\_). Initial comments must be filed with the Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, SW., Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). A copy of each comment shall be served upon the representative of the applicant (insert name, address, and phone number). Except as otherwise set forth in 49 CFR part 1155, each document filed with the Board must be served on all parties to the land-use-exemption-permit proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning land-use-exemption-permit procedures may contact the Surface Transportation Board or refer to 49 U.S.C. 10908, 10909, 10910 and the Board's implementing land-use-exemption-permit regulations at 49 CFR part 1155.

A copy of the application is available for public inspection. The applicant shall furnish a copy of the application to any interested person proposing to file a comment, upon request.

Questions concerning the environmental review process or potential environmental issues may be directed to the Board's Office of Environmental Analysis (OEA). After the close of the environmental review, interested parties may file final comments on how the information developed during the environmental review should be weighed by the Board in determining whether to grant the requested land use exemption permit. See 49 CFR part 1155 for details on these processes.

**Note:** The following appendix will not appear in the Code of Federal Regulations.

## Appendix

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

### Description of Collection

*Title:* Solid Waste Rail Transfer Facilities.

*OMB Control Number:* \_\_\_\_-\_\_\_\_.

*STB Form Number:* None.

*Type of Review:* New Collection.

*Respondents:* Any applicant seeking a land-use-exemption permit, whether compelled by a Governor's petition or through its own accord.

*Number of Respondents:* Unknown; none mandated by the Board.

*Estimated Time Per Response:* 160 hours.

*Frequency:* 1.

*Total Burden Hours (annually including all respondents):* 160 hours.

*Total "Non-hour Burden" Cost:* An estimated cost of \$50,000 to hire an environmental consultant to work with Board staff on the required environmental report.

*Needs and Uses:* The information collected from applicants develops the record in land-use-exemption-permit proceedings, a process mandated by Congress in the CRA. The information gathered under the interim regulations is intended to permit the Board to accurately assess the merits of a permit application.

*Retention Period:* Information in this report will be maintained on the Board's Web site for a minimum of 1 year and will be otherwise maintained permanently.

[FR Doc. 2011-6420 Filed 3-23-11; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XA264

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** This rule is effective 12:01 a.m., local time, March 23, 2011, through June 30, 2011.

### FOR FURTHER INFORMATION CONTACT:

Steve Branstetter, telephone: 727-824-5305, fax: 727-824-5308, e-mail: [Steve.Branstetter@noaa.gov](mailto:Steve.Branstetter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The king mackerel quota for the hook-and-line component of the commercial sector in the southern Florida west coast subzone is 520,312 lb (236,010 kg) (50 CFR 622.42(c)(1)(i)(A)(2)(j)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification with the Office of the Federal Register. NMFS has determined the commercial quota for Gulf group king mackerel in the southern Florida west coast subzone will be reached by March 23, 2011. Accordingly, the commercial sector for Gulf group king mackerel in the southern subzone is closed effective 12:01 a.m., local time, March 23, 2011, through June 30, 2011, the end of the fishing year.

From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone off Collier and Monroe Counties, Florida. This is the area south and west from 25°20.4'N. lat. (a line directly east from the Miami-Dade/Monroe County boundary on the east coast of Florida) to 26°19.8' N. lat. (a line directly west from the Lee/Collier County boundary on the west coast of Florida). Beginning April 1, the southern subzone is reduced to the area off Collier County, Florida, between 25°48' N. lat. and 26° 19.8' N. lat.

During the closure period, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for or retain Gulf group king mackerel in Federal waters of the

closed subzone. There is one exception, however, for a person aboard a charter vessel or headboat. A person aboard a vessel that has a valid charter/headboat permit and also has a commercial king mackerel permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed subzone under the 2-fish daily bag limit, provided the vessel is operating as a charter vessel or headboat. Charter vessels or headboats that hold a commercial king mackerel permit are considered to be operating as a charter vessel or headboat when they carry a passenger who pays a fee or when more than three persons are aboard, including operator and crew.

### Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the hook-and-line component of the commercial sector for king mackerel in the southern Florida west coast subzone constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the commercial harvest when the quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment on this action would be contrary to the public interest because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*