

**SUPPORTING STATEMENT
FOR APPROVAL OF NEW COLLECTION
UNDER THE PAPERWORK REDUCTION ACT AND 5 CFR 1320**

New Submissions Under the Board’s Solid Waste Rail Transfer Facilities Regulations

Until recently, the Surface Transportation Board (Board or STB) had preemptive jurisdiction over 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, were preempted. See 49 U.S.C. § 10501(b). Other state actions related to these facilities also were preempted if they would have the effect of unreasonably burdening or interfering with transportation by rail carrier.

The Clean Railroads Act of 2008 (CRA) amended 49 U.S.C. § 10501(c)(2) to restrict the Board’s jurisdiction under § 10501(b) over solid waste rail transfer facilities. The CRA provides that such facilities must now 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 a “land-use-exemption permit.”

The CRA added three new statutory provisions—49 U.S.C. §§ 10908-10910—that address the Board’s regulation of such facilities. It described the circumstances under which the Board may issue land-use-exemption permits. It also provided that, if the Board issues a land-use-exemption permit for a solid waste rail transfer facility, then such facility need not comply with state laws, regulations, orders, and other requirements affecting the siting of the facility, except to the extent that the Board requires compliance with any of those requirements. The CRA mandates that the Board publish procedures governing the submission and review of applications for such solid waste rail transfer facility land-use exemptions. See 49 U.S.C. § 10909(b).

The Board’s proposed and interim rules require affected facilities or railroads that own or operate them to file a detailed application if they are seeking the issuance of a land-use-exemption permit. These permits have significant preemptive effect, and, therefore, these rules also require that the application for a land-use-exemption permit include substantial facts and argument as to why a permit is necessary. These rules also provide for the filing of an environmental report and/or preparation of an environmental impact statement (EIS), in most circumstances, in order to satisfy the requirements of the National Environmental Policy Act (NEPA), when a party chooses to file an application for a land-use-exemption permit.

A. Justification

1. Why Collection Is Necessary.

The CRA requires this collection. Under the CRA, the Board is required to issue rules governing the submission and review of applications for solid waste rail transfer facility land-use-exemption permits. See 49 U.S.C. § 10909(b). The Board may grant a land-use-exemption permit only if it determines that the facility does not pose an unreasonable risk to public health, safety or the environment at that location, after weighing, inter alia, the facility's potential benefits to and adverse impacts on public health and safety, the environment, interstate commerce, and the transportation of solid waste by rail. See 49 U.S.C. § 10909(c). When the Board issues a land-use-exemption permit, all state and local laws, regulations, orders, or other requirements affecting the siting of the facility, from which the applicant has sought an exemption, are preempted with respect to that facility. See 49 U.S.C. § 10909(f). However, the Board may require compliance with some or all of those laws and regulations as a condition of its approval of an application for a land-use-exemption permit. Id. Additionally, the Board must evaluate and determine certain risks to the public, safety, and the environment based on this collection.

Under this mandate, Congress set forth 6 procedures that, "at a minimum," the Board's rules should provide for. Specifically, the Board must provide for the filing of a petition for a land-use exemption permit by a solid waste transfer facility or a rail carrier that owns or operates such a facility. See 49 U.S.C. § 10909(b)(6). The Board also must provide rules defining what information applications for land-use-exemption permits must contain to show how the solid waste rail transfer facility will not pose an unreasonable risk to public health, safety, or the environment. See 49 U.S.C. § 10909(b)(1). Congress specifically listed a number of factors for the Board to consider in making a determination in land-use-exemption permit proceedings. See 49 U.S.C. § 10909(d). In addition, NEPA requires the preparation of an EIS for any major federal action significantly affecting the quality of the human environment. See 42 U.S.C. § 4332(c). The Board has determined that the EIS requirement generally applies to the Board's determination of whether to grant a land-use-exemption permit. Thus, the proposed and interim rules require substantial documentation and justification as part of an application for a land-use-exemption permit, including the filing of an environmental report and/or preparation of an EIS.

2. Uses of Information. This information collection is used by the Board to determine whether a land-use-exemption permit should be issued.

3. Reduction of Burden. This information may be e-filed by parties on the Board's website, <www.stb.dot.gov>.

4. Identification of Duplication. The information requested does not duplicate any other information available to the Board or to the public.

5. Impact on Small Business. There will not be a significant economic impact on a substantial number of small entities. Generally, the requirement is limited to only those small entities or small businesses that choose to file an application to seek preemption of state and local laws. The Board anticipates less than 1 application for land-use-exemption permit per year. It is expected that most solid waste rail-transfer facilities or railroads owning or operating such facilities will conform with state and local laws rather than seek federal preemption under the CRA. Given the small number of applications, this collection should have little economic impact on small-entity filers.
6. Consequence if Collection Not Conducted or Less Frequent. As discussed above, under 49 U.S.C. §§ 10908-10910, the Board is required to provide for this collection and to review it. Without this collection, the Board could not fulfill its statutory responsibilities.
7. Special Circumstances. No special circumstances require the collection to be conducted in a manner inconsistent with the guidelines in 5 C.F.R. § 1320.5.
8. Outside Consultations. The Board is simultaneously publishing notice of this collection in the Federal Register. See 76 Fed. Reg. 16538 (3/24/11). The notice of proposed rules provides 60 days for interested parties to comment on revisions to the proposed rules and an additional 30 days for replies to any comments. The RIN number for the related rulemaking (Ex Parte No. 684) is 2140-AA92.
9. Payment or Gift to Respondents. No payments or gifts to respondents are made.
10. Confidentiality. No confidential information is being collected in this information collection. The collected information is posted on the Board's website.
11. Sensitive Information. No information of a sensitive nature is requested.
12. Collection Burden to Respondents. Based on the Board's experience with similar requirements, the Board estimates that it will take a respondent approximately 160 hours per application for a land-use-exemption permit and that the Board will receive approximately 1 submission per year, for a total annual labor burden of 160 hours.
13. Annual Cost to Respondents. The filing fees are bifurcated depending on whether an affected facility is considered an existing facility. An application for a land-use-exemption permit for a facility not in existence as of October 16, 2008, will require a filing fee of \$22,200. An application for a land-use-exemption permit for a facility existing as of October 16, 2008, will require a filing fee of \$6,300. Additionally, under the proposed and interim rules, an applicant must file an environmental report and, in most circumstances, hire a contractor to work with Board staff to prepare an EIS. While the cost of hiring such a contractor or preparing an environmental report may vary depending on the characteristics of the solid waste transfer facility, staff estimates the cost at approximately \$200,000. The actual amount will depend on the facts and complexity of the case.

14. Annualized Cost to Federal Government. Staff estimates an annual cost to the agency of approximately \$225,000.00. This includes 30 minutes of labor for receipt and posting to the Board's website of an estimated 1 application for a land-use-exemption permit, which is performed by the Board's support staff (GS-12 level) at \$35.88 per hour. The majority of the cost, however, is for reviewing the application and environmental report or, in the alternative, preparing an EIS. Staff estimates that such review will require 3,000 hours of work by professional staff at the GS-14 to SES levels.

15. Changes in Burden Hours. No changes are sought

16. Publication of Results. Individual submissions will be published on the Board's website, <www.stb.dot.gov>. There are, however, no plans to publish for statistical use information derived from this collection.

17. Display of Expiration Date for OMB Approval. The Board will publish notice of the expiration date in the Federal Register after the final rule is adopted and the collection is assigned a control number.

18. Exceptions to Certification Statement. No exceptions are sought.

B. Collection of Information for Employing Statistical Methods. Not applicable. This collection of information does not employ statistical methods.

Appendix – Statutory Authority

§ 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 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”--

(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.

§ 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\(e\)](#).

§ 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.