Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1996 Porsche 928 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991–1996 Porsche 928 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1991–1996 Porsche 928 passenger cars comply with the Bumper Standard found in 49 CFR part 581 and with the Theft Prevention Standard found in 49 CFR part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster in 1991 and 1992 models, and the driver's and passenger's side air bags and knee bolsters in 1993 through 1996 models, with U.S.-model components if the vehicle is not so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 3, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–21071 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3577 (PDA–18(R))]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Broward County, Florida's Requirements on the Transportation of Certain Hazardous Materials to or From Points in the County

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

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by the Association of Waste Hazardous Materials Transporters (AWHMT) for an administrative determination whether Federal hazardous materials transportation law preempts requirements enforced by Broward County, Florida, concerning the transportation of certain hazardous materials to or from points in the County.

DATES: Comments received on or before September 21, 1998, and rebuttal comments received on or before November 4, 1998, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at ''http://dms.dot.gov.''

Please submit comments to the Dockets Office at the above address. Comments may also be submitted by E-mail to ''rspa.counsel@rspa.dot.gov.'' Each comment should refer to the Docket Number set forth above. A copy of each comment must also be sent to

(1) Mr. Michael Carney, Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, VA 22314, and (2) Mr. John J. Copelan, Jr., County Attorney, 115 S. Andrews Avenue, Suite 423, Fort Lauderdale, FL 33301. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Messrs. Carney and Copelan at the addresses specified in the **Federal Register**.'')

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations, are available through the home page of RSPA's Office of the Chief Counsel, at ''http://rspa-atty.dot.gov.'' A paper copy of this list and index will be provided at no cost upon request to Ms. O'Berry, at the address and telephone number set forth in ''For Further Information Contact'' below.

FOR FURTHER INFORMATION CONTACT: Donna L. O'Berry, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

AWHMT has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts certain provisions of the Broward County Code of Ordinances 93–47 (''Code''). The Code is an extensive set of regulations that is designed to protect the Biscayne Aquifer from possible harm due to the infiltration of hazardous materials into the aquifer. The Code was amended in 1993 to address concern pertaining to generation, use, storage, handling, processing, manufacturing and disposal of hazardous materials in Broward County. The text of AWHMT's application and a list of attachments are set forth in Appendix A. A paper copy of the attachments to AWHMT's application will be provided at no cost upon request to Ms. O'Berry, at the address and telephone number set forth in ''For Further Information Contact'' above.

AWHMT's challenges the definition of ''Hazardous Materials'' and related terms used in the Code and nine specific requirements:

—Code § 27–355(a)(1) containing release reporting requirements,

—Code § 27–356(b)(4)d.1 and Code § 27–356(d)(4)a.1 containing shipping paper retention requirements,

—Code § 27–356(d)(4)a.2 containing standards for waste-hauling vehicles,

—Code § 27–356(d)(4)a.3 containing periodic vehicle inspection requirements,

—Code § 27–356(d)(4)a.4 containing requirements that waste-hauling vehicles be marked with an identification tag issued by the County,

—Code § 27–356(d)(4)a.6 containing training requirements for drivers and other appropriate personnel,

—Code § 27–356(d)(4)a.7 containing fee requirements for a license to transport discarded hazardous material within the County,

—Code § 27–356(d)(4)b.1 containing requirements to request a modification from the County prior to utilizing a vehicle for transporting a type of waste that is not specified on the current license, and

—Code § 27–356(d)(4)c.1 containing reporting requirements for monthly activity reports to be submitted to the County.

The following discussion is based upon the copy of Broward County's Code, Chapter 27 attached to AWHMT's application.

Definition of ''Hazardous Material'' and Related Terms

Code § 27–352 defines a hazardous material to include, among other things, any substance identified as hazardous in the most current version of the HMR, as well as other Federal regulations, and any other substance not previous specific that is known to be a hazard due to quantity, concentration, physical, chemical or infectious characteristics and which the Department of Natural Resources Protection (DNRP) determines to pose an actual threat or potential risk to water supply, the environment or health and safety. Secs 27–352 (4)and (5). AWHMT contends that the County's definition of hazardous material is broader than the definition of a hazardous material contained in the HMR. In addition, AWHMT contends that the definitions of combustible liquid and flammable liquid found in Code § 27–352 are not consistent with the Federal standards. AWHMT challenges the Ordinance's provisions concerning the designation, description and classification of hazardous materials as not ''substantially the same'' as DOT's designation and classification system found at 49 CFR 172.

Release Reporting

Code 27–355(a)(1) requires the responsible party of an unauthorized hazardous material release to immediately report the release by telephone to the DNRP and to file written notification of its verbal report with the DNRP within seven calendar days. The Code defines responsible party as, among other things, the owner or operator of a facility or any person who accepts or accepted any hazardous material for transport. The Code defines facility to include, among other things, any motor vehicle, vessel, rolling stock, or aircraft.

AWHMT states that the written requirements are not substantially the same as the requirements of 49 CFR 171.16, which require a carrier to report in writing to DOT each incident of an unintentional release of a hazardous materials or discharge of hazardous waste that occurs during the course of transportation. The written report must be filed with DOT within 30 days of the discovery of the release.

Concerning the oral notification requirement, AWHMT also challenges the specific requirement that the notification must go to the DNRP, rather than a local emergency operator. AWHMT contends that the time required to locate the proper local agency number would create an unreasonable delay in reporting. Thus, AWHMT requests that the County's requirement to notify a specific local agency, rather than the local emergency operator, be preempted under the obstacle test.

Shipping Paper Requirements

Code §§ 27–356(b)(4)d.1 and 27–356(d)(4)a.1 and § 27–356(b)(4)d.1 require owners and operators of hazardous material facilities to retain copies of hazardous waste manifests on-site for five years. AWHMT cites to EPA regulations that require generator and transporters to retain copies of the Uniform Manifest for three years. AWHMT further asserts that there is no Federal requirement for the location where such records must be maintained. AWHMT contends that because DOT recognizes the Uniform Manifest as a shipping paper, the County's requirements should be preempted under the ''substantively the same as'' test.

Standards for Packagings

Code § 27–356(d)(4)a.2 requires all waste hauling vehicles to be product-tight or to be designed to effectively contain any release of hazardous material during transportation. AWHMT

contends that terms such as ''product-tight'' and ''any release'' may exclude DOT-authorized cargo tanks, since those tanks are equipped with pressure relief valves. AWHMT also contends that, by specifically referring to vehicles, the County Ordinance suggests that vehicles not authorized as packagings, such as trailers, must meet packaging standards. AWHMT contends that the County Ordinance does not grant equivalency to the HMR's packaging standards contained in 49 CFR 173, 178 and 180, and, therefore, should be preempted as not ''substantively the same as'' the Federal requirement.

Periodic Vehicle Inspection Requirement

Code § 27–356(d)(4)a.3 gives the County the option to inspect licensed vehicles. The Ordinance provides that the DNRP can waive the inspection of such vehicles if the licensee submits evidence that the vehicle has passed an inspection conducted pursuant to applicable Federal or state regulations. AWHMT asserts that the County's periodic inspection regulation causes a delay in the transportation of hazardous materials and should be preempted under the obstacle test.

Vehicle Marking Requirements

Code § 27–356(d)(4)a.4 requires that vehicles used to transport discarded hazardous materials be marked with a County identification tag. AWHMT contends that this provision should be preempted under 49 U.S.C. 5125(b)(1)(E) because it is not substantively the same as the Federal requirements for marking a package or container qualified for transporting hazardous materials.

Training Requirements

Code § 27–356(d)(4)a.6 requires that a licensee provide ''all drivers and other appropriate personnel * * * classroom instruction and/or on the job training that ensures compliance with the provisions of the [Code].'' Training must include annual training in the implementation of the licensee's spill contingency plan and procedures. The Ordinance requires that records, containing the name of each employee trained and dates of training must be kept for three years following the employee's last day of work or until the carrier goes out of business. AWHMT contends that localities do not have the authority to impose training requirements on hazmat employees, and, therefore, Code § 27–356(d)(4)a.6 should be preempted under the obstacle test.

Fee Requirements

Code § 27–357(a) authorizes the DNRP to charge fees for licenses. Code § 27–356(d)(4)a.7 requires an annual fee for a discarded hazardous materials license. Currently the fee is $175 per vehicle. Section 5125(g)(1) of 49 U.S.C. permits a State, political subdivision of a State, or Indian tribe to impose a fee related to transporting hazardous material only if the fee is fair and used for purposes related to transporting hazardous material. AWHMT challenges the County's fees under the obstacle test.

License Modification Requirements

Code § 27–356(d)b.1 provides that ''vehicles may only be utilized for the type of wastes for which the licensee is authorized to haul. A license modification must be requested and approved by DNRP prior to utilizing a vehicle for hauling a waste which is not specified on the current license.'' AWHMT contends that this advance notice requirement has the potential to unreasonably delay hazardous materials transportation and cites to 49 CFR 177.800(d), which requires that shipments of hazardous materials must be transported without unnecessary delay. For these reasons, AWHMT requests that RSPA preempt the regulation under the obstacle test.

Reporting Requirements

Code 27–356(d)(4)c.1 requires carriers of discarded hazardous materials to submit monthly reports to the DNRP. The reports must ''at a minimum, identify the facility name and address for each source, type, and quantity of waste, the date the waste was collected, and the final destination of each waste that was hauled during the preceding month.'' The report must also include ''a summary of the total quantities of each type of waste that was hauled by the licensee.'' AWHMT challenges this provision under the obstacle test.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to AWHMT's application. 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 issued under this chapter is not possible; or
>
> (2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA had applied in issuing inconsistency rulings before 1990, under the original preemption provisions 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 materials 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.

Subsection (g)(1) of 49 U.S.C. 5125 provides that a State, political subdivision, or Indian tribe may

> impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous materials, including enforcement and planning, developing, and maintaining a capability for emergency response.

These preemption provisions in 49 U.S.C. 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 which expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, the HMTA was revised, codified and enacted ''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 make determinations of preemption that concern highway routing to FHWA and those concerning all other hazardous materials transportation to RSPA. 49 CFR 1.48(u)(2), 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(d). 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 of the Constitution or under statutes other than the Federal hazardous materials transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. 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 F2d at 1581 n.10. In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled ''Federalism'' (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, 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. Public Comment

Comments should be limited to whether Federal hazardous material transportation law preempts Broward County, Florida's requirements challenged by AWHMT. Comments should:

(A) Set forth in detail the manner in which these requirements are applied and enforced; including but not limited to:

(1) Whether the County's description and classification of hazardous materials substantially differs from the HMR and potential effects of any differences;

(2) The impact of the County's requirement in § 27–355(a)(1) to immediately notify the DNRP, rather than an emergency response number, of a release;

(3) Whether the County's requirements in § 27-356(d)(4)a.2 that packages be product-tight or contain any release on cargo tanks includes DOT-authorized cargo tanks and whether this requirement applies to vehicles that are not considered packages;

(4) The amount of fees collected and the purposes for which those fees are used;

(5) The potential delays that would be caused by the County's requirement in 27–356(d)b.1 that a licensee request a license modification prior to hauling a waste that is not specified on the current license; and

(B) Specifically address the preemption criteria described in Part II above.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on July 31, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Appendix A—Before the United States Department of Transportation Office of Hazardous Materials Safety

Application of the Association of Waste Hazardous Materials Transporters To Initiate a Proceeding To Determine Whether Various Requirements Imposed by the County of Broward, Florida on Persons Involved in the Transportation of Certain Hazardous Materials to or From Points in the County Are Preempted by the Hazardous Materials Transportation Act

April 9, 1998.

Interest of the Petitioner

The Association of Waste Hazardous Materials Transporters (AWHMT) represents companies that transport, by truck and rail, waste hazardous materials, including industrial, radioactive and hazardous materials, throughout the United States, including points to and from the County of Broward, FL (County). Despite full compliance with the hazardous materials regulations (HMRs), members of the AWHMT are precluded from transporting certain hazardous materials to or from points in the County unless certain requirements of the Broward County Hazardous Materials Ordinance (Ordinance)[1] are met. The AWHMT asserts that the County requirements are in contravention to the Hazardous Materials Transportation Act (HMTA).

Background

When the County proposed its Ordinance in 1993, the hazardous materials transportation industry submitted written and oral comments.[2] The substance of the comments pointed out how the proposed requirements were inconsistent with federal requirements and urged the County to conform the proposed requirements to federal standards. However, with one notable exception that will be mentioned later, the County enacted the proposed rules without substantive change. The County indicated that it preferred to deal with any inconsistencies with federal standards on a case-by-case basis, stating, in a cover letter accompanying the final text of the Ordinance, that, ''if an industry member has a specific question regarding the applicability of the ordinance to a particular fact pattern

[1] Ordinance 93–47, enacted on November 23, 1993.

[2] Letter to Lisa Zima Bosch, Office of the Broward County Attorney, from Cynthia Hilton, Chemical Waste Transportation Institute (CWTI), November 4, 1993; letter to Kevin Burger, Broward County Department of Natural Resource Protection, from Cynthia Hilton, CWTI, November 18, 1993; and statement before the Broward County Commissioners, by Cynthia Hilton, CWTI, November 23, 1993.

or case, DNRP will address the concern as need arises.''[3]

Despite the County's ''flexible'' enforcement promise, it has not deterred the County from enforcing requirements, as the attached affidavits attest, which we believe to be inconsistent with the HMR and therefore subject to preemption under the HMTA. The Ordinance provides that the County may use ''[a]ny enforcement proceedings authorized by the Code of the Laws of Florida * * * to enforce the provisions of [the Ordinance].''[4] In addition, violations of the Ordinance may result in the suspension or revocation of a permit.[5]

The Ordinance authorizes the County's Department of Natural Resource Protection (DNRP) ''to the extent permitted by state and federal law * * * to license, evaluate, review, and administer all hazardous materials activities * * * performed in Broward County.''[6] The Ordinance defines ''hazardous material'' as:

any substance or mixture of substances which meets any one of the following criteria:

(1) Hazardous materials as defined in this Article;[7] or

(2) Any substance listed in [Code] Chapter 27, Article XIII, Appendix A; or

(3) Any petroleum product or any material or substance containing discarded petroleum products; or

(4) Any substance identified as hazardous in the most current version of the following regulations:

(a) Comprehensive Environmental Response Compensation, and Liability Act * * *,

(b) Emergency Planning and Community Right-to-Know Act,

(c) Hazardous Material Transportation Act * * *,

(d) Federal Insecticide, Fungicide, and Rodenticide Act * * *.

(5) Any substance, not specified above, which is known to be hazardous due to quantity, concentration, physical, chemical or infectious characteristics and which DNRP determines poses an actual threat or potential risk to water supplies, to the environment or to health and safety.[8]

Clearly, the Ordinance applies to and affects the transportation of hazardous materials regulated pursuant to the HMTA.

County Requirements for Which a Determination is Sought

This application seeks preemption of the following County requirements:

- Code § 27–352: Definition of ''Hazardous Material'' and related terms.
- Code § 27–355(a)(1) : Release reporting.
- Code § 27–356(b)(4)d.1. & § 27–356(d)(4)a.1.: Shipping paper requirements.
- Code § 27–356(d)(4)a.2.: Standards for packagings.
- Code § 27–356(d)(4)a.3.: Periodic vehicle inspection requirements.
- Code § 27–356(d)(4)a.4.: Vehicle marking requirements.
- Code § 27–356(d)(4)a.6.: Training requirements.
- Code § 27–356(d)(4)a.7.: Fee requirements.
- Code § 27–356(d)(4)b.1.: Prenotification requirements.
- Code § 27–356(d)(4)c.1.: Recordkeeping and reporting requirements.

Federal Law Provides for the Preemption of Non-Federal Requirements When Those Non-Federal Requirements Fail Certain Federal Preemption Tests

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the U.S. Department of Transportation (DOT) greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.''[9] By vesting primary authority over the transportation of hazardous materials in the DOT, Congress intended to ''make possible for the first time a comprehensive approach to minimization of the risks associated with the movement of valuable but dangerous materials.''[10] As originally enacted, the HMTA included a preemption provision ''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.''[11] The Act preempted ''any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the Act], or in a regulation issued under [the Act].''[12] This preemption provision was implemented through an administrative process where DOT would issue ''inconsistency rulings'' as to, [w]hether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and [t]he extent to which the State of political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.''[13]

These criteria, commonly referred to as the ''dual compliance'' and ''obstacle'' tests, ''comport[ed] with the test for conflicts between Federal and State statutes enunciated by the Supreme Court in Hines v. Davidowitz, 312 U.S. 52 (1941).''[14]

In 1990, Congress codified the dual compliance and obstacle tests as the Act's general preemption provision.[15] The 1990 amendments also expanded on DOT's preemption authorities. First, Congress expressly preempted non-federal requirements in five covered subject areas if they are not ''substantively the same'' as the federal requirements. These covered subject areas are:

- The designation, description, and classification of hazardous materials.
- The packing, repacking, handling, labeling, marking and placarding of hazardous materials.
- The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.
- The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.
- The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.[16]

''Substantively the same'' was defined to mean ''conforms in every significant respect to the Federal requirement. Editorial and other similar de minimis, changes are permitted.''[17] Second, non-federal highway routing requirements that fail to satisfy the federal standard under 49 U.S.C. 5112(b) are preempted.[18] Third, non-federal registration and permitting forms and procedures that are not ''the same'' as federal regulations to be issued are preempted.[19] Forth, non-federal fees related to the transportation of hazardous materials are preempted unless the fees are ''fair and used for a purpose related to transporting hazardous materials.''[20] These preemption authorities are limited only to the extent that non-federal requirements are ''otherwise authorized'' by federal law. A non-federal requirement is not ''otherwise authorized by Federal law'' merely because it is not preempted by another federal statute.[21]

The hazardous materials regulations (HMRs) have been promulgated in accordance with the HMTA's direction that the Secretary of Transportation ''issue regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce.''[22] ''Transportation'' is defined as ''the movement of property and loading, unloading, or storage incidental to the movement.''[23]

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[3] Letter to Cynthia Hilton, CWTI, from Lisa Zima Bosch, Office of the County Attorney, May 26, 1994.

[4] Broward County Code of Ordinances Chapter 27, Article XII, (hereinafter ''Code''), § 27–357(d). Attached is evidence of the County's use of this authority. In a notice of violation, the County declares its authority to enforce civil penalties under Code § 27–38(f)(2)and criminal penalties under §§ 775.082 and 775.083, Florida Statutes.

[5] See attached ''General Conditions'' of a License, item 1.

[6] Code § 27–351. Copy attached.

[7] ''Hazardous materials'' is defined as ''any substance defined or identified as a hazardous material in 40 CFR parts 260–265 and appendices, promulgated pursuant to the Resource Conservation and Recovery Act * * *.''

[8] Code § 27–352: Definition of ''Hazardous Material.''

[9] P.L. 93–633 § 102.

[10] S. Rep. 1192, 93rd Cong., 2d Sess., 1974, page 2.

[11] S. Rep. 1192, 93rd Cong., 2d Sess, 1974, page 37.

[12] P.L. 93–633 § 112(a).

[13] 41 *FR* 38171 (September 9, 1976).

[14] 41 *FR* 38168 (September 9, 1976).

[15] 49 U.S.C. § 5125(a).

[16] 49 U.S.C. 5125(b).

[17] 49 CFR 107.202(d).

[18] 49 U.S.C. 5125(c).

[19] 49 U.S.C. 5119(c)(2).

[20] 49 U.S.C. § 5125(g).

[21] *Colo. Pub. Util. Comm'n v. Harmon*, 951 F. 2d, 1571, 1581 n.10, (10th Cir. 1991).

[22] 49 U.S.C. 5103(b).

[23] 49 U.S.C. 5102(12).

Our review of federal law and the Ordinance lead us to believe that the following specific Ordinance requirements are subject to preemption pursuant to 49 U.S.C. 5125(a)(2) and (b) absent further modification and/or clarification:

The Designation, Description, and Classification of Hazardous

Material in Transportation is Reversed to the Federal Government

The HMTA provides that non-federal rules designating, describing, and classifying hazardous materials for transportation is preempted unless the non-federal rules are substantively the same as the federal rules. As noted above, Code § 27–352 defines ''hazardous material'' more broadly than the HMRs. Likewise, Code § 27–352 contains definitions of ''combustible liquid'' and ''flammable liquid'' that are not consistent with federal standards.[24] The disparity between federal and County definitions, the redundancy within the County's definitions, and, in particular, the open-ended discretion given the DNRP at § 27–352—Hazardous materials—(5) to name and regulate additional substances of concern, illustrates the confusion that is faced by hazardous materials transporters in understanding their regulatory obligations.[25] Clearly, the Ordinance provisions relating to the ''designation, description, and classification of hazardous materials'' are not ''substantively the same'' as DOT's designation and classification system found at 49 CFR 172. We believe this classification scheme, as it affects hazardous materials in transportation, is preempted pursuant to 49 U.S.C. 5125(b)(1)(A).

The Written Notification, Recording, and Reporting of the Unintentional Release in Transportation of Hazardous Material is Reversed to the Federal Government and Locally Imposed Oral Reporting Requirements Inconsistent With Federal Requirements Pose an Obstacle to the Accomplishment and Carrying Out of the HMTA

Code § 27–355(a)(1) requires the ''responsible party'' of an unauthorized hazardous material release to ''immediately report'' unauthorized releases of hazardous materials by telephone to the DNRP. Among other things, a ''responsible party'' is defined as the ''owner or operator of a facility'' where a ''facility'' includes ''any . . . motor vehicle, vessel, rolling stock, or aircraft,'' and ''[a]ny person . . . who accepts or accepted any hazardous material for transport . . .''[26] The Code also requires that written notification of these verbal reports must be filed with the DNRP within seven calendar days. The written notification must ''include at a minimum the location of the release, a brief description of the incident that caused the release . . . a brief description of the action taken to stabilize the situation, and any laboratory analysis, if available.''[27]

In addressing this issue, RSPA will have to distinguish between the County's written and verbal notification requirements. First, it is clear that the County's written notification requirements are not substantively the same as corresponding federal requirements.[28] The HMTA expressly preempts such requirements.[29] DOT has even moved to preempt non-federal written incident reports when the non-federal requirement has been only ''to provide copies of the incident reports filed with [DOT] . . .''[30] On the other hand, RSPA has generally not found inconsistent requirements for immediate, oral incident reports.[31] While we do not dispute the necessity of and, in fact, support immediate notice following an incident, we ask RSPA to preempt the specific requirement that the notice must go to the DNRP. Broward County is but one of over 30,000 local governmental jurisdictions in the country. In recognition of this fact, the U.S. Environmental Protection Agency provided an exception from release-reporting requirements for ''an owner or operator of a facility [which includes motor vehicles, rolling stock, and aircraft] from which there is a transportation-related release if the owner/operator provides immediate notice to the ''911 operator, or in the absence of a 911 emergency telephone number, to the operator.''[32] A ''transportation-related release'' is defined as a ''release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee.''[33] If all non-federal jurisdictions required immediate reporting to a specific local agency, telephone-like books of emergency phone numbers and reporting requirements would have to be carried in every vehicle. In fact, we believe that the effort to locate the correct number of each jurisdiction would unreasonably delay such notice. For these reasons, we request that RSPA find preempted the requirement to notify a specific local agency in lieu of a notice to the local emergency operator under its obstacle test preemption authority.[34]

The Preparation, Execution, and Use of Shipping Documents Related to Hazardous Material and Requirements Related to the Number, Contents, and Placement of Those Documents is Reserved to the Federal Government

Code § 27–356(b)(4)d.1. and § 27–356(d)(4)a.1., by reference to (b)(4)d.1., require that owner/operators of ''hazardous material facilities,'' including facilities offering hazardous waste for transport, and ''discarded hazardous material haulers'' to retain copies of ''hazardous waste manifests'' of shipments to, from, or through the County (if the through movement is via a ''transfer station'')[35] for five years at hazardous materials facilities these entities may operate in the County. EPA requires such generators and transporters to retain copies of the Uniform Manifest for a maximum of three years.[36] Additionally, no federal requirement limits the location where the transporter can retain those records. The Uniform Manifest is recognized by DOT as a shipping paper.[37] Non-federal requirements pertaining to shipping papers are subject to the HMTA's ''substantively the same as'' test of preemption.

The Design, Manufacturing, Fabrication and Maintenance of a Packaging or Container Which is Represented, Marked, Certified, or Sold as Qualified for Use in the Transportation of Hazardous Materials is Reserved to the Federal Government

As noted above, the HMTA preempts non-federal requirements concerning the design, manufacture, fabrication, and maintenance of a packaging offered as qualified for use in the transport of hazardous materials. Uniformity in the construction and maintenance of packagings, especially reusable packagings, is critical. The Ordinance, however, requires all ''waste hauling vehicles [to] be *product-tight* or be designed to effectively contain *any release* of hazardous materials during transport.''[38] (Emphasis added.) This definition may seem consistent with the HMRs general packaging standards.[39] However, terms like ''product-tight'' and ''any release''[40] call into question whether DOT-authorized cargo tanks would meet this standard because they are equipped with pressure relief valves. Additionally, the Ordinance keys its requirements to ''vehicles,'' suggesting that vehicles not authorized as packagings, such as trailers, must meet ''packaging'' standards. Nowhere, does the Ordinance grant equivalency to the packaging standards of the HMRs. Code § 27–356(d)(4)a.2. should be preempted pursuant to 49 U.S.C. 5125(b)(1)(E) because it is not ''substantively the same as'' the federal

[24] Also see County's definition of ''biomedical waste''.

[25] Even the County's attempt to clarify materials of concern by reference to federal law provokes confusion. The ordinance states that a ''hazardous material,'' in the County's terminology, includes ''any substance identified as hazardous'' according to a number of federal statutes. ''Hazardous substance'' is a term used in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The Emergency Planning and Community Right-to-Know Act (SARA Title III), lists ''acutely hazardous substances.'' ''Hazardous substance,'' in the context of the HMTA, references the hazardous substance list in CERCLA, making the reference to the HMTA superfluous. No materials are identified as ''hazardous substances'' in the Federal Insecticide, Fungicide, and Rodenticide Act.

[26] Code § 27–352, definitions of ''responsible party'' and ''facility.''

[27] Code § 27–355(a)(1).

[28] 49 CFR 171.16.

[29] 49 U.S.C. 5125(b)(1)(D).

[30] IR–31, 55 FR 25582 (June 21, 1990).

[31] IR–2, 44 *FR* 75566 (December 20, 1979); IR–3, 45 *FR* 76838 (November 20, 1980); IR–32, 55 *FR* 36736 (September 6, 1990).

[32] 40 CFR 355.40(b)(4)(ii).

[33] *Ibid.*

[34] 49 U.S.C. 5125(a)(2).

[35] Code 27–352, definition of ''transfer station'' includes ''any site ... whose primary purpose is to store ... discarded hazardous materials ... prior to or during transport ... .''

[36] 40 CFR 263.22(a).

[37] 49 CFR 172.205(h).

[38] Code § 27–356(d)(4)a.2.

[39] 49 CFR 173.24.

[40] Code § 27–352, definition of ''release'' where ''release'' means the ''unauthorized spilling, leaking, . . . emitting, . . . discharging, . . . of any hazardous materials . . . to the air, water, soil or other natural resources . . . .''

packaging standards found at 49 CFR 173, 178, and 180.

The Ordinance Requirements for Periodic Vehicle Inspections are Preempted by the HMTA

When initially proposed, code § 27–356(d)(4)a.3., would have required all vehicles used for the transport of ''discarded hazardous materials'' to, from or through the County (if the through movement is via a ''transfer station'') to be inspected prior to the issuance of a ''license identification tag'' that must be displayed on the rear of the vehicle prior to transport. The inspection would be valid for one year. After our industry provided the County with evidence that DOT has preempted such non-federal periodic inspections,[41] the final version of the code was amended to provide that the DNRP *could* waive the inspection if the licensee submitted ''evidence that the vehicle has satisfactorily completed an inspection conducted pursuant to applicable federal or state regulations.''[42]

DOT has preempted, under the ''obstacle'' test, non-federal periodic vehicle inspection requirements in the past because such inspections can not be accomplished without ''unnecessary delay'' within the meaning of 49 CFR 177.853(a) and consequently the requirement failed the obstacle test of the HMTA. The County cannot be allowed to protect its inspection requirement against such preemption by making the inspection waivable at the discretion of the DNRP.

In practice, none of the documents distributed to licensees suggests that the DNRP's inspection authority is discretionary, nor has the County on its own initiative communicated to licensees the potential to waive inspection requirements and the process by which such a waiver could be obtained.[43] Even if the County announced a procedure to request a waiver based on the standard provided at Code § 27–356(d)(4)a.3.,—that the vehicle had satisfactorily completed an inspection conducted pursuant to applicable federal or state regulations—the requirement is still defective because the Ordinance does not guarantee that the waiver will be granted. Indeed, such evidence has been presented and the DNRP has, nevertheless, required its own separate inspection, as the attached affidavits attest.

The delay of hazardous materials transportation caused by the inspection requirement is indisputable. To accomplish the County's inspection requirement, motor carriers must schedule, in advance, appointments to bring vehicles to the one inspection location in the County. Vehicles must be delivered for inspection empty. Vehicle and driver are detained for the inspection. Following the inspection, the vehicles are marked with an official permanently attached sticker as proof that the vehicle is qualified by the County to transport discarded hazardous materials. The vehicle and driver are then released.

If the County's vehicle inspection requirements are allowed to stand, every non-federal jurisdiction could impose such requirements. ''Discarded hazardous materials'' transportation via motor carrier would, as a result, virtually cease inasmuch as the vehicles would be routed, without cargo, from place to place to obtain inspections. We believe that the County's periodic inspection requirements, as distinguished from random, roadside inspections, are preempted pursuant to 49 U.S.C. 5125(a)(2).

Non-Federal Marking Requirements on Cargo Tanks and Truck Trailers Carrying Hazardous Materials Are Preempted

Code § 27–356(d)(4)a.4. requires the marking of vehicles used to transport discarded hazardous materials. The County Discarded Hazardous Material Transport identification tag is to be placed on the rear of the vehicle. (DNRP License Identification Tag example attached.) The tag indicates the expiration date of the period for which the vehicle is qualified to transport discarded hazardous materials in the County. A new tag can be applied for after the vehicle has successfully passed the County's vehicle inspection requirements.

The HMTA provides that non-federal marking of a package or container which is marked or otherwise certified pursuant to the HMRs as qualified for use in the transportation of hazardous materials is preempted unless the non-federal requirements are substantively the same as federal requirements. We believe this preemption standard—49 U.S.C. 5125(b)(1)(E) —is appropriate for review of County's vehicle identification tag requirements. In fact, similar vehicle marking requirements imposed by the State of California were preempted under this standard.[44]

The Ordinance Requirements for Training are Preempted by the HMTA

Code § 27–356(d)(4)a.6. requires the licensee to provide ''all drivers and other appropriate personnel . . . classroom instruction and/or on the job training that ensures compliance with the provisions of this [Code].'' At minimum, ''annual training in the implementation of the licensee's spill contingency plan and procedures is required. Additionally, records of the name of each employee and dates of training must be kept on file for three years following the employee's last day at work or until the carrier goes out of business.

DOT prescribes requirements for the training of ''hazmat employees.''[45] A ''hazmat employee'' is defined as a person ''who is employed by a hazmat employer and who in the course of employment directly affect hazardous materials transportation safety.'' DOT's standard requires hazmat employees to be trained every three years, unless job responsibilities change more frequently, and requires that training records be kept only for the preceding three-year training period and only 90 days following the employee's last day at work. States are allowed to impose more stringent training requirements on such employees only if those requirements do not otherwise conflict with DOT's training requirements and apply only to drivers domiciled in that state.[46] There is no authority for localities to impose training standards on such employees.

The County's training requirements, as they affect hazmat employees, should be preempted based on the obstacle test at 49 U.S.C. 5125(a)(2).

The Fees Imposed by the Ordinance are not ''Fair'' and Subject to Preemption Under the Obstacle Test

Code § 27–357(a) authorizes the DNRP ''to charge fees for licenses [based on] fees . . . adopted by the Board of County Commissioners and set forth in the Administrative Code.'' Code § 27–356(d)(4)a.7. provides that the discarded hazardous materials license will be payable annually. Currently, the license fee is $175 per vehicle.

The County's per-vehicle fee is flat and unapportioned. The U.S. Supreme Court has declared fees which are flat and unapportioned to be unconstitutional under the Commerce Clause because, among other things, such fees fail the ''internal consistency'' test.[47] The Court reasoned that a state fee levied on an interstate operation violates the Commerce Clause because, if replicated by other jurisdictions, such fees lead to interstate carriers being subject to multiple times the rate of taxation paid by purely local carriers even though each carrier's vehicles operate an identical number of miles.[48] In addition, because they are unapportioned, flat fees cannot be said to be ''fairly related'' to a feepayer's level of presence or activities in the fee-assessing jurisdiction.[49] In a number of subsequent cases, courts have relied on these arguments to strike down, enjoin, or escrow flat hazardous materials taxes and fees.[50] The County's per vehicle fee rate is comparable to that assessed by many states. The substantial financial burden of meeting multiple state fee requirements is magnified many times if local entities are permitted to impose fees on carriers in every jurisdiction in which they operate.

We submit that flat fees also run afoul of the HMTA because some motor carriers, otherwise in compliance with the HMRs, will inevitably be unable to shoulder multiple flat-per vehicle fees, and thus be excluded from some sub-set of fee-imposing jurisdictions. In fact, motor carriers, as the

[41] 58 *FR* 48933 (September 20, 1993), affirmed on reconsideration 60 *FR* 8800 (February 15, 1995).

[42] Code § 27–356(d)(4)a.3..

[43] See attachment (E), citing ''No Vehicle (sic) shall be utilized for hauling until it has been inspected by DNRP . . . .''

[44] 58 *FR* 48933 (September 20, 1993), affirmed on reconsideration 60 *FR* 8800 (February 15, 1995).

[45] 49 CFR 172, Subpart H.

[46] 49 CFR 172.701.

[47] *American Trucking Assn's* v. *Scheiner*, 483 U.S. 266 (1987).

[48] *Ibid.*, 284–86.

[49] *Ibid.*, 290–291 (citing *Commonwealth Edison Co.* v. *Montana*, 453 U.S. 609, 629 (1981)

[50] *American Trucking Assn's Inc.* v. *State of Wisconsin*, No. 95–1714, 1996 WL 593806 (Wisc. App. Ct., October 1996); *American Trucking Assn's Inc.* v. *Secretary of Administration*, 613 N.E.2d 95 (Mass. 1993); *American Trucking Assn's Inc.* v. *Secretary of State*, 595 A.2d 1014 (Me. 1991).

attached affidavits attest, have already restricted their hazardous materials operations in the County because of the unfairness of the fees. If the County's flat fee scheme is allowed to stand, similar fees must be allowed in the Nation's other 30,000 non-federal jurisdictions. The cumulative effect of such outcome would be not only a generally undesirable patchwork of regulations necessary to collect the various fees, but the balkanization of carrier areas of operation and attendant, unnecessary handling of hazardous materials as these materials are transferred from one company to another at jurisdictional borders. The increased transfers would pose a serious risk to safety, since ''the more frequently hazardous material is handled during transportation, the greater the risk of mishap.'' [51]

In recognition of these outcomes, Congress amended the HMTA, in 1990, to provide that a ''political subdivision . . . may impose a fee related to transporting hazardous material only if the fee is *fair* and used for a purpose related to transporting hazardous material.'' [52] (Emphasis added.) Augmenting this authority, Congress further provided, in the 1994 amendments to the HMTA, that DOT collect information about the basis on which the fee is levied.[53] The then-Chairman of the Senate Subcommittee to authorize the amendment explained that DOT was to use this authority to determine if ''hazardous materials fees are excessive . . . and therefore subject to preemption.'' [54] When determining what constitutes ''fair'', the Chairman clarified that ''the usual constitutional commerce clause protections remain applicable and prohibit fees that discriminate or unduly burden interstate commerce.'' [55] In closely analogous circumstances, the Supreme Court considered the meaning of 49 U.S.C. 1513(b), which authorizes States to impose ''reasonable'' charges on the users of airports. The Court read the statute to apply a ''reasonableness standard taken directly from . . . dormant Commerce Clause jurisprudence.'' [56] In the absence of any evidence the Congress meant to sanction non-federal fees that are discriminatory or malapportioned, a ''fair'' fee within the meaning of 49 U.S.C. 5125(g)(1) surely is one that, at a minimum, complies with the requirements of the Commerce Clause.

Additionally, it must be remembered that the Ordinance imposes its challenged flat fees only on motor carriers of ''discarded hazardous materials'' engaged in transportation operations to or from the County. However, AWHMT has reviewed the hazardous materials incident reports filed with DOT pursuant to 49 CFR 171.16 and discovered, for the five-year representative period 1992–1996, that *no* hazardous waste releases occurred.[57] On the other hand, 160 non-waste hazardous materials incidents were reported. Twenty-one percent of these incidents resulted from shipments traveling through the County. Twelve of the incidents were in the air mode, two were in the rail mode. The County has unfairly burdened select motor carriers of hazardous waste with fees and requirements that are unsupported by the risk presented to the citizens and/or environment of the County.

For the above listed reasons, we assert that flat fees are inherently ''unfair'' and that the County's fee scheme should fall to the obstacle test pursuant to 49 U.S.C. 5125(a)(2).

Regrettably, we have been unable to obtain information about what use the County makes of the revenue from the discarded hazardous material transporter fee. We request the County to provide an accounting of its fee usage pursuant to this proceeding and, based on the County's response, reserve the right to challenge the County's discarded hazardous materials transporter fee under the ''used for'' test as well.

Prenotification Requirements are Preempted by the HMTA

Code § 27–356(d)(4)b.1. provides that ''vehicles may only be utilized for the type of wastes for which the licensee is authorized to haul. A license modification must be requested and approved by DNRP prior to utilizing a vehicle for hauling a waste which is not specified on the license.''

While no such requirement exists in the HMRs, advance notice requirements of hazardous material transportation have been preempted.[58] These requirements have the potential to unreasonably delay hazardous materials transportation.[59] ''Congress expressly found that [non-federal] 'notification' requirements that 'vary from Federal laws and regulations' create 'unreasonable hazards' and pose a 'serious threat to public health and safety.' . . . [Such requirement] obstructs the purpose and objective of Congress and the Secretary.'' [60] For these reasons, we request RSPA to find preempted the requirement to notify the County about changes in the type of waste to be carried on a specific vehicle.

Non-Federal Recordkeeping and Reporting Requirements are Subject to Review Under the Obstacle Test

Code § 27–356(d)(4)c.1. requires carriers of discarded hazardous materials to submit monthly reports to the DNRP. The report must ''at a minimum, identify the facility name and address for each source, type, and quantity of waste, the date the waste was collected, and the final destination of each waste that was hauled during the preceding month.'' The report must also include ''a summary of the total quantities of each type of waste that was hauled by the licensee.''

With the exception of the monthly totals, this information is all available from the Uniform Manifest. Federal law requires Manifests to be retained by the carrier for three years, and, as notes above, the County requires a five year retention period. The DNRP has authority, pursuant to the Ordinance, to inspect these documents upon request.[61]

In the past, DOT has preempted requirements for information or documentation in excess of federal requirements because such requirements are an obstacle to the HMTA. There is no de minimus exception to the ''obstacle'' test because thousands of jurisdictions could impose de minimis information requirements.[62]

Conclusion

The Ordinance imposes requirements on the transportation of certain hazardous materials which we believe are preempted by federal law. As the attached affidavits disclose, the County is indeed enforcing the above suspect requirements despite its offer to address individual carrier concerns about conflicts with federal hazmat law as the need arises. When we discovered that the County was indiscriminately enforcing its requirements, we recontacted the County in October 1997 giving notice of our concerns and our intention of file this application if the County was not prepared to repeal these requirements on its own initiative. Despite our good-faith effort to deal directly with the County on these matters, we have not yet received a reply. We can no longer tolerate the uncertainty created by the determination of the County to enforce its suspect regulatory requirements. Consequently, we request timely consideration of the concerns we have raised.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments to: John J. Copelan, Jr., County Attorney, Office of the County Attorney, 115 S. Andrews Avenue, Suite 423, Fort Lauderdale, FL 33301.

Respectfully submitted,

Michael Carney,

Chairman.

Enclosures

cc: Ed Bonekemper, Asst. Chief Counsel for Hazardous Materials Safety, RSPA—DCC–10, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590

Attachments

(A) County Ordinance 93–47

(B) Discarded Hazardous Materials (DHM) License Application

(C) Affidavits of:

Jessica M. Wise, A.R. Paquette & Company

[51] *Missouri Pac. R.R. Co.* v. *Railroad Comm'n of Texas*, 671 F. Supp. 466, 480–81 (W.D. Tex. 1987).

[52] 49 U.S.C. 5125(g)(1).

[53] 49 U.S.C. 5125(g)(2).

[54] *Cong. Record*, August 11, 1994, page 11324.

[55] *Ibid.*

[56] *Northwest Airlines* v. *County of Kent*, 510 U.S. 355, 374, 127 L.Ed. 2d 183, 114 S.Ct. 855 (1994).

[57] Hazardous Materials Information System, U.S. Department of Transportation—1992–1996, January 28, 1998.

[58] IR–6, 48 *FR* 760 (January 6, 1983); IR–32, 55 *FR* 36736 (September 6, 1990).

[59] 49 CFR 177.800(d).

[60] *Colorado Pub. Utilities Comm'n* v. *Harmon*, 951 F.2d 1571 (10th Cir. 1991).

[61] Code § 27–356(b)(4)d.1.

[62] IR–8(A), 52 *FR* 13000 (April 20, 1987).

Connie Buschur, Metropolitan Environmental/Omni Transport Company
Diana L. Hughes, Environmental Transportation Services
Karla Simmons, Tri-State Motor Transit Company
(D) Sample notice of County's Enforcement Authority
(E) Sample ''General Conditions'' of a DHM License
(F) Sample DHM License with Instruction to Schedule Vehicle For Inspection
(G) Sample Vehicle Marking
(H) Map to Vehicle Inspection Site
(I) Letter to Cynthia Hilton, CWTI, from Lisa Bosch, Broward County, FL, May 26, 1994

[FR Doc. 98–21066 Filed 8–5–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Cuban Remittance Affidavit

AGENCY: Office of Foreign Assets Control, Treasury.

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 the Office of Foreign Assets Control's Cuban Remittance Affidavit information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 5, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Dennis P. Wood, Chief, Compliance Programs Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information about the filings or procedures should be directed to Dennis P. Wood, Chief, Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Title: Cuban Remittance Affidavit.

OMB Number: 1505–0167.

Abstract: The information is required of persons subject to the jurisdiction of the United States who make remittances to close relatives in Cuba pursuant to §§ 515.563 and 515.564 of the Cuban Assets Controls, 31 CFR part 515. The information will be used by the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') to monitor compliance with regulations governing family and emigration remittances.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000 filers per quarter, each filing four times a year.

Estimated Time Per Respondent: 45 to 75 seconds per form, with four forms filed annually per person.

Estimated Total Annual Burden Hours: 66,667, assuming each filer files four times per year.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to this collection of information must be retained for five years.

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 has 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.

Approved: July 31, 1998.

William B. Hoffman,

Chief Counsel, Office of Foreign Assets Control.

[FR Doc. 98–20942 Filed 8–3–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Reports on Oil Transactions by Foreign Affiliates

AGENCY: Office of Foreign Assets Control, Treasury.

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 the Office of Foreign Assets Control's information collection on oil-related transactions by foreign affiliates of United States persons (*see* 31 CFR 560.603), as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before October 5, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Loren L. Dohm, Chief, Blocked Assets Division, or William B. Hoffman, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Annex—2d Floor, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Loren L. Dohm, Chief, Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., 1500 Pennsylvania Avenue, Annex—2d Floor, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Title: Reports on Oil Transactions Engaged in By Foreign Affiliates.

OMB Number: 1505–0106.

Abstract: The information must be filed by United States persons with the Office of Foreign Assets Control of the Department of the Treasury (''OFAC'') with respect to each foreign affiliate owned or controlled by that United States person which engaged in reportable transactions during a calendar quarter with respect to certain purchases, sales or swaps of Iranian-origin crude oil, natural gas, or petrochemicals, or sales of services or goods to the Government of Iran or an entity in Iran for certain uses in the petroleum industry. See § 560.603 of the Iranian Transactions Regulations, 31 CFR part 560.