Code, we wish to note at the outset that we have no quarrel with the provisions of subsection ''(a)'' of that Section.

In contrast, however, NTTC notes that 49 CFR 180.417 contains direct requirements for ''Reporting and Record Retention Requirements''. Significantly, there is no Federal requirement for copies of reports and/or records to be carried in the cargo tank motor vehicle. Instead, the Administrator relies on certain (and specified) markings on the cargo tank as indicia of compliance. Moreover, 49 CFR 180.417(a)(2) allows carriers to retain relevant documents at either their ''principal place of business'', or (upon application to the Federal Highway Administration) ''at a regional or terminal office''.

Conversely, the state's regulations require documentation to be retained ''in the vehicle.'' NTTC holds that Section 230.6(b) is preempted by the HMR. As the Administrator well knows, cargo tanks regularly move from jurisdiction to jurisdiction. For instance, nationwide carriers may move vehicles from southern states into the New England area to move gasoline when transportation demands for MC 306/DOT406 equipment accelerate because of the winter ''fuel oil season''. Unnecessary delay is created when carriers are compelled to retrieve documents from storage, reproduce those documents, and exercise the management controls necessary to put copies in some vehicles but not in others. The situation is compounded when one realizes the potential for other jurisdictions to play havoc with the current system. For instance, should the Administrator not preempt, what would prevent a state or locality from requiring all service and maintenance records (including the vehicle manufacturer's original certification) to be retained in the vehicle?

In Docket HM–183 (the administrative proceeding which created Part 180), the Administrator decided that the proper indicia for compliance with Part 180 is vehicle marking (as codified at 180.415). As has often been noted in both (the former) ''inconsistency petitions'' and in ''preemption determinations'', the Administrator's regulations are ''presumed safe''. New York State is not free to unilaterally amend RSPA's requirements.

With regard to the state's requirement at 230.6(c), the same arguments and fact patterns apply. At 49 CFR 180.417(c)(2), the specified retention time is length of (cargo tank) ownership plus one year. New York requires ''. . . two years after the testing occurred.'' It, too, must be preempted.

Our problem with New York's requirement at 230.4(a)(3) is more direct and concise. Simply stated, this regulation is a ''hazardous materials specific'' marking requirement. It applies only to DOT Specification tanks (authorized for the transportation of gasoline). HMTUSA specifies that ''marking'' (of a package or container) is a ''covered subject''. The Administrator's relevant requirements at 49 CFR 180.415 ''occupy the field''. New York's regulation must be stricken.

Precedent On These Issues Is Abundant—NTTC believes that the Administrator's decisions in both ''Inconsistency Rulings'' (IR) and ''Preemption Determinations'' (PD) buttress our claims with respect to the New York State regulations under question.

For instance, in both IR#19 and #IR 28, the Administrator ruled that, ''. . . the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them.''

Similarly, in those two rulings (plus a host of others), it was ruled that, ''Requirements for information or documentation in excess of Federal requirements create potential delay, constitute an obstacle to execution of the Federal hazmat law and the HMR, and thus are preempted.''

In at least 14 prior proceedings of this type (IR's and PD's), RSPA has struck down state and local requirements found to be ''* * * likely to cause'' and/or ''* * * the mere threat'' of unnecessary delays in hazardous materials transportation.

As the Administrator ruled in PD–4 (R), ''Required markings of packagings (cargo tanks and portable tanks) to certify current registration and inspection are preempted since they are not substantively the same as the markings required by the HMR.'' (emphasis added)

Even the United States Court of Appeals for the 10th Circuit weighed in most directly. In reversing a District Court decision in the matter of Colorado Pub. Utilities Commission v. Harmon, the Court went to the heart of NTTC's complaint specifying that a state may not require a carrier to retain inspection reports in a vehicle; and, that such an additional documentation requirement could ''* * * create confusion and increase hazards.''

Given the fact that the State of New York is aggressively enforcing the regulations cited above, we ask expedited consideration of NTTC's application for a preemption determination.

I hereby certify that I have sent a copy of this petition to: Mr. John P. Cahill, Commissioner, Department of Environmental Conservation, State of New York, 50 Wolf Road, Albany, NY 12233.

Respectfully submitted:

Clifford J. Harvison,

President.

Attachments

(A) Part 230 of New York Codes, Rules and Regulations.

[FR Doc. 98–14562 Filed 6–1–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Intermountain Tariff Bureau, Inc.; Section 5a Application No. 62

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of tentative approval of request to withdraw Section 5a Application No. 62 and cancel the agreement.

SUMMARY: Intermountain Tariff Bureau, Inc. (ITB), has filed a letter seeking to withdraw its Section 5a Application No. 62 and cancel the agreement. The Board has tentatively granted ITB's request, and, if no opposing comments are timely filed, this decision will be the final Board action.

DATES: Written comments must be filed with the Board no later than June 22, 1998. If no opposing comments are filed by the expiration of the comment period this decision will take effect automatically.

ADDRESSES: An original and 10 copies of comments referring to Section 5a Application No. 62 should be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N. W., Washington, DC 20423–0001. A copy of any comments filed with the Board must be served on Larry H. Wilkinson, Secretary, Intermountain Tariff Bureau, Inc., 125 West 1500 North, Bountiful, UT 84010.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: ITB indicates that it has ceased operations and that shortly it will be dissolved as a corporation. ITB states that, to the best of its knowledge, all obligations to members, customers and debtors have successfully been completed. ITB requests cancellation of Section 5a Application No. 62 (and any other formal agreements involving ITB) approved by the Interstate Commerce Commission.[1]

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

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

It is ordered:

1. The request to cancel Section 5a Application No. 62 (and any amendments) is approved, and the proceeding(s) is (are) dismissed, subject to the filing of opposing comments.

2. If timely opposing comments are filed, this decision will be deemed vacated.

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat., which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S. 13703.

3. This decision will be effective on June 22, 1998, unless timely opposing comments are filed.

Decided: May 27, 1998.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 98–14470 Filed 6–1–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33591]

The Indiana & Ohio Rail Passenger Corporation—Trackage Rights Exemption—Indiana & Ohio Railway Company, Inc.

Indiana & Ohio Railway Company, Inc. (IORY) has agreed to grant local trackage rights to The Indiana & Ohio Rail Passenger Corporation (IORP), for the operation of rail passenger service over the following points: (1) from milepost 39.8, near Diann, MI, to milepost 107.3, near Leipsic, OH; (2) from milepost 110.8 to milepost 114.9 in Ottaway, OH; and (3) from milepost 128.3, near Lima, OH, to milepost 202.7, near Springfield, OH, a distance of approximately 146.02 miles.[1]

The parties expected to consummate the transaction on or about May 26, 1998. The earliest the transaction could be consummated was May 22, 1998, the effective date of the exemption (7 days after the notice of exemption was filed).

The purpose of the trackage rights is to extend IORP's passenger operations over newly-acquired IORY lines.[2]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33591, 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 each pleading must be served on Robert L. Calhoun, Esq., Redmon, Boykin & Braswell, L.L.P., 510 King Street, Suite 301, Alexandria, VA 22314.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 26, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–14467 Filed 6–1–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The agreement that is the subject of this notice is a confirmation of and an amendment to an earlier trackage rights agreement between IORP and IORY and certain other Class III railroads affiliated with the IORY. *See* STB Finance Docket No. 32976, *The Indiana & Ohio Rail Passenger Corporation—Acquisition by Trackage Rights and Operation Exemption—Cincinnati Terminal Railway Corp., Indiana and Ohio Railroad Company, Indiana & Ohio Railway Company, Inc., and Indiana & Ohio Central Railroad Company, Inc.,* (STB served June 21, 1996).

[2] *See* STB Finance Docket No. 33180, *Indiana & Ohio Railway Company—Acquisition Exemption—Lines of The Grand Trunk Railroad Inc.,* (STB served Feb. 10, 1997).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33587]

City of Rochelle, Illinois; Notice of Exemption; Commencement of Rail Common Carrier Operations

The City of Rochelle, IL (the City), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to commence operations over 2.06 miles of track located within the limits of Rochelle, IL.[1] The City states that its projected revenues will not exceed those of a Class III railroad.

The effective date of the exemption was May 5, 1998 (7 days after the exemption was filed).[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time.[3] The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33587, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on counsel for the City: John W. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 27, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–14571 Filed 6–1–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The line was not further described in the notice filed by the City, but a map included with the filing indicates that it begins at a switch near the intersection of Caron Road and Creston Road and ends in a stub east of Gredco Drive.

[2] Under 49 CFR 1150.32(b), a notice of exemption becomes effective 7 days after filing.

[3] By petition filed on May 1, 1998, the Rochelle Railroad Company requests that the Board reject and or revoke this exemption. That petition will be addressed in a decision to be issued by the Board.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33600]

Wisconsin Central Ltd.—Trackage Rights Exemption—Wisconsin & Southern Railroad Company

Wisconsin & Southern Railroad Company (WSOR), a Class III rail carrier, has agreed to grant non-exclusive overhead trackage rights to Wisconsin Central Ltd (WCL), a Class II rail carrier, over WSOR's line of railroad between milepost 112.6, at Rugby Junction, WI, and milepost 93.4, at North Milwaukee, WI, including trackage connecting with Fox Valley & Western Ltd.''s (FVW) main line at DBR Junction (milepost 103.1), a distance of approximately 19.2 miles.

The purpose of the trackage rights is to interchange cars between WCL and the Canadian Pacific and Union Pacific and between WCL and FVW, as well as connecting various WCL and FVW lines and trackage rights.

As a condition to this exemption, any employees affected by the trackage rights will be protected as required by 49 U.S.C. 11326(b), subject to the procedural interpretations of the analogous statutory provisions at 49 U.S.C. 10902 contained in the Board's decision in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad Company,* STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (*WCL Exemption*).[1]

[1] WCL has stated that it is alternatively willing to accept the conditions set out in *Norfolk and*