

§ 1155.25

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.

§ 1155.25 Participation in application proceedings.

(a) *Public participation.* (1) *Comments.* Interested persons may become parties to a land-use-exemption-permit proceeding by filing written comments with the Board within 45 days of the filing of the application. Comments should contain the following information, as appropriate:

(i) Name, address, and organizational affiliation.

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

(iii) Specific reasons 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), (d) and 49 CFR part 1155.

(iv) If the applicant files under 49 CFR 1155.23, specific reasons why the commenter supports or opposes the Board considering the application.

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

(vi) Any State, local, or municipal law, regulation, order, or other requirement affecting the siting of the facility not included in the application and any argument concerning its bearing on the merits of the application in terms of the standards for the Board's review and consideration set forth in 49 U.S.C. 10909(c), (d) and 49 CFR part 1155.

(b) *Filing and service of written comments, along with evidence and argument, and rebuttals.* (1) Written comments shall be filed with the Board (addressed to the Secretary, 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 written comment shall be filed with the Board. A

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copy of each written 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) Rebuttals to written comments shall be filed and served by applicants no later than 60 days after the filing of the application. An original and 10 copies of such replies shall be filed with the Board.

§ 1155.26 Transfer and termination of a land-use-exemption permit.

(a) A land-use-exemption permit will be transferred 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) should specifically advise the Board of the intended transfer.

(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 49 CFR 1155.26(a), the entity that received the land-use-exemption permit must notify the Board 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.

§ 1155.27 Board determinations under 49 U.S.C. 10909.

(a) *Procedural schedule.* (1) The following schedule 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:

Day 0—Application filed, including applicant's case in chief.

Day 20—Due date for Notice of Application to be published in the FEDERAL REGISTER.

Day 45—Due date for comments.

Day 60—Due date for applicant's rebuttal.

(2) A decision on the merits will be due 90 days after a full record is developed, including the appropriate environmental review, if any.

(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 No. 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) 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.

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

(c) *Considerations.* 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) If the Board grants a land-use-exemption permit to 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. A Board issued land-use-exemption permit may require compliance with such State laws, regulations, orders, or other requirements.

§ 1155.28 Appellate procedures.

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 1155.4. The petition must demonstrate material error, new evidence, or substantially changed circumstances that warrant the requested action, and is subject to these additional conditions: