

Transportation containing the model plan and recommendations developed by the task force under subsection (b).

TITLE VI—CLARIFICATION OF FEDERAL JURISDICTION OVER SOLID WASTE FACILITIES

SEC. 601. SHORT TITLE.

This title may be cited as the “Clean Railroads Act of 2008”.

SEC. 602. CLARIFICATION OF GENERAL JURISDICTION OVER SOLID WASTE TRANSFER FACILITIES.

Section 10501(c)(2) is amended to read as follows:

“(2) Except as provided in paragraph (3), the Board does not have jurisdiction under this part over—

“(A) mass transportation provided by a local government authority; or

“(B) a solid waste rail transfer facility as defined in section 10908 of this title, except as provided under sections 10908 and 10909 of this title.”.

SEC. 603. REGULATION OF SOLID WASTE RAIL TRANSFER FACILITIES.

(a) IN GENERAL.—Chapter 109 is amended by adding at the end thereof the following:

“§ 10908. Regulation of solid waste rail transfer facilities

“(a) IN GENERAL.—Each solid waste rail transfer facility shall be subject to and shall comply with all applicable Federal and State requirements, both substantive and procedural, including judicial and administrative orders and fines, respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, including laws governing solid waste, to the same extent as required for any similar solid waste management facility, as defined in section 1004(29) of the Solid Waste Disposal Act (42 U.S.C. 6903(29)) that is not owned or operated by or on behalf of a rail carrier, except as provided for in section 10909 of this chapter.

“(b) EXISTING FACILITIES.—

“(1) STATE LAWS AND STANDARDS.—Not later than 90 days after the date of enactment of the Clean Railroads Act of 2008, a solid waste rail transfer facility operating as of such date of enactment shall comply with all Federal and State requirements pursuant to subsection (a) other than those provisions requiring permits.

“(2) PERMIT REQUIREMENTS.—

“(A) STATE NON-SITING PERMITS.—Any solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a permit required pursuant to subsection (a), other than a siting permit for the facility, as of the date of enactment of the Clean Railroads Act of 2008 shall not be required to possess any such permits in order to operate the facility—

“(i) if, within 180 days after such date of enactment, the solid waste rail transfer facility has submitted, in good faith, a complete application for all

permits, except siting permits, required pursuant to subsection (a) to the appropriate permitting agency authorized to grant such permits; and

“(ii) until the permitting agency has either approved or denied the solid waste rail transfer facility’s application for each permit.

“(B) SITING PERMITS AND REQUIREMENTS.—A solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a State siting permit required pursuant to subsection (a) as of such date of enactment shall not be required to possess any siting permit to continue to operate or comply with any State land use requirements. The Governor of a State in which the facility is located, or his or her designee, may petition the Board to require the facility to apply for a land-use exemption pursuant to section 10909 of this chapter. The Board shall accept the petition, and the facility shall be required to have a Board-issued land-use exemption in order to continue to operate, pursuant to section 10909 of this chapter.

“(c) COMMON CARRIER OBLIGATION.—No prospective or current rail carrier customer may demand solid waste rail transfer service from a rail carrier at a solid waste rail transfer facility that does not already possess the necessary Federal land-use exemption and State permits at the location where service is requested.

“(d) NON-WASTE COMMODITIES.—Nothing in this section or section 10909 of this chapter shall affect a rail carrier’s ability to conduct transportation-related activities with respect to commodities other than solid waste.

“(e) DEFINITIONS.—

“(1) IN GENERAL.—In this section:

“(A) COMMERCIAL AND RETAIL WASTE.—The term ‘commercial and retail waste’ means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

“(B) CONSTRUCTION AND DEMOLITION DEBRIS.—The term ‘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.

“(C) HOUSEHOLD WASTE.—The term ‘household waste’ means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

“(D) INDUSTRIAL WASTE.—The term ‘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.

“(E) INSTITUTIONAL WASTE.—The term ‘institutional waste’ means material discarded by schools, nonmedical

waste discarded by hospitals, material discarded by non-manufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

“(F) MUNICIPAL SOLID WASTE.—The term ‘municipal solid waste’ means—

- “(i) household waste;
- “(ii) commercial and retail waste; and
- “(iii) institutional waste.

“(G) SOLID WASTE.—With the exception of 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, the term ‘solid waste’ means—

- “(i) construction and demolition debris;
- “(ii) municipal solid waste;
- “(iii) household waste;
- “(iv) commercial and retail waste;
- “(v) institutional waste;
- “(vi) sludge;
- “(vii) industrial waste; and
- “(viii) other solid waste, as determined appropriate by the Board.

“(H) SOLID WASTE RAIL TRANSFER FACILITY.—The term ‘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 section 10102 of this title) 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—

- “(I) 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

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

“(I) SLUDGE.—The term ‘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.

“(2) EXCEPTIONS.—Notwithstanding paragraph (1), the terms ‘household waste’, ‘commercial and retail waste’, and ‘institutional waste’ do not include—

- “(A) yard waste and refuse-derived fuel;
- “(B) used oil;
- “(C) wood pallets;
- “(D) clean wood;

“(E) medical or infectious waste; or

“(F) motor vehicles (including motor vehicle parts or vehicle fluff).

“(3) STATE REQUIREMENTS.—In this section the term ‘State requirements’ 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.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 109 is amended by inserting after the item relating to section 10907 the following:

“10908. Regulation of solid waste rail transfer facilities.”.

SEC. 604. SOLID WASTE RAIL TRANSFER FACILITY LAND-USE EXEMPTION AUTHORITY.

(a) IN GENERAL.—Chapter 109 is further amended by adding at the end thereof the following:

“§ 10909. Solid waste rail transfer facility land-use exemption

“(a) AUTHORITY.—The Board may issue a land-use exemption for a solid waste rail transfer facility that is or is proposed to be operated by or on behalf of a rail carrier if—

“(1) the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility petitions the Board for such an exemption; or

“(2) the Governor of a State in which a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 is located, or his or her designee, petitions the Board to initiate a permit proceeding for that particular facility.

“(b) LAND-USE EXEMPTION PROCEDURES.—Not later than 90 days after the date of enactment of the Clean Railroad Act of 2008, the Board shall publish procedures governing the submission and review of applications for solid waste rail transfer facility land-use exemptions. At a minimum, the procedures shall address—

“(1) the information that each application should contain to explain how the solid waste rail transfer facility will not pose an unreasonable risk to public health, safety, or the environment;

“(2) the opportunity for public notice and comment including notification of 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 proposed to be located;

“(3) the timeline for Board review, including a requirement that the Board approve or deny an exemption within 90 days after the full record for the application is developed;

“(4) the expedited review timelines for petitions for modifications, amendments, or revocations of granted exemptions;

“(5) the process for a State to petition the Board to require a solid waste transfer facility or a rail carrier that owns or operates such a facility to apply for a siting permit; and

“(6) the process for a solid waste transfer facility or a rail carrier that owns or operates such a facility to petition the Board for a land-use exemption.

“(c) STANDARD FOR REVIEW.—

“(1) The Board may only issue a land-use exemption if it determines that the facility at the existing or proposed location does 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 may not grant a land-use exemption 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, a National Monument, or lands referenced in 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.

“(d) CONSIDERATIONS.—When evaluating an application under this section, the Board shall 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 State or Federal 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.

“(e) EXISTING FACILITIES.—Upon the granting of petition from the State in which a solid waste rail transfer facility is operating as of the date of enactment of the Clean Railroads Act of 2008 by the Board, the facility shall submit a complete application for a siting permit to the Board pursuant to the procedures issued pursuant to subsection (b). No State may enforce a law, regulation, order, or other requirement affecting the siting of a facility that is operating as of the date of enactment of the Clean Railroads

Act of 2008 until the Board has approved or denied a permit pursuant to subsection (c).

“(f) EFFECT OF LAND-USE EXEMPTION.—If the Board grants a land-use exemption 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. An exemption may require compliance with such State laws, regulations, orders, or other requirements.

“(g) INJUNCTIVE RELIEF.—Nothing in this section precludes a person from seeking an injunction to enjoin a solid waste rail transfer facility from being constructed or operated by or on behalf of a rail carrier if that facility has materially violated, or will materially violate, its land-use exemption or if it failed to receive a valid land-use exemption under this section.

“(h) FEES.—The Board may charge permit applicants reasonable fees to implement this section, including the costs of third-party consultants.

“(i) DEFINITIONS.—In this section the terms ‘solid waste’, ‘solid waste rail transfer facility’, and ‘State requirements’ have the meaning given such terms in section 10908(e).”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 109, as amended by section 603 of this division, is amended by inserting after the item relating to section 10908 the following:

“10909. Solid waste rail transfer facility land-use exemption.”.

SEC. 605. EFFECT ON OTHER STATUTES AND AUTHORITIES.

(a) IN GENERAL.—Chapter 109, as amended by section 604, is further amended by adding at the end thereof the following:

“§ 10910. Effect on other statutes and authorities

“Nothing in section 10908 or 10909 is intended to affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards that are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers.”.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 109, as amended by section 604 of this division, is amended by inserting after the item relating to section 10909 the following:

“10910. Effect on other statutes and authorities.”.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. TECHNICAL CORRECTIONS.

(a) LIMITATIONS ON FINANCIAL ASSISTANCE.—Section 22106 is amended—

(1) by striking the second sentence of subsection (a);

(2) by striking subsection (b) and inserting the following:

“(b) STATE USE OF REPAID FUNDS AND CONTINGENT INTEREST RECOVERIES.—The State shall place the United States Government’s share of money that is repaid and any contingent interest that is recovered in an interest-bearing account. The repaid money, contingent interest, and any interest thereof shall be considered to be State funds. The State shall use such funds to make other grants and loans, consistent with the purposes for which financial

assistance may be used under subsection (a), as the State considers to be appropriate.”; and

(3) by striking subsections (c) and (e) and redesignating subsection (d) as subsection (c).

(b) GRANTS FOR CLASS II AND III RAILROADS.—Section 22301(a)(1)(A)(iii) is amended by striking “and” and inserting “or”.

(c) RAIL TRANSPORTATION OF RENEWABLE FUEL STUDY.—Section 245(a)(1) of the Energy Independence and Security Act of 2007 is amended by striking “Secretary, in coordination with the Secretary of Transportation,” and inserting “Secretary and the Secretary of Transportation”.

(d) MOTOR CARRIER DEFINITION.—

Section 14504a is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting “(except as provided in paragraph (5))” after “14506”;

(B) in paragraph (1), by striking subparagraph (A) and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘commercial motor vehicle’—

“(i) for calendar years 2008 and 2009, has the meaning given the term in section 31101; and

“(ii) for years beginning after December 31, 2009, means a self-propelled vehicle described in section 31101.”; and

(C) by striking paragraph (5) and inserting the following:

“(5) MOTOR CARRIER.—

“(A) THIS SECTION.—In this section:

“(i) IN GENERAL.—The term ‘motor carrier’ includes all carriers that are otherwise exempt from this part—

“(I) under subchapter I of chapter 135; or

“(II) through exemption actions by the former Interstate Commerce Commission under this title.

“(ii) EXCLUSIONS.—In this section, the term ‘motor carrier’ does not include—

“(I) any carrier subject to section 13504; or

“(II) any other carrier that the board of directors of the unified carrier registration plan determines to be appropriate pursuant to subsection (d)(4)(C).

“(B) SECTION 14506.—In section 14506, the term ‘motor carrier’ includes all carriers that are otherwise exempt from this part—

“(i) under subchapter I of chapter 135; or

“(ii) through exemption actions by the former Interstate Commerce Commission under this title.”; and

(2) in subsection (d)(4)(C), by inserting before the period at the end the following: “, except that a decision to approve the exclusion of carriers from the definition of the term ‘motor carrier’ under subsection (a)(5) shall require an affirmative vote of $\frac{3}{4}$ of all such directors.”.

(e) EXTENSION OF LOAN PERIOD.—Section 502(g)(1) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(g)(1)) is amended by striking “25 years” and inserting “35 years”.