

Issued on: December 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2010-1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2010 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2010 RCAF (Unadjusted) is 1.038. The first quarter 2010 RCAF (Adjusted) is 0.467. The first quarter 2010 RCAF-5 is 0.443.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT:

Pedro Ramirez, (202) 245-0333. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision, which is available on our Web site <http://www.stb.dot.gov>. Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202)-245-0235. Assistance for the hearing impaired is available through FIRS at 1-800-877-8339.

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

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 16, 2009.

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

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9-30361 Filed 12-21-09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 684]

Solid Waste Rail Transfer Facilities

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: This decision provides the factual basis for the Board's certification under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that the interim rules governing the submission and review of applications for land-use-exemption permits and related filings under 49 CFR 1155 will not have a significant economic impact on a substantial number of small entities.

DATES: Comments on the factual basis for the Board's Regulatory Flexibility Act certification are due by January 6, 2010, and reply comments are due by January 19, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 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 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The Clean Railroads Act of 2008, Public Law No. 110-432, 122 Stat. 4848 (Clean Railroads Act or CRA), enacted October 16, 2008, removed from the jurisdiction of the Surface Transportation Board the regulation of solid waste rail transfer facilities,¹ except as provided for in that act. The CRA limited the Board's authority with regard to solid waste rail

¹ The CRA defines a solid waste transfer facility as including the portion of a facility: (1) That is owned or operated by or on behalf of a rail carrier; (2) where solid waste is treated as a commodity transported for a charge; (3) where the solid waste is collected, stored, separated, processed, treated, managed, disposed of, or transferred; and (4) to the extent that solid-waste activity is conducted outside of the original shipping container. 49 U.S.C. 10908(e)(1)(H)(i).

transfer facilities to the issuance of land-use-exemption permits, a license that preempts a facility from compliance with state laws, regulations, orders, and other requirements affecting the siting of the facility.² On January 14, 2009, the Board served a notice of proposed rulemaking that set forth proposed procedures governing the submission and review of applications for land-use-exemption permits and related filings. *See Solid Waste Rail Transfer Facilities*, STB Ex Parte No. 684 (STB served Jan. 14, 2009) (*January 14 Notice*). Pursuant to 49 U.S.C. 10909(b), those proposed rules serve as the current interim rules.

In accordance with 5 U.S.C. 605(b) of the Regulatory Flexibility Act, we certified in the *January 14 Notice* that the proposed action would not have a significant economic impact on a substantial number of small entities. The Board also sought comment on the interim rules and the Board's interpretation of the CRA. During the time period allotted for comments, we received a request that we publish the factual basis for our certification and allow comments on it. *See Salem Rail Logistics Comments* at 3.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, generally requires a description and analysis of new rules that will have a significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601-604. When proposing new rules, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or certify that the proposed rule will not have a "significant impact on a substantial number of small entities," 5 U.S.C. 605(b). The impact must be a direct impact on small entities "whose conduct is circumscribed or mandated" by the proposed rule. *White Eagle Coop. Ass'n v. Conner*, 553 F.3d 467, 480 (7th Cir. 2009).

In the *January 14 Notice*, the Board certified that the interim rules would not have a significant economic impact on a substantial number of small entities. The basis for that determination is as follows. While applicants for land-use-exemption permits could be small entities, as defined in 13 CFR Part 121, nothing in the interim rules gives the

² The Board, however, has the authority to require as a condition of the permit compliance with State laws, regulations, orders, and other requirements that affect the siting of a facility. 49 U.S.C. 10909(f).