under this Rule may be beyond the scope of ordinary planning activities. Further, while FTA has long required the reporting of information for project evaluations, there has never been a regulatory requirement until TEA–21. Finally, this Rule adds a new requirement for before-and-after data collection for purposes of Government Performance and Results Act reporting as a condition of obtaining a Full Funding Grant Agreement (FFGA). Therefore, FTA is submitting a separate Paperwork Reduction Act request.

It is also important to note that since this is a new regulatory requirement, the burden estimates include all data collection efforts required by this Rule, regardless of whether or not the same data would have been required under the previous, policy statement-driven process. Thus, the total burden estimate includes items that would have been required whether this regulation had been issued or not. These estimates were also provided in the preamble to the Final Rule dated December 7, 2000.

Estimated Total Annual Burden: 47,200 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the collected information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: July 11, 2001.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 01–17727 Filed 7–13–01; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7740 (PD–25(R))]

Missouri Prohibition Against Recontainerization of Hazardous Waste at a Transfer Facility

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Applicant: The Kiesel Company (Kiesel).

Local Laws Affected: 10 Missouri Code of State Regulations (CSR) 25–6.263(2)(A).10.H.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

Mode Affected: Rail and highway.

SUMMARY: Federal hazardous material transportation law preempts Missouri's prohibition against the recontainerization of hazardous wastes at a transfer station, in 10 CSR 25–6.263(2)(A).10.H, because that prohibition is not substantively the same as provisions in the HMR on the packing, repacking, and handling of hazardous material.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

In this determination, RSPA considers whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the prohibition against recontainerization of hazardous waste in the following regulation of the Missouri Department of Natural Resources (DNR) at 10 CSR 25–6.263(2)(A).10.H:

> Recontainerization of hazardous waste at a transfer facility is prohibited; however, hazardous waste containers may be overpacked to contain leaking or to safeguard against potential leaking. When containers are overpacked, the transporter shall affix labels to the overpack container, which are identical to the labels on the original shipping container; * * *.

In a notice published in the **Federal Register** on August 14, 2000, RSPA invited interested parties to submit comments on Kiesel's application for a determination that this regulation is preempted. 65 FR 49633. In its application, Kiesel stated that it is a licensed hazardous waste transporter and wanted to off-load hazardous wastes from rail cars to trucks at a rail siding at its facility located within the City of St. Louis, Missouri, for further transportation to a licensed disposal site in Illinois. Kiesel stated that the transfer from rail car to motor vehicle would constitute a prohibited ''recontainerization'' and that RSPA had found ''an identical regulation'' preempted in PD–12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Waste Incidental to Transportation, 60 FR 62527 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970 (Apr. 3, 1997), petition for judicial review dismissed, *New York* v. *U.S. Dep't of Transportation,* 37 F. Supp. 2d 152 (N.D.N.Y. 1999).

Following publication of the August 14, 2000 notice, it appears that Kiesel and DNR exchanged correspondence regarding the prohibition in 10 CSR 25–6.263(2)(A).10.H, because (1) Kiesel first clarified that it had not been advised by DNR that transferring hazardous waste from a rail car to motor vehicles would constitute a prohibited recontainerization; (2) DNR then stated that it had informed Kiesel that ''the off-loading of hazardous waste from rail cars onto trucks is not prohibited by 10 CSR 25–6.263(1)''; and (3) Kiesel purported to withdraw its application. In response to the August 14, 2000 notice, RSPA also received comments from National Tank Truck Carriers, Inc. (NTTC) and Safco Safe Transport supporting a finding that Missouri's prohibition is preempted.

In a further public notice published in the **Federal Register** on December 11, 2000, RSPA explained that it does not have any procedure for withdrawing an application for a preemption determination. 65 FR 77417. RSPA stated that, in the past, it has dismissed proceedings when a local requirement never went into effect or was repealed after the application was filed, but an applicant does not have the option to end a preemption determination proceeding by simply withdrawing its application when the non-Federal requirement on transporting hazardous materials remains in effect. As discussed in the December 11, 2000 notice (65 FR at 77418–19),

> Unlike a lawsuit, these administrative proceedings are initiated only when RSPA

publishes a notice in the **Federal Register** inviting interested persons to comment on an application. 49 U.S.C. 5125(d)(1), 49 CFR 107.203(d), 107.205(b). RSPA may dismiss an application without prejudice and return it to the applicant without publishing a notice in the **Federal Register**. *See* 49 CFR 107.207(b). Moreover, there is no ''default'' suffered in a preemption proceeding if the State, locality, or Indian tribe does not submit comments on an application. *See, e.g.,* PD–5(R), Massachusetts Requirement for an Audible Back-up Alarm on Bulk Tank Carriers Used to Deliver Flammable Material, 58 FR 62702 (Nov. 29, 1993), and IR–27, Colorado Regulations on Transportation of Radioactive Materials, 54 FR 16326 (Apr. 21, 1989), *aff'd, Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571 (10th Cir. 1991), *reversing* No. 88–Z–1524 (D. Colo. 1989).

Any interested person may submit comments on an application for a preemption determination, unlike a lawsuit where the proceedings are limited to the named parties. 49 CFR 107.205(c). And RSPA may go beyond the application and comments to ''initiate an investigation of any statements in an application and utilize * * * any relevant facts obtained by that investigation'' and ''may consider any other source of information.'' 49 CFR 107.207(a). Following issuance of a determination, any ''aggrieved'' person may file a petition for reconsideration, 49 CFR 107.211(a), and any party to the proceeding may ''bring an action for judicial review.'' 49 U.S.C. 5125(f), 49 CFR 107.213.

These differences from a lawsuit are consistent with the very purpose for issuing preemption determinations. RSPA believes that the value in deciding whether a non-Federal requirement is inconsistent with (or preempted by) Federal hazardous material transportation law ''goes beyond the resolution of an individual controversy. At a time when hazardous materials transportation is receiving a great deal of public attention, the forum provides [RSPA] an opportunity to express its views on the proper role of State and local vis-a-vis Federal regulatory activity in this area.'' IR–2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas, etc., decision on appeal, 45 FR 71881, 71882 (Oct. 30, 1980).

Therefore, RSPA reopened the period for interested parties to comment on Kiesel's application and specifically invited comments on the meaning of the Missouri prohibition, the manner in which that prohibition is applied and enforced, and whether that prohibition precludes the transfer of hazardous wastes from a rail car to a motor vehicle and is preempted because it is not substantively the same as requirements in the HMR on packing, repacking, and handling. The only further comments were submitted by DNR.

II. Federal Preemption

RSPA explained in its August 14, 2000 notice that 49 U.S.C. 5125 contains several preemption provisions that are relevant to this proceeding. 65 FR at 49634–35. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation prescribed under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must conform ''in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 C.F.R.

107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Discussion

In its application, Kiesel stated that 10 CSR 25–6.263(2)(A).10.H ''prohibits recontainerization'' whereas nothing in the HMR or regulations of the U.S. Environmental Protection Agency (EPA) precludes recontainerization of hazardous waste at a transfer facility. Kiesel also stated that, in PD–12(R), RSPA had found that 49 U.S.C. 5125(b)(1)(B) preempts ''an identical regulation'' of the New York Department of Environmental Conservation because ''the prohibition of recontainerization 'applies to the ''repacking'' and ''handling'' of hazardous materials and transportation and is not substantively the same as the requirements in the HMR.' '' In further comments, Kiesel stated that ''the plain language'' of DNR's regulation prohibits ''the practice of transferring product from railcar to trucks or trailers for further transportation.''

NTTC stated that Missouri ''has imposed a prohibition on a transportation-related activity which is (not only) permitted by Federal regulations, but is necessary to the safe and prudent handling of environmentally sensitive products.'' NTTC considered that Missouri's regulation prohibits ''the transfer of product from one container to another'' and stated that ''[p]roduct transfer (in contemplation of subsequent transportation) is a common 'unloading/loading' activity, particularly in intermodal transportation'' which is encompassed by Federal hazardous material transportation law and permitted by the HMR. NTTC found ''an inherent conflict within the state's regulatory structure,'' because Missouri has adopted the HMR as State law. *See* 10 CSR 25–6.263(1), Mo. Rev. Stat. 307.177.1.

In its initial submission in this proceeding, DNR stated that it had informed Kiesel that its regulations did not prohibit ''the off-loading of hazardous wastes from rail cars onto trucks,'' and that ''nothing in Missouri hazardous waste regulations is intended to impede intermodal transportation activities.'' In its further comments, DNR stated that 10 CSR 25–6.263(2)(A).10.H

> is a general prohibition on the re-containerization of hazardous waste at transfer facilities; however, the Department has interpreted the regulation to prohibit blending separate contents of containers. The Department has not interpreted the regulations to mean a transporter may not transfer hazardous waste from a railcar to a truck or similar container (intermodal transfer).

With this submission, DNR included a copy of its October 13, 2000 letter to Kiesel stating that ''misunderstanding [of its regulation] is not uncommon'' and that it ''means to control the blending of different materials into a common container, perhaps leading to some type of adverse reaction, similar in scope to the United States Department of Transportation's prohibition of mixing incompatibles.'' DNR also advised that it is in the process of amending its regulations and is proposing to replace the first sentence of 10 CSR 25–6.263(2)(A) to read: ''The contents of separate containers of hazardous waste may not be combined at a transfer facility.''

DNR also stated that its hazardous waste regulations are authorized by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, and argued that, under RCRA, the ''state may enact regulations and statutes that are stricter than the RCRA'' because 49 U.S.C. 5125(a) and (b) do not preempt non-Federal requirements that are ''authorized by another law of the United States.'' DNR stated that the decision in *New York* v. *U.S. Dep't of Transportation* ''is a district court case and thus is not precedent.''

In PD–12(R), RSPA discussed industry practices of transferring hazardous wastes from one container to another during transportation. It noted that EPA had recognized this practice in a 1980 rule amending its hazardous waste regulations:

> Many transporters own or operate transfer facilities (sometimes called ''break-bulk'' facilities) as part of their transportation activities. At these facilities, for example, shipments may be consolidated into larger units or shipments may be transferred to different vehicles for redirecting or rerouting.

Interim final amendments and request for comments, Hazardous Waste Management System, etc., 45 FR 86966 (Dec. 31, 1980), quoted at 60 FR at 62528. RSPA also referred to comments that consolidation occurs in various forms. NCH Corporation stated that some transporters pick up hazardous waste in drums from relatively small generators and then consolidate them

> into loads that are large enough to be accepted by the permitted recycler or waste treatment facility. Transferring the drummed waste upon delivery to the transfer facility into a tanker truck * * * eliminates the labor-intensive and wasteful unloading, reloading, and management of multiple drums of waste that would otherwise be necessary.

60 FR at 62528. The Association of American Railroads stated that

> It is a common practice for hazardous waste to be transferred from truck to rail. For example, contaminated soil has been trucked from hazardous waste sites to rail sidings for rail delivery to treatment or disposal facilities. Hazardous waste liquids are trucked to sidings for pumping into tank cars and subsequent delivery to consignees for burying or recycling.

Id. at 62528–29.

In addition, RSPA explained that both the HMR and EPA's regulations place limitations on, but do not completely prohibit, transferring hazardous wastes from one container to another. As summarized in the August 14, 2000 notice in this proceeding, ''Specific provisions in the HMR prohibit:

—mixing two materials in the same packaging or container when it ''is likely to cause a dangerous evolution of heat, or flammable or poisonous gases or vapors, or to produce corrosive materials.'' 49 CFR 173.21(e).

—loading two or more materials in the same cargo tank motor vehicle ''if, as a result of any mixture of the materials, an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure or heat, or the release of toxic vapors.'' 49 CFR 173.33(a)(2).

—loading certain flammable materials from tank trucks or drums into tank cars on the carrier's property. 49 CFR 173.10(e).

—transferring a Class 3 (flammable liquid) material between containers or vehicles ''on any public highway, street, or road, except in case of emergency.'' 49 CFR 177.856(d).

65 FR at 49834. RSPA also noted that:

[T]he HMR contain segregation requirements, applicable to rail and motor carriers, limiting which hazardous materials may be ''loaded, transported, or stored together.'' 49 CFR 174.81(f), 177.848(d). EPA's regulations provide that a hazardous waste transporter must also follow the requirements applicable to generators if it ''[m]ixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.'' 40 CFR 263.10(c).

Id. See also 60 FR at 62534, 62529.

In PD–12(R), RSPA found that, ''[b]y its very terms,'' New York's prohibition against the ''consolidation or transfer of [hazardous wastes] either by repackaging in, mixing, or pumping from one container or transport vehicle into another'' involved ''repacking'' and was not substantively the same as requirements in the HMR for ''the packing, repacking, [and] handling * * * of hazardous material.'' 60 FR at 62536. The prohibition against ''recontainerization'' in 10 CSR 25–6.263(2)(A).10.H similarly involves ''repacking'' and is not substantively the same as requirements in the HMR for ''the packing, repacking, [and] handling * * * of hazardous material.'' 49 U.S.C. 5125(b)(1)(B).

DNR's claim that it interprets its ''recontainerization'' prohibition ''to control the blending of different materials into a common container'' is inconsistent with the plain words of its regulation and, in light of the Federal regulations adopted as State requirements, unnecessary. In PD–12(R), RSPA discussed that New York's

prohibition against repackaging hazardous wastes prevents transporters from transferring the contents of many drums into a cargo tank, from transferring the contents of several cargo tanks into a tank car (or from dump trucks into a gondola or hopper car), and from transferring the contents from rail cars into trucks.

60 FR at 62536. DNR's interpretation that it allows intermodal transfers ''from a rail car to a cargo tank'' accepts only one of these forms of transfer, and seems to leave the remainder prohibited. Apparently, DNR would allow only the transfer from a larger container to smaller ones (railcar to trucks) and not consolidation of the contents of smaller containers into a larger one (drums to a cargo tank or cargo tanks to a rail car), on the theory that there is the possibility of ''blending of different materials into a common container.''

Because Missouri has adopted the HMR as State law (*see* 10 CSR 25–6.263(1)), it is already a violation of separate State requirements to ''blend[] different materials into a common container'' whenever there would be ''a dangerous evolution,'' or ''an unsafe condition'' in a cargo tank motor vehicle. 49 CFR 173.21(e), 173.33(a)(2). Missouri has also adopted EPA's ''Standards Applicable to Transporters of Hazardous Waste'' in 40 CFR Part 263 (*see* 10 CSR 25–6.263(1)), making a hazardous waste generator subject to all requirements applicable to a generator if it mixes hazardous wastes of different DOT shipping descriptions. 40 CFR 263.10(c).

In PD–12(R), RSPA rejected arguments that New York's consolidation prohibition was ''consistent with and complimentary to'' the HMR, or a regulation on ''management activities'' at a transfer facility. 60 FR at 62535. RSPA also discussed at length and rejected the argument that RCRA authorized New York to adopt additional requirements that are ''more stringent'' than EPA's regulations, under 42 U.S.C. 6929. *Id.* at 62532–34.

As RSPA noted, this issue had been raised, without success, several times before. *See* PD–1(R), Maryland, Massachusetts, and Pennsylvania Bonding Requirements, 57 FR 58848, 58854–55 (Dec. 11, 1992), decision on petition for reconsideration, 58 FR 32418, 32420 (June 9, 1993), reversed, 93 F.3d 890 (D.C. Cir. 1996); PD–2(R), Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176, 11183 (Feb. 23, 1993); and PD–7(R), Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, 59 FR 28913, 28919–20 (June 3, 1994).

In all of these decisions and PD–12(R), RSPA found ''no basis for the position * * * that any State can avoid preemption of its hazardous waste requirements simply by obtaining authorization under RCRA.'' 60 FR at 62534. RSPA discussed the requirement in RCRA (42 U.S.C. 6923) for EPA to consult with DOT and issue regulations on the transportation of hazardous waste that are ''consistent with'' Federal hazardous material transportation law and the HMR. *Id.* Moreover, Congress also provided that a State program ''must be equivalent to the Federal program'' under RCRA and ''consistent with the Federal or State programs applicable in other States'' to be approved by EPA. 42 U.S.C. 6926(b).

Thus, EPA itself has stated that ''preemption issues under other Federal laws * * * do not affect the State's RCRA authorization'' and ''the RCRA authorization decisions provide no basis for shielding state regulations touching upon hazardous materials transport from possible preemption challenges raised under the HMTA.'' Quoted at 60 FR at 52533.

DNR's argument that RCRA authorizes States to adopt ''more stringent'' regulations on hazardous waste transportation was also rejected when New York petitioned for review of PD–12(R) in Federal court. In *New York* v. *U.S. Dep't of Transportation,* the court specifically agreed that:

DOT does have primary jurisdiction over the regulation of the transportation of hazardous waste as hazardous ''material'' includes that of ''waste.'' *See* 49 CFR § 171.8. * * * EPA is statutorily obligated to coordinate its RCRA regulations applicable to transporters of hazardous waste with DOT regulations applicable to transporters of all hazardous material * * * [and] this general state empowerment [in 42 U.S.C. 6929] must be read in conjunction with the statutory mandate that EPA regulations be consistent with the HMTA. *See* 42 U.S.C. § 6923(b); * * *

Finally, EPA clearly does not decide whether a preemption problem exists under the HMTA when considering an application for state authorization under the RCRA. * * * EPA's authorization of a state RCRA program is not the equivalent of ''authoriz[ation] by another law of the United States.'' Therefore, if the [State] regulation at issue is ''about'' one of the ''covered subjects,'' then the [State] regulation must be found to be preempted as it is not ''authorized'' by the RCRA.

37 F. Supp. 2d at 157–58 (footnote omitted).

IV. Ruling

Federal hazardous material transportation law preempts Missouri's prohibition against the recontainerization of hazardous wastes at a transfer station, in 10 CSR 25–6.263(2)(A).10.H, because that prohibition is not substantively the same as provisions in the HMR on the packing, repacking, and handling of hazardous material.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States * * * not

later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on July 11, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 01–17726 Filed 7–13–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34058 (Sub–No. 1)]

Union Pacific Railroad Co.—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Co.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34058 [1] to permit the trackage rights to expire, as they relate to the operations extending from Pasco, WA, to Spokane, WA, on September 4, 2001.

DATES: This exemption is effective on September 15, 2001. Petitions to reopen must be filed by September 5, 2001.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34058 (Sub-No. 1) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Robert T. Opal, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1 (800) 877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā to Dā Office Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1 (800) 877–8339.]

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: July 6, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–17708 Filed 7–13–01; 8:45 am]

BILLING CODE 4915–00–P

[1] On June 18, 2001, UP concurrently filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over 136.5 miles of BNSF trackage extending from BNSF milepost 2.7, near Pasco, WA, to BNSF milepost 11.8, near Spokane, WA. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34058 (STB served June 29, 2001). The agreement is scheduled to expire on September 4, 2001. The trackage rights operations under the exemption were scheduled to be consummated on June 26, 2001.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Race and National Origin Identification.

DATES: Written comments should be received on or before September 14, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dennis Snyder, Employment Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8553.

SUPPLEMENTARY INFORMATION:

Title: Race and National Origin Identification.

OMB Number: 1512–0547.

Form Number: ATF F 2931.1.

Abstract: This form when combined with other Bureau tracking forms will allow the Bureau to determine its applicant/employee pool, and thereby, enhance its recruitment plan. It will also allow the Bureau to determine how its diversity/EEO efforts are progressing and to determine adverse impact on the employee selection process.

Current Actions: There are no changes to this information collection and it is only being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 29, 2001.

William T. Earle,

Assistant Director (Management) CFO.

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