administrative record for Coast Guard agency use only, as described in the NOI.

The Coast Guard published a Notice of Availability of the Draft Programmatic Environmental Impact Statement on October 26, 2001 (66 FR 54324). Comments were originally due on December 10, 2001. However, due to delivery problems resulting from anthrax concerns, comments were received in January that had been mailed prior to the original deadline. These comments were accepted and included in the Final PEIS. A total of 28 letters were received from various agencies and the public. All comments are discussed, along with any changes made in response to the comments, in Appendix M of the Final PEIS. No requests for public hearings were received.

After the 30-day comment period described in the *Request for Comments* section of this notice, a Record of Decision (ROD) detailing the Coast Guard's decision of the selected alternative will be prepared and published in the **Federal Register**. The entire ROD will be made available for public review at that time.

Dated: March 13, 2002.

P.M. Stillman,

Rear Admiral, U.S. Coast Guard, Program Executive Officer, Integrated Deepwater System.

[FR Doc. 02–7569 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–01–10293 (PD–28(R))]

Town of Smithtown, New York Ordinance on Transportation of Liquefied Petroleum Gas

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

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Local Laws Affected: Smithtown Town Code Sections 164–108 and 164–109.

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.

SUMMARY: Federal hazardous material transportation law preempts:

(1) The requirement in Section 164–108 of the Smithtown Town Code for a permit to deliver liquefied petroleum gas (LPG) within the Town of Smithtown with respect to trucks that are based outside of Smithtown because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside Smithtown.

(2) the requirement in Section 164–109 of the Smithtown Town Code for a certificate of fitness insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 164–109 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR.

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

The Town of Smithtown, New York (the Town) has asked RSPA to determine whether Federal hazardous material transportation law preempts requirements in Sections 164–108 and 164–109 of the Town Code for permits and ''certificates of fitness'' for the delivery of LPG within the Town. According to the Town's application these requirements were adopted in 1983, and they are similar to provisions of Nassau County Ordinance No. 344–1979 that RSPA considered in Preemption Determination (PD) No. 13(R), Nassau County, New York Ordinance on Transportation of Liquefied Petroleum Gases, 63 FR 45283 (Aug. 25, 1998), decision on petition for reconsideration, 65 FR 60238 (Oct. 10, 2000), complaint for judicial review dismissed, *Office of the Fire Marshal of the County of Nassau* v. *U.S. Dep't of Transportation,* Civil Action No. 00–7200 (E.D.N.Y. Mar. 18, 2002). The Town is located on Long Island in Suffolk County, which is adjacent to Nassau County.

In PD–13(R), RSPA found that, as enforced and applied to vehicles based outside Nassau County, that County's permit requirement is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside the County. 65 FR at 60245. RSPA also found that Nassau County's certificate of fitness requirement is preempted insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG because it imposes more stringent training requirements than provided in the HMR. 63 FR at 45288.

In a notice published in the **Federal Register** on August 9, 2001, RSPA invited interested persons to submit comments on the Town's similar permit and certificate of fitness requirements. 66 FR 41931. In response to that notice, RSPA received written comments from National Tank Truck Carriers, Inc. (NTTC) and the National Propane Gas Association (NPGA). The Town submitted a response to NTTC's comments.

RSPA believes that it received all comments on the Town's application despite the disruption of mail delivery to DOT between mid-October and the end of November 2001. On October 25, 2001, DOT posted on its Docket Management System Web site *(http://dms.dot.gov)* a notice that comments could also be submitted in person, electronically, and by alternate delivery services, and that DOT would consider late-filed comments to the extent possible. *See also* DOT's Notice that ''we will do everything possible to ensure that we consider comments that we otherwise would have received before the close of the comment period,'' and advising interested persons ''to check our Dockets Web page * * * to see if we received and processed your document(s).'' 67 FR 1391, 1392 (Jan. 10, 2002). RSPA's procedural regulations specifically provide that ''Late-filed comments are considered so far as practicable'' in a preemption determination proceeding. 49 CFR 107.205(c)

II. Federal Preemption

RSPA explained in its August 9, 2001 notice that 49 U.S.C. 5125 contains express preemption provisions that are relevant to this proceeding. 66 FR at 41933–34. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under Section 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

prescribed under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to 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).

Subsection (g)(1) of 49 U.S.C. 5125 provides:

A State, political subdivision of a State, 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.

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.

Public Law 101–615 section 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. Public Law 103–272, 108 Stat. 745.)

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the 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, or whether a fee is ''fair'' within the meaning of 49 U.S.C. 5125(g)(1). 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 10, 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.

III. Discussion

A. Inspection and Permit Requirement

According to the Town, the relevant provisions of Section 164–108 are as follows:

A. No person, firm or corporation shall use or cause to be used any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer for the transportation of liquefied petroleum gas unless, after complying with these regulations, a permit to operate any such vehicle has first been secured from the Fire Prevention Division. No permit shall be required under this section for any motor vehicle that is used for the transportation of LPG not operated or registered by an authorized dealer, in containers not larger than 10 gallons' water capacity each (approximately 34 pounds' propane capacity) with an aggregate water capacity of 25 gallons (approximately 87 pounds) or when used in permanently mounted containers on the vehicle as motor fuel. This section shall not apply to any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer traveling through the town and making no deliveries within the town.

B. Permits shall be issued to a vehicle for the transportation of LPG only after a full safety inspection of the vehicle by the Fire Prevention Division and the Fire Marshal approves of the issuance of the permit.

With its application, the Town submitted an affidavit of its Chief Fire Marshal stating that the inspection and permit requirement in Section 164–108 applies to both bulk carriers and rack trucks that are used to deliver LPG within the Town, but that a permit is not required for ''vehicles that are only passing through the Town of Smithtown and not making any deliveries within the Town.'' It appears that a truck would have to be inspected in both the Town and Nassau County (and hold a permit from each) in order to make propane deliveries in both jurisdictions.

The Town Code provides that a permit is valid for one year (Section 164–108.C.), but it does not refer to fees. According to the Chief Fire Marshal, the permit fee is $150 for a new permit, and $75 for a renewal, and these fees ''are used to offset the work performed by the Fire Prevention Division,'' such as ''responding to hazardous material incidents, including, but not limited to, gas leaks and spills.''

The Town acknowledged that ''Section 164–108 is essentially identical'' to the inspection and permit requirement of Nassau County that RSPA has found to be preempted with respect to trucks based outside the jurisdiction performing the inspections and issuing the permit. Nonetheless, the Town asserted in its application that its inspection and permit requirement ''is distinguishable from the Nassau County Ordinance'' because its inspections do not last ''several hours''; they ''are scheduled in advance and scheduling is flexible.'' In his affidavit, the Chief Fire Marshal also stated:

Appointments are available on a monthly basis (with the exception of winter months at the request of the LPG companies) and are made one month prior to the expiration of the permit. Adjustments in scheduling are made for inspections that would be due to expire during a winter month. In order to eliminate the delay in having to wait for the inspection to take place, no more than four trucks are scheduled to be inspected within a 30 minute time frame.

In its responding comments, the Town again argued that RSPA based its finding in PD–13(R) that Nassau County's inspection and permit requirement is preempted with respect to trucks based outside the County ''on evidence that transportation of propane was interrupted for several hours or longer while Nassau County conducted inspections and issued permits.'' The Town stated that, ''[u]nlike the Nassau County inspections, the Town of Smithtown conducts its inspections within a thirty-minute time frame,'' and it referred to the Chief Fire Marshal's affidavit indicating that the inspection of a bulk carrier takes ''from 15 to 20 minutes'' and only ''10 to 15 minutes'' for a rack truck.

NTTC stated that RSPA's decision in PD–13(R) provides the ''ground rules'' regarding a local requirement for an inspection of ''hazmat-laden vehicles.'' It quoted the following language:

A city or county may apply an annual inspection requirement to trucks based outside its jurisdictional boundaries only if the city or county can actually conduct the equivalent of a ''spot'' inspection upon the truck's arrival within the local jurisdiction. The city or county may not require a permit or inspection for trucks that are not based within the local jurisdiction if the truck must interrupt its transportation of propane for several hours or longer in order for an inspection to be conducted and a permit to be issued.

65 FR at 60244.

NPGA agreed that the Smithtown permit requirement ''is substantively identical'' to the same requirement of Nassau County that RSPA found to be preempted in PD–13(R) with respect to trucks based outside the County. NPGA urged RSPA to extend its decision in PD–13(R) to ''companies based outside of the County and those based within the County'' because NPGA ''believes that, under most conditions, permit requirements such as the one [in Nassau County] create obstacles to the safe and efficient transportation of propane for delivery companies based within the jurisdiction.''

NPGA disagreed with RSPA's conclusion in PD–13(R) that it should be possible to schedule an inspection of a truck based within the inspecting jurisdiction ''at a time that does not disrupt or unnecessarily delay deliveries.'' 65 FR at 60243. It stated that, ''[d]uring peak propane delivery seasons, it may be impossible for a propane retailer to take a propane vehicle out of service for inspection.'' NPGA contends that ''the same delay of a loaded vehicle with a hazardous material could occur,'' whether the truck is based within or outside of the inspecting jurisdiction. It stated that, if the ''tens of thousands of state, county and local jurisdictions nationwide . . . required inspections in addition to those already required under the HMRs, the delay of hazardous materials transportation would be indisputable.'' NPGA also stated that ''the Nassau County and Smithtown inspection requirements are duplicative'' of the annual and roadside inspections required under 49 CFR part 396 and the inspection, repair and maintenance requirements for cargo tanks in 49 CFR part 180.

RSPA considers that vehicle and container inspections are an integral part of a program to assure the safe transportation of hazardous materials in compliance with the HMR (including those parts of the Federal Motor Carrier Safety Regulations in 49 CFR parts 390–397 incorporated by reference in the HMR, at 49 CFR 177.804). *See*, for example, 49 CFR 396.17 (annual inspection of motor vehicle); 396.11 and 396.13 (daily inspection by driver); 180.407 (periodic inspection of cargo tanks); 173.34(e) (periodic inspection of cylinders).

RSPA has also specifically found that inspections conducted by State or local governments ''to assure compliance with Federal or consistent requirements are themselves consistent'' with Federal hazardous material transportation law and not preempted. IR–20, Triborough Bridge and Tunnel Authority Regulations, etc., 52 FR 24396, 24398 (June 30, 1987), quoted in PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48933, 48940 (Sept. 20, 1993), decision on petition for reconsideration, 60 FR 8800 (Feb. 15, 1995). Accordingly, RSPA ''has encouraged States and local governments to adopt and enforce the requirements in the HMR 'through both periodic and roadside spot inspections.' '' PD–4(R), 58 FR at 48940, and PD–13(R), 63 FR at 45286, quoting from Waiver of Preemption Determination No. 1, New York City Fire Department Regulations, etc., 57 FR 23276, 23295 (June 2, 1992).

To be consistent with Federal hazardous materials transportation law and the HMR, however, a non-Federal inspection of a vehicle or container used to transport a hazardous material must not conflict with the requirement in 49 CFR 177.800(d):

All shipments of hazardous materials must be transported without unnecessary delay, from and including the time of commencement of the loading of the hazardous material until its final unloading at destination.

In PD–4(R), RSPA determined that Federal hazardous material transportation law preempts a California requirement for an annual inspection of cargo tanks and portable tanks used to transport flammable and combustible liquids. In that situation, the evidence showed that these tanks were not being inspected for several days (or longer) after their arrival in the State, and RSPA

found that ''the instances when a vehicle must wait, or a portable tank must be held, for the arrival of State inspectors from another location create unnecessary delays.'' 58 FR 48941. In PD–13(R), RSPA found a similar problem with Nassau County's annual inspection requirement for trucks used to transport LPG, because the evidence showed that the County could not conduct the equivalent of a ''roadside or spot'' inspection on vehicles arriving in Nassau County from outside the County. 65 FR at 60244.

These principles apply to the Town's permit requirement in Section 164–108 of the Town Code. It is clear that any State or local periodic inspection requirement has an inherent potential to cause unnecessary delays in the transportation of hazardous materials when that requirement is applied to vehicles based outside of the inspecting jurisdiction. The comments submitted in PD–4(R) and PD–13(R) establish that the ''call and demand'' nature of common carriage makes it (1) impossible to predict in advance which vehicles may be needed for a pick-up or delivery within a particular jurisdiction and (2) impractical to have all vehicles inspected every year or, alternatively, have a few vehicles inspected in order to be ''dedicated'' to the inspecting jurisdiction. *See* the discussion in PD–4(R), 58 FR at 48938–41, and PD–13(R), 65 FR at 60242–44. More specific evidence of the effect of the Town's inspection requirement is not necessary.

The inherent potential for unnecessary delay, when a periodic inspection requirement applies to a vehicle based outside the inspecting jurisdiction, is not eliminated by a ''flexible'' scheduling policy. The impracticability of scheduling an inspection in advance of knowing whether a particular truck will be needed to make a delivery within the inspecting jurisdiction creates unnecessary delay—not the time that the inspection actually takes to be conducted. As discussed in PD–4(R) and PD–13(R), that unnecessary delay would be eliminated if the Town performed the equivalent of a spot or roadside inspection, upon the unannounced arrival of a truck carrying LPG.

Whether or not the inspection performed by the Town lasts longer than that performed by the Nassau County Fire Marshal does not distinguish the requirements of the two jurisdictions. In PD–13(R), RSPA did not focus on the actual time that Nassau County took to conduct an inspection but referred to its earlier determinations that ''the minimal increase in travel time when an inspection is actually being conducted, or the vehicle is waiting its ''turn'' for an inspector to finish inspecting another vehicle that arrived earlier at the same facility is not unnecessary delay.'' 65 FR at 60243 and 63 FR 45286, quoting from IR–4(R), 58 FR at 48941.

RSPA appreciates NPGA's argument that the Town's inspections may duplicate inspections performed by the carrier itself or by Federal or State inspectors. Nonetheless, RSPA cannot find that, by itself, a non-Federal inspection requirement is preempted by Federal hazardous material transportation law when the inspection is performed without causing unnecessary delay in the transportation of hazardous material or otherwise creating an obstacle to accomplishing and carrying out that law and the HMR. (In PD–13(R), RSPA specifically noted that a separate statutory procedure exists for DOT to review and determine whether a State or local inspection requirement is preempted by 49 U.S.C. 31142. 65 FR at 60243.) Under the principles set forth in RSPA's decisions in PD–4(R) and PD–13(R), the potential for duplication is limited to the jurisdiction in which the vehicle is based. Under these circumstances, there is no basis for NPGA's concern that numerous States, counties, and other local jurisdictions may require periodic inspections of the same vehicle. Moreover, the limitation on the number of non-Federal inspections that may be performed should also make it feasible for the owner of a truck based within the Town to schedule an inspection outside of the ''peak propane delivery seasons.''

For all the reasons set forth above and in RSPA's prior determinations in PD–4(R) and PD–13(R), RSPA finds that Federal hazardous material transportation law does not preempt the Town's annual permit requirement in Section 164–108 of the Town Code with respect to trucks that are based within the Town. On the other hand, RSPA finds that the Town's annual permit requirement creates an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous materials on vehicles based outside of the Town and, accordingly, Federal hazardous materials transportation law preempts Section 164–108 of the Town Code with respect to trucks based outside of the Town.

B. Certificate of Fitness Requirement

The Town stated that the relevant provisions of Section 164–109, concerning certificates of fitness, are the following:

A. Certificate of fitness required. Any person filling containers at locations where LPG is sold and/or transferred from one vessel into another shall hold a valid certificate of fitness issued by the Fire Prevention Division. Such certificate is subject to revocation by the Fire Prevention Division at any time where the certificate holder displays evidence of noncompliance with the provisions of this chapter.

E. The certificate of fitness shall be given full force and effect for a period of three years.

I. Certificate of fitness issued. A certificate of fitness will be required of any person performing the following activities:

(1) Filling containers permanently located at consumer sites from a cargo vehicle.

(2) Selling LPG or transferring LPG from one vessel to another.

In its application, the Town stated that two categories of persons must have a certificate of fitness, those who ''handle (fill and sell) LPG at commercial dispensing stations'' and ''operators of vehicles (bulk and rack type carriers) used for domestic delivery of LPG.'' The Town's Chief Fire Marshal explained that a ''Type One'' certificate is required for ''individuals who fill and sell propane tanks at a fixed site,'' and the persons who ''transfer LPG at a fixed site and/or transport and deliver LPG to locations within the Town of Smithtown'' must hold a ''Type Two'' certificate. The Town Code specifies that a certificate of fitness is valid for three years (Section 164–109.E), upon payment of ''the applicable fees'' (Section 164–109.B), which the Chief Fire Marshal states are $150 for the initial issuance and $75 for renewal.

According to the Chief Fire Marshal, both ''a written examination and investigation'' are required to obtain the initial certificate of fitness. He stated that ''testing covers the makeup, uses, and proper handling of the product as outlined within'' the Town's Fire Prevention Code, the New York State Uniform Fire Prevention and Building Code, and standards of the National Fire Prevention Association. He also stated that the ''written exam is a multiple choice exam that lasts approximately 30 minutes. The investigation is a practical test during which the applicant is observed performing the necessary operations.'' The Chief Fire Marshal explained that the written and practical examinations are not required for a renewal or ''when the applicant can produce a valid certificate of fitness from another jurisdiction.''

The Town stated that its certificate of fitness requirement is ''consistent with 49 CFR 172.701 which proscribes only 'minimum training requirements for the transportation of hazardous materials.' '' It stated that its written examination

and investigation are ''in no way duplicative of the training requirements'' in the HMR and address different matters than covered in the HMR: because ''the Town Code deals primarily with the handling of LPG, *i.e.* transporting cylinders and delivering cylinders * * * no conflict exists between the federal code of regulations and the Town Code.''

The Town acknowledged that ''a transporter who delivers LPG must obtain a Type II Certificate of Fitness,'' but stated that ''transporters can anticipate the need to schedule the certification process in advance,'' so there should not be any delay in transportation. It cited the decision in *New Hampshire Motor Transport Ass'n* versus *Flynn*, 751 F.2d 43 (1st Cir. 1984), as upholding a State requirement for hazardous materials and waste transporters to obtain an annual $25 permit or $15 single-trip permit from offices that were not open at night or on weekends.

NPGA stated that RSPA should find that the Town's certificate of fitness requirement is preempted for the same reasons that RSPA found Nassau County's similar requirement to be preempted in PD–13(R). The only difference, as noted by NPGA, is that the Town has two different certificates of fitness, ''one for refillers and one for domestic delivery drivers.'' NPGA also called attention to the decision of a local court that the Town's certificate of fitness requirement is preempted with respect to motor vehicle drivers. *People* versus *Paraco Gas Corp.*, No. SMTO 398–99 (Dist. Ct. Suffolk Co., Mar. 20, 2000).

As discussed in PD–13(R), 63 FR at 45287, the HMR set minimum training requirements for hazmat employees but also contain a specific limitation on additional training that may be required for drivers of motor vehicles transporting hazardous materials. Section 172.701 in the HMR provides that, ''a State may impose more stringent training requirements [on motor vehicle drivers] only if those requirements— (a) Do not conflict with the training requirements in [the HMR]; and (b) Apply only to drivers domiciled in that State.'' As explained in the preamble to RSPA's final rule, this ''language recognizes the traditional regulation by States of their own resident drivers, particularly through drivers' licensing requirements and procedures,'' but it ''does not authorize States to impose [additional training] requirements on non-residents and also does not authorize other governmental agencies to impose requirements.'' 57 FR 20944, 20947 (May 15, 1992), quoted at 63 FR at 45287.

The HMR are consistent with the prohibition against holding a commercial driver's license from more than one State and the requirement that a State must honor a valid commercial driver's license issued by another State that has not been revoked, suspended or canceled. 49 U.S.C. 31311(a)(11), (14), 49 CFR 383.21, 384.214. In this State-administered scheme for licensing drivers of commercial motor vehicles (including those used to deliver propane), there is no room for ''other governmental agencies'' (such as a city or county) to impose additional training requirements, either as part of a licensing procedure or otherwise. Any such additional training requirements are an obstacle to carrying out the Federal hazardous material transportation law and the HMR.

The hazmat employee training requirements in the HMR specifically include testing ''by appropriate means'' in three required areas: general-awareness/familiarization training, function-specific training, and safety training. 49 CFR 172.702(d). Records of training must include a written ''[c]ertification that the hazmat employee has been trained and tested, as required by this subpart.'' 49 CFR 172.704(d). Hazmat training and testing must be conducted ''at least once every three years'' and whenever there is ''a change in job function.'' 49 CFR 172.704(c).

RSPA found that Nassau County's written and practical tests on the use, makeup, and handling of LPG clearly fall within the definition of ''training'' in 49 CFR 172.700(b):

> A systematic program that ensures a hazmat employee has familiarity with the general provisions of this subchapter, is able to recognize and identify hazardous materials, has knowledge of specific requirements of this subchapter applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures, and accident prevention methods and procedures.

See 63 FR at 45287. *Accord*, PD–7(R), Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, 59 FR 28913, 28919 (June 3, 1994), where RSPA found that Federal hazardous material transportation law preempts Maryland's additional certification requirements for operators of vehicles transporting oil and hazardous wastes, when applied to drivers not domiciled within the State.

When applied to motor vehicle drivers, the Town's certificate fitness requirement conflicts with the limitation against additional training requirements in 49 CFR 172.701 and is an obstacle to accomplishing and carrying out the HMR's training requirements. For that reason, Federal hazardous material transportation law preempts the Town's certificate of fitness requirement in Section 164–109 of the Town Code.

IV. Ruling

Federal hazardous material transportation law preempts:

(1) the requirement in Section 164–108 of the Smithtown Town Code for a permit to deliver liquefied petroleum gas (LPG) within the Town of Smithtown with respect to trucks that are based outside of Smithtown because it is not possible to schedule and conduct an inspection of the truck (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside Smithtown.

(2) the requirement in Section 164–109 of the Smithtown Town Code for a certificate of fitness insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG, because Section 164–109 imposes on drivers of motor vehicles used to deliver LPG more stringent training requirements than provided in the HMR.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States . . . not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on March 25, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–7715 Filed 3–28–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–565 (Sub–No. 7X) and STB Docket No. AB–55 (Sub–No. 605X)]

New York Central Lines, LLC—Abandonment Exemption—in Suffolk County, MA; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Suffolk County, MA

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 to abandon and CSXT to discontinue service over approximately 2.17 miles of railroad between milepost QBG 5.7 and milepost QBG 7.87 in Chelsea, in Suffolk County, MA.[1] The line traverses United States Postal Service Zip Codes 02128 and 02129.

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 abandonment or 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 April 30, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 8, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Natalie S. Rosenberg, Counsel, 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.*

NYC and CSXT have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 5, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NYC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NYC's filing of a notice of consummation by March 29, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.sbt.dot.gov.*

Decided: March 18, 2002.

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

Vernon A. Williams,

Secretary.

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[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 to be abandoned is included among the property being operated by CSXT pursuant to the NYC operating agreement.

[2] 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.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25). This fee is scheduled to increase to $1,100, effective April 8, 2002.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on an information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, FinCEN is soliciting comments concerning FinCEN Form 8300, for use by nonfinancial trades and businesses to report transactions in currency of greater than $10,000.

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—Form 8300. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov* with the caption in the body of the text, ''*Attention:* PRA Comments—Form 8300.''

FOR FURTHER INFORMATION CONTACT: Russell Stephenson, Senior Regulatory Program Analyst, FinCEN, (800) 949–2732, or Laurence Levine, Attorney-Advisor, FinCEN, (703) 905–3590. A copy of the form may be obtained through the Internet at *http://www.IRS.gov.*

SUPPLEMENTARY INFORMATION: