application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: September 13, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 8, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–20601 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Federal Motor Vehicle Safety Standards; Review: Antilock Brake Systems, Heavy Trucks; Evaluation Plan; Review: Rear Impact Guards, Truck Trailers; Evaluation Plan

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of evaluation plan.

**SUMMARY:** This notice announces NHTSA's publication of a plan for reviewing and evaluating its existing Safety Standards 121, Air Brake Systems, 223, Rear Impact Guards, and 224, Rear Impact Protection. The plan's title is Proposed Evaluations of Antilock Brake Systems for Heavy Trucks and Rear Impact Guards for Truck Trailers. The plan is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/121223.html*.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kahane, Chief, Evaluation Division, NPP–22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov*.

John L. Jacobus, Mechanical Engineer, NPP–21, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2586. FAX: 202–366–2559. E-mail: *jjacobus@nhtsa.dot.gov*.

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click ''Regulations & Standards'' underneath ''Car Safety'' on the home page; then click ''Regulatory Evaluation'' on the ''Regulations & Standards'' page.

**SUPPLEMENTARY INFORMATION:** As required by the Government Performance and Results Act of 1993 and Executive Order 12866 (58 FR 51735), NHTSA reviews existing regulations to determine if they are achieving policy goals. Safety Standard 121 (49 CFR 571.121) requires Antilock Brake Systems (ABS) on air-brake equipped truck-tractors manufactured on or after March 1, 1997 and on semi-trailers and single-unit trucks equipped with air brakes and manufactured on or after March 1, 1998. Safety Standards 223 (49 CFR 571.223) and 224 (49 CFR 571.224) set minimum requirements for the geometry, configuration, strength and energy absorption capability of rear impact guards on full trailers and semi-trailers over 10,000 pounds Gross Vehicle Weight Rating manufactured on or after January 26, 1998. NHTSA's Office of Plans and Policy is planning to obtain crash data and statistically evaluate the effectiveness of ABS and rear impact guards for heavy trucks.

NHTSA proposes to work with the State police from at least two large States. They will send data to NHTSA on every crash they investigate that involves a tractor-trailer, a bobtail tractor, or a medium or heavy single-unit truck. The data will include the basic State crash report plus a supplemental form identifying if the truck or trailer are ABS-equipped (as evidenced by presence of the malfunction indicator lights). The data will comprise approximately 10,000 tractor-trailer crashes and 5,000 single-unit trucks. On the subset of approximately 1,000 truck-trailers and 700 single-unit trucks that were hit in the rear by the front of a passenger vehicle, police will fill out a second supplemental form describing the rear impact guard on the trailer and the damage pattern on the passenger vehicle. Data collection will start in January 2001, or as soon as feasible after that, and run for two years. NHTSA believes these samples will be adequate for statistically evaluating ABS and rear impact guards.

The purpose of ABS is to help maintain directional stability and control during braking, and possibly reduce stopping distances on some road surfaces, especially on wet roads. ABS could reduce crashes involving jackknife, loss-of-control, run-off-road, lane departure, or skidding, or where trucks with conventional brakes were unable to stop in time to avoid hitting something frontally. On the other hand, ABS is unlikely to affect a control group of crashes where the truck was standing still, moving too slowly for ABS activation, or proceeding straight ahead when another vehicle unexpectedly hit it in the side or rear. The ratios of the various crash types where ABS has potential benefits to control group crashes will be compared for tractor-trailers where both units are equipped with ABS versus tractor-trailers where neither unit is equipped; also for ABS-equipped single-unit trucks vs. non-equipped trucks.

The goal of a rear impact guard is to arrest the forward motion of the striking passenger vehicle and prevent a damage pattern called ''underride with passenger compartment intrusion (PCI)'' that is dangerous for occupants of the passenger vehicle. The proportion of rear impacts that result in underride with PCI will be compared for trailers with guards that meet NHTSA and/or industry standards versus older trailers with guards that do not meet NHTSA or industry standards. Since the NHTSA standard does not apply to single-unit trucks, the analysis for these trucks will be limited to estimating the overall incidence rate of underride with PCI in rear-impact crashes.

The full text of the plan is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/121223.html*.

### How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes your review and suggestions on the evaluation plan. You may send your suggestions or comments to Mr. Kahane or Mr. Jacobus, by e-mail, phone or letter, at the addresses shown above, preferably by October 1, 2000.

**Authority:** 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**William H. Walsh,**

*Associate Administrator for Plans and Policy.*

[FR Doc. 00–20493 Filed 8–11–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–00–7740 (PDA–25(R))]**

### Application by the Kiesel Company for a Preemption Determnination as to Missouri Prohibition of Recontainerization of Hazardous Waste at Transfer Facility

**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 Kiesel Company (Kiesel) for an administrative determination whether Federal hazardous material transportation law preempts a Missouri regulation prohibiting the recontainerization of hazardous waste by a transporter at a transfer facility.

**DATES:** Comments received on or before September 28, 2000, and rebuttal comments received on or before November 13, 2000, will be considered before issuance of an administrative ruling on Kiesel's application. 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.''

Comments must refer to Docket No. RSPA–00–xxxx and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on ''Help & Information'' to obtain instructions.

A copy of each comment must also be sent to (1) Kiesel's attorney, Mr. Richard Greenberg, Rosenbloom, Goldenhersh, Silverstein & Zafft, P.C., 7743 Forsyth Blvd., Fourth Floor, St. Louis, MO 63105–1812, and (2) Mr. Stephen M. Mahood, Director, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, MO 65102. 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. Greenberg and Mahood 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 issued, 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 the individual named in **FOR FURTHER INFORMATION CONTACT** below.

**FOR FURTHER INFORMATION CONTACT:** Frazer C. Hilder, 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

Kiesel has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts Missouri's prohibition of recontainerization of hazardous wastes by a transporter at a transfer facility.

In its application, Kiesel states that it is a licensed hazardous waste transporter that has a rail siding at its facility located within the City of St. Louis, Missouri. Kiesel advises that it wants to off-load hazardous waste from rail cars to trucks ''for transport to a disposal site in Illinois licensed to receive and dispose of hazardous waste.'' According to Kiesel, it has been advised by the Missouri Department of Natural Resources (DNR) that this transfer from rail car to motor vehicle would constitute a prohibited ''recontainerization'' of hazardous waste. Kiesel states that DOT has found ''an identical regulation'' preempted in Preemption Determination (PD) No. 12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Waste Incidental to Transportation, 63 FR 62517 (Dec. 6, 1995), decision on petition for reconsideration, 65 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). Kiesel refers to these decisions in which, according to Kiesel, DOT ''recognized that the prohibition of recontainerization 'applies to the ''repackaging'' and ''handling'' of hazardous materials and transportation and is not substantively the same as requirements in the HMR.'''

The DNR's regulations on transporters of hazardous waste are set forth in 10 CSR 25–6.263 and consist of Federal regulations issued by DOT and the Environmental Protection Agency (EPA), plus additional State requirements. Among the additional State requirements is the following prohibition against recontainerization in 10 CSR 25–6.263(2)(A).10.H:

> Recontainerization of hazardous wastes 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 10 CSR 25–6.263(1), DNR has adopted and incorporated by reference EPA's ''Standards Applicable to Transporters of Hazardous Waste'' in 40 CFR part 263; DOT's Hazardous Materials Regulations in 49 CFR parts 171–180; and DOT's Drug Testing and Federal Motor Carrier Safety Regulations in 49 CFR parts 40, 383, 387, and 390–397 (except for § 390.3(f)(2)). As discussed in PD–12(R), 60 FR at 62534, neither EPA's regulations nor the HMR contain any general prohibition against the transfer of hazardous materials from one container to another, or the combination of commodities within the same packaging. 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).

In addition, the 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).

## II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to Kiesel'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 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.)

## III. Preemption Determinations

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 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 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. 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 4, 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.

## IV. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts the first sentence of 10 CSR 25–6.263(2)(A)10.H. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the Missouri prohibition against recontainerization is applied and enforced. Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on August 4, 2000.

**Robert A. McGuire,**

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

[FR Doc. 00–20482 Filed 8–11–00; 8:45 am]

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