under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Mazda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 13, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–12425 Filed 5–16–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Preemption Determination No. PD–18(R); Docket No. RSPA–98–3577 (PDA–18(R))]

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: Decision on petition for reconsideration of an administrative determination of preemption.

Petitioner: Broward County, Florida (the County).

Local Laws Affected: Broward County, Florida Code of Ordinance No. 1999–53, §§ 27–352; 27–355(a)(1); 27–356(b)(4)d.1; 27–436; 27–439(b); 27–439(f)(1); 27–439(g)(1) and 27–439(g)(2).

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

Modes Affected: Highway and rail.

SUMMARY: The County's petition for reconsideration is denied, and RSPA affirms its December 27, 2000 determination that Federal hazardous materials transportation law preempts the County's Ordinance No. 1999–53 on the following subjects to the extent that, as applied and enforced, they relate to transportation in commerce: certain hazardous materials definitions and the requirements that rely on those definitions; written notification of a hazardous materials release; retention of shipping papers; licensing fees for hazardous waste transporters; and monthly reports of transportation activity.

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. Background

A. Preemption Determination (PD) No. 18(R)

In April 1998, the Association of Waste Hazardous Materials Transporters (AWHMT) applied for a determination that Federal hazardous material transportation law preempts 10 specific provisions of Chapter 27 of the Broward County Ordinance (Ordinance) that defined hazardous materials and set requirements for their transportation to and from points within the County. These provisions were contained in Article XII (entitled ''Hazardous Material'') of Chapter 27.

On August 6, 1998, RSPA published in the **Federal Register** a public notice and invitation to comment on AWHMT's application (63 FR 42098). RSPA received comments from Nufarm, the Hazardous Materials Advisory Council (now the Dangerous Goods Advisory Council), Freehold Cartage, Inc., the Association of American Railroads (AAR), Mr. Tony Tweedale, and the Institute of Makers of Explosives (IME). AWHMT submitted rebuttal comments.

On September 28, 1999, the Broward County Commissioners amended Chapter 27 by adopting Ordinance No. 1999–53 (the revised Ordinance). Some of the regulations originally challenged in AWHMT's application were modified and moved by the County to new Article XVII (entitled ''Waste Transporters''); some were deleted from the revised Ordinance; and others remained where they were in the previous Ordinance.

Because the County had substantially modified the Ordinance, RSPA asked AWHMT to supplement its application to reflect the revisions to the Ordinance, and invited interested parties to comment on the County's revised Ordinance. 64 FR 59231. (Nov. 2, 1999). On behalf of AWHMT, the American Trucking Associations (herein referred to as ATA/AWHMT) submitted the revised application. In addition, IME and AAR submitted comments. On March 22, 2000, the County submitted its comments to the revised Ordinance. On May 5, 2000, ATA/AWHMT submitted rebuttal comments to the County's comments.

As a result of the County's changes to the revised Ordinance, ATA/AWHMT withdrew its challenge to four of the County's requirements. ATA/AWHMT continued to challenge the County's definitions of certain hazardous materials in §§ 27–352 and 27–436, and the County's requirements for release reporting in §§ 27–355(a)(1) and 27–439(f)(1), packaging standards in § 27–439(e)(2), fees in § 439(a), monthly reporting in § 27–439(g), and vehicle inspection in § 27–439(e)(3). In addition, AAR continued to challenge the County's shipping paper requirements in § 27–439(g)(1), and vehicle marking requirements in § 27–439(e)(4). RSPA's December 27, 2000 decision addressed only the challenges to the revised Ordinance.

In its decision, RSPA determined that Federal hazardous material transportation law preempts County requirements pertaining to certain hazardous material definitions, all requirements that rely on those definitions, written notification of a hazardous material release, shipping paper retention for certain hazardous materials transporters, licensing fees for hazardous waste transporters and monthly transportation activity reporting. 65 FR 81950–60. RSPA stated that these requirements were preempted only to the extent that they related to transportation in commerce or differed from the HMR or other Federal requirements. *Id.* In addition, RSPA determined that Federal hazardous material transportation law did not preempt County requirements pertaining to oral notification of a hazardous material release, packaging standards for hazardous waste transport vehicles, shipping paper retention for

hazardous waste transporters, periodic vehicle inspection and vehicle marking. *Id.*

In Part II of its decision, RSPA discussed the standard for making preemption determinations under the Federal hazardous materials transportation law. 65 FR 81951–52. As RSPA explained, unless there is specific authority in another Federal law or DOT grants a waiver, a local (or other non-Federal) requirement is preempted if:

—It is not possible to comply with both the local requirements and a requirement in the Federal hazardous material transportation law or regulations;

—The local requirement, as applied or enforced, is an ''obstacle'' to accomplishing and carrying out the Federal hazardous materials transportation law or regulations; or

—The local requirement concerns any of five specific subjects and is not ''substantively the same as'' a provision in the Federal hazardous materials transportation law or regulations. *Id.* at 81951. Among these five subjects are (1) ''the designation, description, and classification of hazardous material,'' (2) ''the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents,'' and (3) ''the written notification, recording and reporting of the unintentional release in transportation of hazardous material.'' *See* 49 U.S.C. 5125(a) and (b). *Id.*

In addition, 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 material, including enforcement and planning, developing, and maintaining a capability for emergency response.'' 49 U.S.C. 5125(g)(1).

These preemption provisions stem from congressional findings that State and local laws which vary from Federal hazardous material transportation requirements can create ''the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting * * * regulatory requirements,'' and that safety is advanced by ''consistency in laws and regulations governing the transportation of hazardous materials.'' Pub. L. 101–615 §§ 2(3) and 2(4), 104 Stat. 3244.

B. Petition for Reconsideration and Comments

Within the 20-day time period provided in 49 CFR 107.211(a), the County filed a petition for reconsideration and stay of PD–18(R). The County challenged the preemption of:

- Revised Ordinances 27–325 and 27–436 pertaining to certain hazardous materials definitions,
- Revised Ordinances 27–355(a)(1) and 27–439(f)(1) pertaining to incident release reporting,
- Revised Ordinance 27–356(b)(4)d.1 pertaining to shipping paper retention requirements,
- Revised Ordinance 27–439(b) pertaining to fees, and
- Revised Ordinance 27–439(g)(2) pertaining to monthly reporting requirements.

The County certified that it had mailed a copy of its petition to all organizations and individuals that had submitted comments to the original application, with the exception of one individual whose address was incomplete. IME submitted comments to the County's petition for reconsideration and stay.

In its petition for reconsideration, the County argues that Article XII, Hazardous Materials, applies exclusively to ''the generation, use, storage, handling, processing, manufacturing and disposal of hazardous materials.'' The County explains that the Article does not seek to regulate the transportation of hazardous materials in any fashion, but rather gives deference to Federal law. The County further contends that Article XII, Waste Transporters, has been subdivided and is the only area in which the County intends to regulate hazardous materials transportation in or incidental to commerce. The County argues that it has every right to regulate certain hazardous materials-related activities and facilities within the County's borders without Federal Government interference. Thus, the County concludes that RSPA has improperly sought to preempt a non-Federal regulation that does not conflict with Federal regulations. For the reasons discussed below, RSPA finds that portions of Article XII do apply to transportation in commerce, including storage incidental to transportation, and to that extent are preempted.

II. Discussion

A. Hazardous Materials Definitions

The County challenges RSPA's determination that its definitions of hazardous materials, combustible liquid, flammable liquid, biomedical waste discarded hazardous materials and sludge are preempted under 49 U.S.C. 5125(b)(1)(A). 65 FR 81952–54. Following is a summary of the County's arguments concerning each preempted definition.

- *Hazardous Materials.* The County states that the term ''hazardous materials'' as defined in § 27–352 applies exclusively to Article XII, ''the generation, use, storage, handling, processing, manufacturing and disposal of hazardous material.'' As previously mentioned, the County states that Article XII does not seek to regulate the transportation of hazardous materials in any fashion and gives deference to Federal law. In support of its claim, the County points to § 27–351 of the County Ordinance, which states that

> (1) The Department of Planning and Environmental Protection (DPEP) *to the extent permitted by state and federal law,* shall have the authority to license, evaluate, review, and administer all hazardous materials activities, and all environmental assessments and remediation actions performed within Broward County. (Emphasis added by the County).

The County further states that Article XVII, which is titled ''Waste Transporters,'' has been properly subdivided and is the only area in which the County intends to regulate hazardous materials transportation. The County contends that it has the right to regulate hazardous material facilities, construction overlying contamination, storage and use of hazardous material in wellfield zones, and abandonment or improper disposal of hazardous materials that occurs within Broward County without Federal Government interference. Thus, the County concludes that RSPA has improperly sought to preempt Article XII, which does not conflict with Federal regulations.

- *Combustible liquid and flammable liquid.* The County contends that the requirements for storage, handling processing, manufacturing and disposal of hazardous materials do not apply to materials defined as combustible liquid and flammable liquid in § 27–352. The County states that Article XVII, titled ''Waste Transporters'' (which contains § 27–436), applies to the generation, use and transportation of hazardous materials in commerce. The County further states that Article XVII is self-contained and the only place in the Code where the County seeks to regulate hazardous materials transportation in or incidental to commerce.
- *Biomedical waste.* The County states that it will delete the definition of biomedical waste contained in § 27–436

in upcoming revisions of the Code and will replace it with the HMR definition of ''regulated waste.'' The County anticipates this will take approximately six months because of the County's requirements for notice and public hearing.

• *Discarded hazardous materials.* The County states that it will delete the definition of discarded hazardous materials contained in § 27–436 in upcoming revisions of the Code and replace it with the HMR definition of ''hazardous material.'' The County states that this revision will only apply to Article XVII, Waste Transporters, because that is the only section where the County seeks to regulate the transportation of hazardous materials in or incidental to commerce. The County further states that it will not revise the current definition of hazardous materials found in § 27–352 because that section does not apply to transportation. The County anticipates this will take approximately six months because of the County's requirements for notice and public hearing.

• *Sludge.* The County states that RSPA has overstepped its authority by preempting the County's definition of sludge. The County agrees with RSPA's determination that sludge does not have a counterpart in the HMR. 65 FR 81953. The County argues that 49 CFR 171.8 does not include water and wastewater residual sludges in its list of regulated materials. The County claims that sludge, as defined by the County, has not been determined or designated by the Secretary of Transportation to pose an unreasonable risk to health, safety and property when transported. The County also states that sludge, as defined in County Code and state rule, is a solid waste, not a hazardous material as defined by the HMR. The County contends that, because solid waste is not a substance regulated by DOT, DOT does not have jurisdiction to preempt the County's regulations of sludge transportation.

In its decision, RSPA, under 49 U.S.C. 5125(b)(1)(A), preempted the County's definitions of hazardous materials, combustible liquid, flammable liquid, biomedical waste, discarded hazardous materials, and sludge because these definitions were not ''substantively the same as'' their counterparts in the HMR or did not have counterparts in the HMR. 65 FR 81952–53. Section 5125(b)(1)(A) preempts non-Federal requirement on the ''designation, description, and classification of hazardous material'' that are not ''substantively the same as'' the HMR. However, RSPA stated that these definitions were only preempted to the extent that they related to transportation in commerce. 65 FR 81952–53.

As RSPA stated in its decision, it appears from a plain reading of Article XII and Article XVII of the County's revised Ordinance that the County uses the definitions in defining the applicability of its regulation of transportation in commerce. 65 FR 81953. RSPA found that

> Article XII regulates the ''generation, use, storage, handling, processing, manufacturing, and disposal of hazardous materials.'' Revised Ordinance 27–351. The * * * DPEP is authorize to license, evaluate, review and administer all hazardous materials activities * * * performed in Broward County. *Id.* Article XVII regulates the transportation of discarded hazardous material, sludge, and biomedical waste and applies to ''all persons conducting activities within geographic boundaries of Broward County, who transport discarded hazardous material, sludge, or biomedical waste to, from, and within Broward County.'' Revised Ordinance 27–435.

Id. Based on these regulations, RSPA determined that the County was using the challenged definitions in defining the applicability of its regulation of transportation in commerce and preempted the definitions. *Id.*

If, however, that is not the case for a particular definition, then RSPA's preemption decision does not apply to that definition. Therefore, if the County's definitions in § 27–352 of hazardous material, combustible liquid, flammable liquid, and discarded hazardous materials, as applied and enforced by the County, do not relate to transportation in commerce or storage incidental to transportation, the preemption provisions in 49 U.S.C. 5125(b)(1)(A) do not apply.

Concerning the definitions of biomedical waste and discarded hazardous materials in §§ 27–352 and 27–436, RSPA's determination that these definitions are preempted still applies.

Concerning the definition of sludge in § 27–436, RSPA does not agree with the County that it does not have the authority to preempt this definition as it is applied and enforced. It appears that the County is using the definition of sludge to regulate a material as a hazardous material. The definition of sludge is contained in Article XVII, Waste Transporters, which, as the County states in its comments, is the section where the County seeks to regulate the transportation of hazardous materials in commerce. As previously mentioned, § 27–435 of Article XVII, which deals with the applicability of the article, states ''[t]his article applies to all persons conducting activities within geographical boundaries of Broward County, which transport discarded hazardous material, sludge, or biomedical waste to, from, and within Broward County.'' Based on this information, the County appears to be attempting to use the definition of sludge for the purpose of regulating a hazardous material and, therefore, continues to find that the definition is preempted under 49 U.S.C. 5125(b)(1)(A). However, as stated in the previous determination, this definition and the regulations that apply this definition are preempted only to the extent that they relate to transportation in commerce and storage incidental to transportation in commerce. 65 FR 81953–54.

The County can, however, define sludge as it deems appropriate for State purposes, such as disposal, and RSPA's preemption of the definition has no effect on non-transportation-related functions. The County is correct that the HMR do not contain a specific definition of ''solid waste.'' Solid waste and hazardous waste are defined in the Environmental Protection Agency's (EPA's) Resource Conservation and Recovery Act (RCRA) regulations at 40 CFR 261.2 and 261.3, respectively. We do not address whether the County's definition of sludge conflicts with EPA's definitions for solid waste or hazardous waste.

B. Release-Reporting Requirements

The County maintains its position that Article XII regulates releases that do not involve transportation, including storage incidental to transportation in commerce. The County states that Article XII has been consistently enforced in that manner and, therefore, should not be preempted. The County states that it has agreed to modify section 27–439(f)(1) and provides sample language of how it intends to revise the section. The County anticipates that it will take approximately six months to complete the revisions because of the required notice and public hearing requirements in its local law.

In its decision, RSPA addressed two requirements in the County's revised Ordinance that dealt with release reporting—§ 27–355(a)(1) in Article XII and § 27–439(f)(1) in Article XVII. 65 FR 81954–81955. RSPA found that the written notification requirement contained in § 27–355(a)(1), and the requirement in § 27–439(f)(1) to report releases in accordance with § 27–355(a)(1), were preempted to the extent that they related to the transportation of hazardous materials in commerce, including loading, unloading and

storage incidental to transportation. *Id.* RSPA found that these requirements were not ''substantively the same'' as the Federal written incident-reporting requirements found in 49 CFR 171.16 and, therefore, were preempted under 49 U.S.C. 5125(b)(1)(D). *Id.* RSPA determined that the oral incident notification requirements contained in §§ 27–355(a)(1) and 27–439(f)(1) were not preempted. 65 FR 81955.

As mentioned above, the County argues that Article XII [which contains § 27–355(a)(1)] regulates releases that do not involve transportation, including storage incidental to transportation in commerce, and has consistently been enforced in that manner. The County made the same argument in its comments to the initial proceeding. At that time, RSPA determined that it was not apparent from the face of the revised Ordinance whether Article XII could be construed as applying to hazardous materials transportation or storage incidental to transportation. 65 FR 81954. Thus, RSPA stated that its decision to preempt § 27–355(a)(1) was limited to the extent that § 27–355(a)(1) related to transportation in commerce, including storage incidental to commerce. *Id.* The text of § 27–355(a)(1) has not changed; therefore, RSPA reaches the same conclusion in this instance that § 27–355(a)(1) is preempted by Federal hazardous materials transportation law to the extent that it relates to transportation in commerce or storage incidental to transportation in commerce. If this regulation does not pertain to a release that occurs during transportation or storage incidental to transportation as the County claims, then RSPA's decision is irrelevant to the County's application of the regulation.

Concerning the proposed revisions to § 27–439(f)(1), it appears from the County's comments that the modification has not been made and likely will not be made for some time. Thus, RSPA's determination that this section is preempted as it pertains to written incident release reporting is affirmed.

C. Shipping Paper Requirements

The County's only comment is that it does not regulate intermediate rail transporters. IME contends that it is unclear what the County is asking of RSPA. IME points out that RSPA preempted section 27–439(g)(1) as it relates to intermediate rail transporters and that if the County does not regulate intermediate rail transporters RSPA's decision has no bearing on that part of the revised Ordinance.

In its decision, RSPA addressed two sections of the revised Ordinance that dealt with shipping paper retention: § 27–356(b)(4)d.1 in Article XII and § 27–439(g)(1) in Article XVII. 65 FR 81956. RSPA determined that § 27–356(b)(4)d.1 was preempted under the ''substantively the same as'' test to the extent that the requirement differed from the HMR and EPA's requirements for hazardous waste manifest retention because (1) it requires a five-year retention period for waste manifests, bills of lading or other equivalent manifesting, rather than three years as required under the HMR and by the EPA, and (2) it applies to intermediate rail transporters, which were exempt from this type of record retention under the HMR. *Id.* RSPA determined that § 27–439(g)(1) was only preempted to the extent that it applies to intermediate rail transporters. *Id.*

Section 27–435, which defines the applicability of Article XVII, states that the ''article applies to all persons conducting activities within the geographical boundaries of Broward County, which transport discarded hazardous materials, sludge, or biomedical waste to, from, and within Broward County.'' It is not apparent from a plain reading of this section that it excludes intermediate rail transporters. However, if the County does not regulate intermediate rail transporters, as it asserts, then RSPA's determination that §§ 27–356(b)(4)d.1 and 27–439(g)(1) are preempted as applied to intermediate rail transporters is moot.

As mentioned above, however, RSPA also preempted § 27–356(b)(4)d.1 under the ''substantively the same as'' test because it imposed a longer record retention period for hazardous waste manifests, bills of lading and other equivalent manifesting. *Id.* The section requires that these documents be maintained on site for five years. As RSPA explained in its decision, the Federal requirements for hazardous waste manifests require, among other things, that a copy of the manifest * * * must be ''[r]etained by the shipper (generator) and by the initial and each subsequent carrier for three years from the date the waste was accepted by the initial carrier.'' 49 CFR § 172.205(e)(5). *Id.* EPA also requires a three-year waste manifest retention period for hazardous waste generators and transporters. *Id. See also* 40 CFR 262.40 and 263.22. Neither RSPA nor EPA specifies where a manifest must be kept.

Thus, § 27–356(b)(4)d.1 remains preempted under the ''substantively the same as'' test to the extent that the requirement differs from the HMR (and EPA) requirements for hazardous waste manifest retention.

D. Fee Requirements

The County states that it has begun revising its transporter license fee structure, which will be based upon use of service. The County explains that all license fees that are colleted are deposited into the General Fund of Broward County. It states that these funds are then budgeted for use related to transporting hazardous materials, including enforcement, planning, and maintaining a capability for emergency response. The County further explains that the County's DPEP maintains a trained staff in its Emergency Response section, each with on-call capabilities. The County estimates that it will take approximately six months to implement the new fee structure because of its notice and public hearing requirements.

RSPA preempted the County's existing fee structure contained in § 27–439(a) because it failed the fairness and ''used for'' tests, as well as the ''obstacle'' test. 65 FR 81958–59. RSPA determined that the County's fee for obtaining a waste transport license was the same for every transporter that transported discarded hazardous materials, sludge or biomedical waste ''to, from and within'' the County. 65 FR 81959. RSPA determined that the County's fee structure was not fair under the standards set forth in 49 U.S.C. 5125(g)(1) because it was not based on some fair approximation of use of facilities and because it discriminated against interstate commerce. *Id.* RSPA determined that the County's fee structure failed the ''used for'' test under 49 U.S.C. 5125(g)(1) because the County did not provide any evidence of how it used the waste transporter fee. *Id.* Finally, RSPA determined that because the County's fee failed the fairness and ''used for'' tests in 49 U.S.C. 5125(g)(1), it created an obstacle to carrying out the Federal hazardous materials transportation law and, thus, failed the ''obstacle'' test in 49 U.S.C. 5125(a)(2). *Id.*

As mentioned above, the County indicates that it has begun modifying its waste transporter fee structure and that the funds are budgeted for items that appear to meet the requirements of 49 U.S.C. 5125(g)(1). To date, however, the County has not submitted its revised regulation and may not be able to do so for several months. Therefore, RSPA reaffirms it decision that the County's fee requirement contained in § 27–439(a) is preempted under 49 U.S.C. 5125(g)(1) for the reasons stated above. Once the County has competed its revision to that section of the

Ordinance, it can apply to RSPA for a determination of whether Federal hazardous materials transportation law preempts its new requirement.

E. Reporting Requirements

The County states that it will revise its reporting requirements by deleting § 27–439(g)(2) in the upcoming version of Chapter 27. In its decision, RSPA preempted this section under the ''obstacle'' test because it required information in excess of the Federal reporting requirements. 65 FR 81959–60. If the County does remove this section in an upcoming revision of the County Code, then RSPA's preemption determination as to this particular section will become moot. Until that time, however, the section remains preempted.

III. Ruling

The County's petition for reconsideration and stay of determination is denied. RSPA finds that Federal hazardous materials preemption law preempts:

- Portions of revised §§ 27–352 and 27–436 containing the definitions of biomedical waste, combustible liquid, discarded hazardous materials, flammable liquid, hazardous material and sludge, to the extent that these definitions relate to transportation in commerce.
- All County hazardous materials transportation requirements that rely on these definitions.
- Portions of §§ 27–355(a)(1) and 27–439(f)(1) containing written incident release reporting requirements, to the extent that these sections pertain to transportation in commerce.
- Section 27–356(b)(4)d.1 containing shipping paper requirements, to the extent that they differ from HMR or EPA requirements for shipping paper and waste manifest retention. (Section 27–439(g)(1) is preempted only if it is applied to intermediate rail transporters.)
- Section 27–439(b) containing the fee requirements for obtaining a waste transporter license.
- Section 27–439(g)(2) containing monthly reporting requirements, to the extent that this requirement relates to transportation in commerce.

The County's request for a six-month stay to modify its existing regulations is also denied. It has been more than six months since the County submitted its request for a stay, but the County has provided no evidence that it has made the contemplated revisions to its Ordinance. Therefore, the specific sections discussed above are preempted.

IV. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on ATA/AWHMT's application for a determination of preemption of specific sections of Broward County, Florida's revised Ordinances. Any party to this proceeding ''may bring a civil action in an appropriate district court of the United States for judicial review of [this] decision * * * not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f). This decision becomes final on the date of **Federal Register** publication. 49 CFR 107.213.

Issued in Washington, DC on May 13, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–12420 Filed 5–16–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–565 (Sub–No. 9X); STB Docket No. AB–55 (Sub–No. 611X)]

New York Central Lines, LLC-Discontinuance of Service Exemption-in Allen County, OH; CSX Transportation, Inc.—Discontinuance of Service Exemption-in Allen County, OH

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for NYC and CSXT to discontinue service over approximately 0.9 miles of railroad from milepost QFL 51.0 to milepost QFL 51.9 in Lima, Allen County, OH.[1] The line traverses United States Postal Service Zip Code 45804.

NYC and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C.91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on June 18, 2002,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] must be filed by May 28, 2002. Petitions to reopen must be filed by June 6, 2002, with: Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.[5]

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

[1] Pursuant to Board authorization in 1998, CSX Corporation, CSXT's parent company, and Norfolk Southern Corporation jointly acquired control of Conrail Inc., and its wholly owned subsidiary, Consolidated Rail Corporation (Conrail). As a result of that acquisition, certain assets of Conrail have been assigned to NYC, a wholly owned subsidiary of Conrail, to be exclusively operated by CSXT pursuant to an operating agreement. The line for discontinuance is included among the property being operated by CSXT pursuant to the NYC operating agreement.

[2] Pursuant to 49 CFR 1150.50(d)(2), the railroad must filed a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. In its verified notice, applicant did not indicate a consummation date as required. A Board staff member consulted with applicant's representative and applicant's representative has subsequently confirmed that consummation cannot occur before June 18, 2002, 50 days after the April 29, 2002 filing of the verified notice.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which as of April 8, 2002, is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[5] Because these are discontinuance proceedings and abandonment is not proposed, trail use/rail banking and public use conditions are not appropriate.