

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 33

[Docket No. OST 2010–0298]

RIN 2105–AD83

Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act**AGENCY:** Office of the Secretary of Transportation (OST), DOT.**ACTION:** Confirmation of effective date.

SUMMARY: On October 1, 2012, the Department published a final rule requesting comment at 77 FR 59793 to clarify the priorities and allocation authorities exercised by the Secretary of Transportation (Secretary) under title I of the Defense Production Act of 1950 and to establish the administrative procedures by which the Secretary will exercise this authority. In the final rule, the Department requested comment on certain revised definitions found in 49 CFR 33.20. No comments were received by the comment closing date of October 31, 2012. As a result, this document confirms that the October 1 final rule will not be changed and its effective date is November 30, 2012.

DATES: *Effective Date:* This document confirms that the Department's final rule at 77 FR 59793 is effective on November 30, 2012.

FOR FURTHER INFORMATION CONTACT: Donna L. O'Berry, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE., Room W96–320, Washington, DC 20590; telephone: (202) 366–6136; email: donna.o'berry@dot.gov.

SUPPLEMENTARY INFORMATION: As the Department received no comments on its final rule published on October 1, 2012, we are making no changes to the rule and its effective date is November 30, 2012.

Issued in Washington, DC, on November 14, 2012.

Ronald Jackson,*Assistant General Counsel for Operations.*

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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:** Final rules.

SUMMARY: These final rules govern land-use-exemption permits for solid waste rail transfer facilities. The Clean Railroads Act of 2008 amended the U.S. Code to restrict the jurisdiction of the Surface Transportation Board over solid waste rail transfer facilities. The 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. In 2009, as required by the Act, the Board issued interim rules. In 2011, based on the comments received and further evaluation, the Board revised the 2009 Rules and sought comments on the changes. After further evaluation and review of the comments received on the 2011 Rules, the Board now adopts the 2011 Rules as final rules with minor modification.

DATES: These rules will be effective on December 21, 2012.

FOR FURTHER INFORMATION CONTACT: Lucille Marvin, The Office of Public Assistance, Governmental Affairs, and Compliance, (202) 245–0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Clean Railroads Act of 2008, Public Law 110–432, 122 Stat. 4848, (CRA) amended 49 U.S.C. 10501(c)(2) to restrict the jurisdiction of the Surface Transportation Board (Board or STB) over solid waste rail transfer facilities. The CRA also added three new statutory provisions—49 U.S.C. 10908–10910—that address the Board's regulation of such facilities, which is now limited to issuance of "land-use-exemption permits" in certain circumstances. Under the CRA, 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 CRA, the Board issued interim rules in a decision served January 14, 2009. *Solid Waste Rail Transfer Facilities (2009 Decision)*, EP 684 (STB served Jan. 14, 2009). Those interim rules were published in the **Federal Register** on January 27, 2009 (74 FR 4714) (2009 Rules). Based on the comments received and further evaluation, the Board served a decision on March 11, 2011, which revised the 2009 Rules and sought comments on the changes. *Solid Waste Rail Transfer Facilities (2011 Decision)*, EP 684 (STB served Mar. 11, 2011). The revised interim rules were published in the **Federal Register** on March 24, 2011 (76 FR 16538) (2011 Rules). After further evaluation and review of the comments received on the 2011 Rules, the Board now adopts the 2011 Rules as final rules with minor modifications. The final rules are set forth below.

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 "[t]he 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 or State law." Prior to enactment of the CRA, 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