

cept that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

(h) If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.

(Added Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 828.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10910 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 10907 to 10910 and 10921 to 10936 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Section 10907, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1407, related to rail carriers entering into arrangements for joint use or ownership of spur, industrial, team, switching, or side tracks, and deprived Interstate Commerce Commission of authority over such tracks when located in one State or over certain electric railways. See sections 10102, 10501, and 10906 of this title.

Section 10908, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1407, related to discontinuing or changing interstate train or ferry transportation subject to State law.

Section 10909, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1408, related to discontinuing or changing train or ferry transportation in one State.

Section 10910, added Pub. L. 96-448, title IV, §401(a), Oct. 14, 1980, 94 Stat. 1939; amended Pub. L. 97-468, title V, §506(a), Jan. 14, 1983, 96 Stat. 2553; Pub. L. 103-272, §4(j)(27), July 5, 1994, 108 Stat. 1369, related to railroad development. See section 10907 of this title.

Section 10921, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1409, related to requirement for certificate, permit, or license. See section 13901 of this title.

Section 10922, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1409; Pub. L. 96-296, §§5(a), 6, 34(a), July 1, 1980, 94 Stat. 794, 796, 825; Pub. L. 96-454, §10(a), Oct. 15, 1980, 94 Stat. 2021; Pub. L. 97-261, §§6(a)-(c), (g), 7, 8, Sept. 20, 1982, 96 Stat. 1103, 1107, 1108; Pub. L. 98-554, title II, §§225(a), (b), 226(b), Oct. 30, 1984, 98 Stat. 2847, 2848, 2850; Pub. L. 100-17, title III, §§339, 340(a), Apr. 2, 1987, 101 Stat. 243, 245; Pub. L. 100-690, title IX, §911(g), Nov. 18, 1988, 102 Stat. 4533; Pub. L. 102-240, title III, §3003(b), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 103-272, §5(m)(25), July 5, 1994, 108 Stat. 1378; Pub. L. 103-311, title II, §207, Aug. 26, 1994, 108 Stat. 1686; Pub. L. 103-429, §7(a)(4)(D), Oct. 31, 1994, 108 Stat. 4389, related to certificates of motor and water common carriers. See section 13902 of this title.

Section 10923, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1410; Pub. L. 96-258, §1(9), June 3, 1980, 94 Stat. 426; Pub. L. 96-296, §§10(a)(2), (3), 34(b), July 1, 1980, 94 Stat. 799, 800, 825; Pub. L. 97-261, §13(a), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 99-521, §8(a)(1), (2), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103-311, title II, §208, Aug. 26, 1994, 108 Stat. 1687, related to permits of motor and water contract carriers and household goods freight forwarders. See section 13903 of this title.

Section 10924, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96-296, §17(a), July 1, 1980, 94 Stat. 810; Pub. L. 97-261, §14(a)-(c), Sept. 20, 1982, 96 Stat. 1114; Pub. L. 103-272, §4(j)(28), July 5, 1994, 108 Stat. 1370, related to licenses of motor carrier brokers. See section 13904 of this title.

Section 10925, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1412; Pub. L. 96-296, §§10(e), 17(b), July 1, 1980, 94 Stat. 801, 811; Pub. L. 97-261, §§13(b), 22, Sept. 20, 1982, 96 Stat. 1114, 1123; Pub. L. 97-449, §5(g)(6), Jan. 12, 1983, 96 Stat. 2443; Pub. L. 99-521, §8(b), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 103-311, title II, §209, Aug. 26, 1994, 108 Stat. 1688, related to effective periods of certificates, permits, and licenses. See section 13905 of this title.

Section 10926, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 99-521, §8(c), Oct. 22, 1986, 100 Stat. 2996, related to transfers of certificates and permits.

Section 10927, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1413; Pub. L. 96-296, §29, July 1, 1980, 94 Stat. 820; Pub. L. 97-261, §18(h), Sept. 20, 1982, 96 Stat. 1121; Pub. L. 98-554, title II, §226(c)(2), (3), Oct. 30, 1984, 98 Stat. 2851; Pub. L. 99-521, §8(d), Oct. 22, 1986, 100 Stat. 2996; Pub. L. 100-690, title IX, §911(h), Nov. 18, 1988, 102 Stat. 4534; Pub. L. 103-272, §5(m)(26), July 5, 1994, 108 Stat. 1378, related to security of motor carriers, brokers, and freight forwarders. See section 13906 of this title.

Section 10928, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1414; Pub. L. 96-296, §23, July 1, 1980, 94 Stat. 814; Pub. L. 97-261, §15, Sept. 20, 1982, 96 Stat. 1114, related to temporary authority for motor and water carriers.

Section 10929, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1415, related to temporary authority for previously exempt water transportation.

Section 10930, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1415; Pub. L. 96-296, §10(b), July 1, 1980, 94 Stat. 800; Pub. L. 99-521, §8(e), Oct. 22, 1986, 100 Stat. 2996, related to limitations on certificates and permits.

Section 10931, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1416, related to motor common carriers providing transportation entirely in one State.

Section 10932, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1417, related to motor carrier savings provisions.

Section 10933, Pub. L. 95-473, Oct. 17, 1978, 92 Stat. 1418; Pub. L. 99-521, §8(f)(1), (2), Oct. 22, 1986, 100 Stat. 2996, 2997, related to authorizing abandonment of household goods freight forwarder service.

Section 10934, added Pub. L. 96-454, §5(a)(1), Oct. 15, 1980, 94 Stat. 2013; amended Pub. L. 98-554, title II, §227(a)(2), Oct. 30, 1984, 98 Stat. 2852, related to household goods agents. See section 13907 of this title.

Section 10935, added Pub. L. 97-261, §16(a), Sept. 20, 1982, 96 Stat. 1115; amended Pub. L. 103-272, §5(m)(27), July 5, 1994, 108 Stat. 1378, related to discontinuing bus transportation in one State.

Section 10936, added Pub. L. 103-311, title II, §211(a), Aug. 26, 1994, 108 Stat. 1689, related to limitation on State regulation of intrastate passengers by bus.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 1996, except as otherwise provided in Pub. L. 104-88, see section 2 of Pub. L. 104-88, set out as a note under section 1301 of this title.

#### § 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))<sup>1</sup> 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 Fed-

eral 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 nonmanufacturing 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"—

<sup>1</sup> So in original. Probably should be followed by a comma.

(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.

(Added Pub. L. 110-432, div. A, title VI, § 603(a), Oct. 16, 2008, 122 Stat. 4900.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of enactment of the Clean Railroads Act of 2008, referred to in subsec. (b), is the date of enactment of title VI of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

The Solid Waste Disposal Act, referred to in subsec. (e)(1)(D), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

##### PRIOR PROVISIONS

For prior section 10908, see note set out under section 10907 of this title.

#### § 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 Railroads 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.