Committee to be held on Thursday, December 14, 2000. The purpose of this meeting was to review the agenda items to be considered at the thirty-second session of the Subcommittee on Standards of Training and Watchkeeping (STW 32) of the International Maritime Organization (IMO).

This notice is to announce that the meeting is cancelled.

For further information, please contact Chief, Office of Operating and Environmental Standards, U.S. Coast Guard Headquarters, Commandant (G–MSO), room 1210, 2100 Second Street, SW, Washington, DC, 20593–0001 or by calling LCDR Luke Harden at: (202) 267–1838.

December 6, 2000.

Mira Piplani,

International Transportation and Commercial Officer.

[FR Doc. 00–31585 Filed 12–7–00; 2:26 pm]

BILLING CODE 4710–07–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 Determination as to Missouri Prohibition Against Recontainerization of Hazardous Waste at a Transfer Facility

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

ACTION: Notice of Reopening Period for Public Comment

SUMMARY: RSPA is reopening the period for interested parties 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: Additional comments received on or before January 25, 2001, and rebuttal comments received on or before March 12, 2001, will be considered before issuing an administrative ruling on Kiesel's application. Rebuttal comments may discuss only those issues raised previously or 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–00–7740 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, Greensfelder, Hemker & Gale, P.C., 2000 Equitable Bldg., 10 South Broadway, St. Louis, MO 63102–1774, 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 each Inconsistency Ruling (IR) and Preemption Determination (PD) issued by DOT, 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 Mr. Hilder (see ''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, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

In a June 28, 2000 letter, Kiesel applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the prohibition against recontainerization of hazardous waste in a regulation of the Missouri Department of Natural Resources (DNR) at 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 its application, Kiesel stated 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 stated that it

> has been in discussions regarding the use of the rail siding at its facility to provide a transfer point for the off loading of hazardous waste from rail cars to tankers or vacuum trucks for transport to a disposal site in Illinois licensed to receive and dispose of hazardous waste. The transfer of hazardous waste from the rail car to a trailer or a vacuum truck would constitute recontainerization which is prohibited under Missouri regulations.

Notice of Kiesel's application was published in the **Federal Register** on August 14, 2000, and interested parties were invited to submit comments by September 28, 2000, and rebuttal comments by November 13, 2000. 65 FR 49633. In the August 14, 2000 public notice, RSPA also referred to DNR's regulations on transporters of hazardous waste set forth in 10 CSR 25–6.263; the lack of any general prohibition in the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180, against the transfer of hazardous materials from one container to another; and Kiesel's argument that ''an identical regulation'' was found to be preempted in PD–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). 65 FR at 49633. In parts II and III of the August 14, 2000 public notice, RSPA discussed the preemption provisions in 49 U.S.C. 5125 and the procedures for issuing preemption determinations. *Id.* at 49634–35.

II. Comments Received and Request to Withdraw Application

In response to the August 14, 2000 public notice, RSPA has received the following submissions:

—An August 30, 2000 letter from Kiesel clarifying that it had not been advised by DNR that transferring hazardous waste from a rail car to a motor vehicle would constitute a prohibited recontainerization of hazardous waste, contrary to RSPA's understanding from Kiesel's mention

of ''discussions'' in its application. *See* 65 FR at 49634. In this letter, Kiesel also stated that ''the plain language of the regulation would encompass this practice as it would require that rail cars of bulk hazardous waste would be placed in new and different containers such as vacuum trucks or tank trailers.''

—A September 28, 2000 comment from National Tank Truck Carriers, Inc. (NTTC) which reads the Missouri regulation to prohibit ''the transfer of [a hazardous] product from one container to another.'' NTTC stated that it is ''a national trade association composed of approximately 200 trucking companies which specialize in the transportation of hazardous materials, hazardous wastes and hazardous substances in cargo tank motor vehicles throughout the United States,'' and implied that at least some of its members are affected by the Missouri prohibition against recontainerization of hazardous wastes at a transfer facility. It stated that the Missouri prohibition is preempted by Federal hazardous material transportation law because ''transportation'' includes the ''loading'' and ''unloading'' of hazardous materials incidental to their movement, and Congress has given DOT the ''exclusive power'' to regulate matters involving the ''packing, repacking [and] handling'' of hazardous materials in transportation.

—An undated letter from DNR stating that it has informed Kiesel that ''the off-loading of hazardous wastes from rail cars onto trucks, is not prohibited by 10 CSR 25–6.263(1)'' and requesting an extension of the comment period ''in the event that Kiesel does not withdraw'' its application. With this undated letter, DNR attached a copy of its September 26, 2000 letter to Kiesel in which DNR stated that it wants to ''work with Kiesel personnel to develop a manifesting protocol to insure all shipments will be accompanied by proper documentation as required by the Department of Transportation, Environmental Protection Agency [EPA], and the Department of Natural Resources (DNR).''

—An October 10, 2000 comment from Safco Safe Transport (Safco), of Seattle, Washington, objecting to an extension of the comment period and questioning whether DNR is attempting to impose additional requirements under a manifest ''protocol'' that goes beyond the HMR or EPA's regulations. Safco did not indicate whether it operates in Missouri.

—An October 12, 2000 letter from Kiesel stating that it had no objection to a 30-day extension of the period to comment on its application in this matter to ''allow further clarification of the position of the Department of Natural Resources and determine if a preemption determination is necessary given the public position of the Department.''

—An October 30, 2000 letter from Kiesel stating that it had received ''written assurances'' from DNR that the prohibition against recontainerization of hazardous wastes ''does not apply to the transfer of hazardous wastes transferred from railcars to trucks.'' Kiesel did not provide a copy of the written assurances it had received from DNR. Kiesel stated that it was withdrawing its application in this matter.

—An undated note from Safco withdrawing its earlier objection to an extension of the comment period and stating that preemption occurs by ''operation of law'' and ''cannot be withdrawn.''

III. Discussion

RSPA does not have any procedure for withdrawing an application for a preemption determination. In the past, RSPA has dismissed proceedings involving a city ordinance that never went into effect, Docket No. PDA–3(RF) (Chester, West Virginia), 59 FR 4962 (Feb. 2, 1994), and a local requirement that was repealed after the application was filed, Docket No. PDA–14(R) (El Paso, Texas), 62 FR 11677 (March 21, 1996). But RSPA has never stated that an applicant can end a preemption proceeding by simply withdrawing its application when a non-Federal requirement on transporting hazardous materials remains in effect.

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

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

These differences from a lawsuit are consistent with the very purpose for issuing preemption determinations. RSPA believes that the value in deciding whether a non-Federal requirement is inconsistent with (or preempted by) Federal hazardous material transportation law

> goes beyond the resolution of an individual controversy. At a time when hazardous materials transportation is receiving a great deal of public attention, the forum provides [RSPA] an opportunity to express its views on the proper role of State and local vis-a-vis Federal regulatory activity in this area.

IR–2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas, etc., decision on appeal, 45 FR 71881, 71882 (Oct. 30, 1980).

The manner in which a non-Federal requirement is actually applied or enforced must be considered under the ''obstacle'' test in 49 U.S.C. 5125(a)(2), but not necessarily under the ''dual compliance'' test in § 5125(a)(1) or the ''substantively the same as'' criteria in § 5125(b)(1)(A)–(E). On this point, RSPA previously discussed an ''extreme example [of] the nonimplementation or nonenforcement of a directly conflicting State requirement,'' and found that it ''makes no sense * * * to say that since there is no enforcement there is no conflict.'' *Id.* at 71883. Moreover, a commenter in another proceeding has asserted that a regulation or ordinance is ''enforced'' whenever it remains in effect, because persons feel compelled to comply with the requirement even when there have not been citations or other ''enforcement proceedings.'' Thus, there may be an issue whether a non-Federal requirement is an obstacle to the

safe transportation of hazardous materials and the specific requirements in the HMR, even when not enforced, because the requirement may cause offerors or transporters of hazardous materials to take actions that are not required by the HMR, or refrain from actions that are permitted under the HMR.

While it may not be necessary to look at the actual application of a non-Federal requirement, except when applying the ''obstacle'' test, the words in the requirement always set the scope of the requirement. In some cases, terms may be defined in the statute, regulation, or ordinance. Otherwise, those terms must be given their usual and customary meaning. But RSPA cannot accept efforts to interpret a non-Federal requirement in a manner that ''is in direct conflict with the plain language'' of the State, local, or tribal statute, regulation, or ordinance. PD–14(R), Houston, Texas, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials, 63 FR 67506, 67510 (Dec. 7, 1998), decision on petition for reconsideration, 64 FR 33949 (June 24, 1999).

Here, both NTTC and Safco appear to support Kiesel's position that RSPA should consider the ''plain language'' of Missouri's prohibition against recontainerization of hazardous waste and find that the Missouri regulation is preempted because it is not substantively the same as Federal requirements on ''the packing, repacking, [and] handling * * * of hazardous material.'' 49 U.S.C. 5125(b)(1)(B). Kiesel also specifically refers to PD–12(R), where the applicant and other persons indicated, without contradiction, that New York's repackaging prohibition prevented a transporter ''from transferring the contents of rail cars into trucks.'' 60 FR at 62536.

To date, very few comments have been submitted on Kiesel's application. Neither Kiesel nor DNR has provided a copy of the ''written assurances'' explaining why the prohibition against recontainerization in 10 CSR 25–6.263(2)(A).10.h would not apply to Kiesel's planned operations, nor has DNR submitted any comments explaining its regulation and why it is not preempted by 49 U.S.C. 5125(b)(1)(B). Under these circumstances, it is appropriate to reopen the comment period rather than simply to proceed to a determination in this proceeding.

IV. Reopening of Comment Periods

The period to submit comments on Kiesel's application is reopened to allow a new initial comment period of 45 days, followed by a 45-day period for rebuttal comments.

All comments should address whether 49 U.S.C. 5125 preempts the prohibition against recontainerization in 10 CSR 25–6.263(2)(A)10.H, and, in the context of the preemption criteria discussed in the August 14, 2000 public notice:

(1) explain the meaning of the Missouri prohibition against recontainerization of hazardous wastes and the manner in which that prohibition is applied and enforced; and

(2) address the assertions in Kiesel's August 30, 2000 letter that the Missouri prohibition against recontainerization precludes a transfer of hazardous waste from a rail car to a motor vehicle and is preempted because it is not substantively the same as RSPA's regulations on the ''packing, repacking, [and] handling * * * of hazardous material.'' 49 U.S.C. 5125(b)(1)(B).

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 December 4, 2000.

Robert A. McGuire,

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

[FR Doc. 00–31477 Filed 12–8–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–00–8452; Notice 1]

Pipeline Safety: Intent To Approve Waiver and Environmental Assessment of Waiver for Duke Energy

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of Intent to Consider Waiver and Environmental Assessment of Waiver.

SUMMARY: The Office of Pipeline Safety (OPS) is conducting a Risk Management Demonstration Program with pipeline operators to determine how risk management might be used to complement and improve the existing Federal pipeline safety regulatory process. OPS selected Duke Energy (Duke) as a candidate for participation in the Demonstration Program; subsequently, OPS and Duke held discussions as part of a consultation process. During the consultation, Duke identified a portion of its system where it believed performing alternative risk control activities in lieu of compliance with current regulations would result in a comparable margin of safety and environmental protection. Duke submitted an application to OPS to temporarily waive certain regulatory requirements relating to class location changes for five locations in a 3-line system, ranging from 0.5 miles to 0.88 miles in length and totaling 12.2 miles in fifteen pipeline segments. Duke had previously reduced the operating pressure along the fifteen segments in accordance with these requirements and seeks to return the pipeline to its historical operating pressure. Duke has completed many of the proposed alternative risk control activities related to assuring integrity of the pipeline in the segments for which regulatory relief is sought. Discussions continue between OPS and Duke regarding programmatic aspects of the company's risk management demonstration project.

This Notice announces OPS's intent to approve a waiver to allow Duke to increase the allowable operating pressure in these fifteen pipe segments. OPS has reviewed the terms of this waiver and found them to be appropriate. Among the terms of the waiver that were crucial to OPS's decision to consider granting the waiver were Duke's selection as a candidate for the Risk Management Demonstration Program, Duke's subsequent participation in the consultation process with an OPS Project Review Team (PRT), the comparable margin of safety and environmental protection provided by the proposed activities, and the expectation that the continuing discussions with Duke may result in approval of their risk management demonstration project. In addition, OPS has found that the overall effect of the waiver is not inconsistent with pipeline safety. If granted, this waiver would expire upon either the approval or disapproval of Duke's risk management demonstration project.

OPS is considering whether or not additional regulations to enhance pipeline integrity in high consequence areas are warranted for natural gas transmission pipelines. Additional information on integrity management rule-related activities is available on the OPS web site at http://ops.dot.gov. Within 90 days of OPS's adoption of new rules related to integrity management of natural gas pipelines,