Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91 of Part 11.

Issued in Washington, D.C., on November 9, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–7996.
Petitioner: Gortner Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121
Description of Relief Sought/ Disposition:

To permit GPA to conduct local sightseeing flights at Greater Gortner Airport, Garrett County, Maryland, for the one-day Greater Gortner Airport Fly-In/Open House in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/13/2000, Exemption No. 7369*

Docket No.: FAA–2000–8085.
Petitioner: Carolinas Historic Aviation Commission.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, 135.353 and appendixes I and J to part 121
Description of Relief Sought/ Disposition:

To permit CHAC to conduct local sightseeing flights at Charlotte/Douglas International Airport, Charlotte, North Carolina, for a two-day charitable event in October 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/13/2000, Exemption No. 7368*

[FR Doc. 00–29322 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Illinois Central Railroad

[Docket Number FRA–2000–8089]

Canadian National Illinois Central Railroad (CN/IC) seeks a permanent waiver of compliance from certain provisions of the Railroad Safety Appliance Standards, 49 CFR Part 231, and the Railroad Power Brakes and Drawbars regulations, 49 CFR Part 232, concerning RoadRailer®'' train operations over their system. Specifically, CN/IC requests relief from those sections of 49 CFR Part 231 which stipulates the number, location and dimensions for handholds, ladders, sill steps, uncoupling levers and handbrakes. CN/IC also seeks relief from 49 CFR Part 232.2 which sets the standard height for drawbars.

CN/IC states that this waiver is necessary to permit them to begin operation of RoadRailer equipment between Chicago, Illinois, and Port Huron, Michigan. CN/IC requests that this petition, if approved, be modeled on conditions contained in waiver FRA–1999–5895 which was granted to the Burlington Northern Santa Fe Railway in May 2000.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2000–8089) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, D.C. on November 9, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–29317 Filed 11–15–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–8026 (PDA–26(R))]

Application by Boston & Maine Corporation for a Preemption Determination as to Massachusetts' Definitions of Hazardous Materials

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

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by Boston & Maine Corporation for an administrative determination whether Federal hazardous materials transportation law preempts the Commonwealth of Massachusetts' definitions of ''hazardous materials'' as applied to hazardous materials transportation.

DATES: Comments received on or before January 2, 2001, and rebuttal comments received on or before February 14, 2001, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

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

Comments must refer to Docket No. RSPA–00–8026 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) Robert B. Culliford, Esq., Corporate Counsel, Boston & Maine Corporation, Iron Horse Park, North Billerica, MA 01862, and (2) Ginny Sinkel, Esq., Assistant Attorney General, Commonwealth of Massachusetts, Office of the Attorney General, One Ashburton Place, Boston, Massachusetts 02108–1698. 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 Mr. Culliford and Ms. Sinkel at the addresses specified in the **Federal Register**.'')

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

FOR FURTHER INFORMATION CONTACT: Karin V. Christian, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), Room 8407, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination:

The Boston & Maine Corporation (Boston & Maine) has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the Massachusetts General Laws chapter 21K, section 1 and chapter 21E, section 2 definitions of hazardous materials. Boston & Maine asserts that the Massachusetts definition of hazardous materials is not ''substantively the same'' as the definitions of hazardous materials in the hazardous materials regulations (49 CFR Parts 171–180) issued under the Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*

In addition, Boston & Maine requests a determination that the regulation of hazardous materials in transportation in commerce based on a definition of hazardous materials that is not substantively the same as the designation by the Secretary of Transportation is an obstacle to accomplishing and carrying out the Federal hazardous materials transportation law.

In an August 25, 2000 letter to RSPA's Office of the Chief Counsel, the Massachusetts Office of the Attorney General responded to Boston & Maine's application on behalf of the Massachusetts Department of Fire Services. The Office of the Attorney General informed RSPA that Boston & Maine had filed a complaint against the Massachusetts Department of Fire Services in the Massachusetts Superior Court raising the same issue as in its preemption determination application, *i.e.,* whether Massachusetts General Law chapters 21K and 21E are preempted by Federal law. Massachusetts requested that RSPA not act on Boston & Maine's application until the state judicial proceedings are resolved.

RSPA reviewed Massachusetts' request and Boston & Maine's response. On September 13, 2000, RSPA sent a letter to both parties stating that RSPA has decided to proceed with docketing and taking action on the application for preemption.

Boston & Maine Application

The text of Boston & Maine's application and a list of the attachments to the application are set forth in Appendix A to this notice. A paper copy of the attachments to Boston & Maine's application (which have been placed in the public docket) will be provided at no cost upon request to Ms. Christian, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** above.

In its application, Boston & Maine challenges the following:

(1) Massachusetts General Laws chapter 21K, § 1 that defines hazardous material as follows:

> ''Hazardous material'', material including, but not limited to, material, in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with a substance, constitutes a present or potential threat to human health, safety or welfare or to the environment when improperly stored, treated, transported, disposed of, used or otherwise managed. Hazardous materials shall include, but not be limited to, oil and all substances which are included under 42 USC 9601(14).

(2) Massachusetts General Laws chapter 21E, § 2 that defines hazardous material as follows:

> ''Hazardous material'', material including but not limited to, any material, in whatever form, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall also include all those substances which are included under 42 USC 9601(14), but it is not limited to those substances.

In its application, Boston & Maine asserts that the Massachusetts regulations greatly expand the Federal designation of hazardous materials to include substances that have not been designated as ''hazardous'' materials by the Secretary of Transportation. Boston & Maine states that Massachusetts' definitions do not conform in every significant respect to the Federal definition because the State law definitions would include materials not determined by the Secretary to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce.

Boston & Maine also asserts that Massachusetts' definitions of hazardous materials create an obstacle to the efficient and uniform application of the Federal hazardous materials transportation law. Boston & Maine states that when State regulations designate materials as ''hazardous'' that are not included as hazardous materials by the Secretary of Transportation, the discrepancy subjects interstate carriers to undue burdens and creates obstacles to uniform regulation of transportation of hazardous materials in interstate commerce. Boston & Maine argues that an overly broad State designation of ''hazardous'' materials potentially subjects common carriers to a multitude of different regulations because each State could have different standards requiring additional packaging requirements, labeling, storage, and documentation for substances based upon the designation of ''hazardous'' material adopted by each individual State.

With its August 25, 2000 letter to RSPA, Massachusetts attached a copy of Boston & Maine's January 20, 2000 First Amended Complaint (the Complaint) filed in Massachusetts Superior Court. In the Complaint, Boston & Maine described the action as one to correct errors of law in an administrative proceeding by the Department of Fire Services.

In the Complaint's factual background, Boston & Maine described a June 27, 1999 freight train derailment on Boston & Maine property. Boston & Maine stated that as a result of the

derailment, approximately five cars leaked materials, including latex, terephthalic acid, polyethylene, polypropene, and ''distillers'' grain onto the ground and into the river adjacent to the railroad tracks. Boston & Maine stated that immediately after the derailment, it implemented an emergency response plan, including notification of a private contractor and licensed site professional to contain the release of materials from the five leaking rail cars. Boston & Maine stated that the private contractor was licensed to respond to all releases of material, whether the materials were considered ''hazardous'' or not.

The Complaint stated that shortly after the derailment, the Fire Department of the town of Charlemont, Massachusetts, responded to the scene and contacted the regional Massachusetts Hazardous Materials Response Team (Response Team) under the belief that hazardous materials were being released or threatened to be released.

Boston & Maine stated that the Response Team arrived at the scene and prevented Boston & Maine from properly containing the materials being released from the rail cars. Boston & Maine stated that the Response Team insisted that Boston & Maine produce documentation proving that the materials being released were not ''hazardous materials.'' Boston & Maine stated that the demand for information regarding the leaking materials was made despite the fact that none of the leaking cars were placarded or were required to be accompanied by ''shipping papers'' because none of the materials were considered ''hazardous.'' Boston & Maine stated that when it produced additional documentation to prove that no release or threat of release of ''hazardous materials'' existed, the Response Team released control of the scene to Boston & Maine.

The Complaint stated that Boston & Maine received an invoice from Massachusetts seeking to recover the costs incurred by the Response Team on June 27, 1999. On September 7, 1999, Boston & Maine filed a Petition for Review of the Statement of Costs. On November 19, 1999, Massachusetts denied Boston & Maine's Petition for Review.

In the Complaint, Boston & Maine asserts that the Massachusetts Department of Fire Services had no legal authority to respond to the June 27, 1999 derailment because the State law designations of ''hazardous'' materials are preempted by Federal law and therefore has no legal authority to recover its costs for the response to the derailment on June 27, 1999 pursuant to Massachusetts General Laws Chapter 21K, Section 5(b). Boston & Maine states there was no release or threat of release of a federally designated, described, or classified ''hazardous material'' pursuant to the regulations promulgated by the Secretary of Transportation. Boston & Maine argued that the fact that the train crew did have immediate possession of the proper ''shipping papers'' and placards for other materials in the train, but no ''shipping papers'' or placards for the materials in the cars that were leaking, was proof that the leaking materials did not meet the Federal definition of ''hazardous materials.''

The following materials have been placed in the public docket of this proceeding:

Boston & Maine's August 16, 2000 application for preemption determination and attachments.

Massachusetts August 25, 2000 letter with attachment, requesting that RSPA decline to take action on Boston & Maine's application until state judicial proceedings are resolved. The First Amended Complaint filed by Boston & Maine in Massachusetts' Superior Court is attached to this letter.

Boston & Maine's September 5, 2000 response to Massachusetts' request that RSPA decline to take action on its application.

RSPA's September 13, 2000 letter informing both parties that the Associate Administrator had decided to proceed to take action on Boston & Maine's application.

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

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are possibly relevant to Boston & Maine's application. 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 issued under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to 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). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz,* 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.,* 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not ''substantively the same as'' a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be ''substantively the same,'' the non-Federal requirement must ''conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.'' 49 CFR 107.202(d).

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 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.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to FMCSA and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2) (as added October 9, 1999, 64 FR 56720, 56721 [Oct. 19, 1999], and revised January 1, 2000, 65 FR 220, 221 [Jan. 4, 2000]).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 C.F.R. 107.209(d), 397.211(d). A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon,* above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255 (August 4, 1999)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Public Comments

All comments should be limited to the issue of whether 49 U.S.C. 5125 preempts the Commonwealth of Massachusetts' definitions of hazardous materials challenged by Boston & Maine. Comments should specifically address the preemption criteria detailed in Part II, above, and should include the following:

(1) whether the term ''hazardous material'' in Massachusetts General Laws chapter 21K includes materials that are not defined as ''hazardous materials'' in the HMR, 49 CFR 171.8 (examples?);

(2) whether the term ''hazardous material'' in Massachusetts General Laws chapter 21K excludes materials that are defined as ''hazardous materials'' in the HMR, 49 CFR 171.8 (examples?);

(3) whether the term ''hazardous material'' in Massachusetts General Laws chapter 21E includes materials that are not defined as ''hazardous materials'' under the HMR, 49 CFR 171.8 (examples?);

(4) whether the term ''hazardous material'' in Massachusetts General Laws chapter 21E excludes materials that are defined as ''hazardous materials'' in the HMR, 49 CFR 171.8 (examples?); and

(5) whether and how the two cited Massachusetts definitions of ''hazardous material'' are applied and enforced by Massachusetts with respect to transportation.

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, and 397.201–397.211.

Issued in Washington, DC on November 13, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Boston & Maine Corporation

August 16, 2000.

Associate Administrator for Hazardous Materials Safety

Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001; Attention: Hazardous Materials Preemption Docket.

Re: APPLICATION FOR PREEMPTION DETERMINATION

Dear Sir/Madam: Please consider the attached Boston and Maine Railroad's Application for a Preemption Determination filed pursuant to 49 C.F.R. 107.203 for final determination by the Research and Special Programs Administration.

Boston and Maine Railroad (hereinafter ''B&M'') disputes the enforcement of ''hazardous'' materials designations by the Commonwealth of Massachusetts under M.G.L. c.21K, and c.21E. B&M contends the Commonwealth is preempted from enforcing the statute by the Hazardous Materials Transportation Act (hereinafter ''HMTA'') laws because the ''hazardous'' materials designation is not substantively the same as HMTA regulations.

The attached petition contains the following:

49 C.F.R. 107.203(b)(2): Text of the State Requirement;
49 C.F.R. 107.203(b)(3): Comparable Federal Hazardous Material Transportation Laws;
49 C.F.R. 107.203(b)(4): Explanation of Why the State Law Should Be Preempted;
49 C.F.R. 107.203(b)(5): Statement of How the State Regulations Affected Boston and Maine Railroad; and
49 C.F.R. 107.205(a): Certification of Notice Compliance.

A copy of this application will be forwarded to each party subject to this ruling. Should you have any questions, please contact me at (978) 663–1029. Thank you for your attention to this matter.

Sincerely,
Robert B. Culliford,
Corporate Counsel.
cc: Ginny Sinkel, Asst. Attorney General,
Thomas Reilly, Attorney General.

49 C.F.R. 107.203(b)(2): Text of State Requirements

(Please see corresponding attached copies.)

1. MGL C. 21K, section 1, definition
2. MGL C. 21E, section 2, definition

49 C.F.R. 107.203(b)(3): Comparable Federal Hazardous Materials Transportation Laws

(Please see corresponding attached copies.)

Hazardous Materials Transportation Act (HMTA)

1. 49 C.F.R. 107.202(b)(2)
2. 49 C.F.R. 107.202(a)(1)
3. 49 C.F.R. 107.202(d)
4. 49 U.S.C. 5103(a)

5. 49 C.F.R. 171.8

6. 49 C.F.R. 172.101, App. A, List of Hazardous Substances and Reportable Quantities.

49 CFR 107.203(b)(4): Explanation of Why RSPA Should Issue Preemption Determination

Pursuant to 49 C.F.R. 107.203, the applicant respectfully submits this application for a determination by the Research and Special Programs Administration (hereinafter ''RSPA'') that Massachusetts General Laws c. 21K, section 1, section 21E, and section 2 [1] (see attached hereto), as these State laws apply to transportation in interstate commerce, are preempted by the Hazardous Materials Transportation Act, 49 U.S.C. 5101, *et. seq.* (hereinafter ''HMTA''). The basis for this request is that these statutes designate ''hazardous'' materials in a manner that is not substantively the same as the designation of ''hazardous'' materials in a manner that is not substantively the same as the designation of ''hazardous'' materials promulgated by the Secretary of Transportation pursuant to his authority under the HMTA.[2] (see attached hereto). In addition, the B&M also requests a determination that the regulation of transportation in interstate commerce by means of a designation of ''hazardous'' materials that is not substantively the same as the designation promulgated by the Secretary is an obstacle to accomplishing and carrying out the Hazardous materials transportation law.

1. A Preemption Determination Should Be Issued in This Instance Because the Plain Language of the HMTA Expressly Preempts Any State Designation, Description and Classification of ''Hazardous'' Material That Is Not Substantively the Same as the Federal Designation Under the HMTA

The Associate Administrator should issue a determination that M.G.L.A. c. 21K, section 1 and 21E, section 2 are preempted because the plain language of the HMTA expressly preempts any State designation of ''hazardous'' material when the non-Federal designation is not substantively the same as the Federal designation, unless the non-Federal designation is authorized by Federal law. 49 C.F.R. 107.202(a)(1).[3] (see attached hereto). In this instance, 49 C.F.R. 107.202(d) defines ''substantively the same'' to mean ''that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted.''

The Massachusetts designations of ''hazardous'' material in M.G.L. c. 21K, section 1 and c.21E, section 2, include, ''material, in whatever form which, . . . constitutes a present or potential threat to human health, safety, or welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. Hazardous materials shall include, *but not be limited to,* all substances which are included under 42 U.S.C. 9601(14).'' Mass. Gen. Laws c. 21K section 1, Mass. Gen. Laws c. 21E, section 2 (emphasis added). The Massachusetts regulations greatly expand the Federal designation of ''hazardous'' materials to include substances that have not been designated as ''hazardous'' materials by the Secretary pursuant to 49 U.S.C. 5103(a) and 49 C.F.R. 171.8. As a result, the State law designation of ''hazardous'' materials does not conform in every significant respect to the Federal designation because these State law designations include materials not determined by the Secretary to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which have been so designated as ''hazardous'' materials by the Secretary. 49 C.F.R. 171.8. Accordingly, the Massachusetts designations are not substantively the same as the Federal designation of ''hazardous'' materials. 49 C.F.R. 107.202(d). Therefore, in light of the fact that the application of these State law designations to transportation in interstate commerce is not authorized by Federal law, it is clear that these State statutes, as they apply to transportation in interstate commerce, are preempted.

2. A Preemption Determination Should Be Issued in This Instance Pursuant to 49 C.F.R. 107.202(b)(2) Because the State Law Designations of ''Hazardous'' Materials as Applied and Enforced Creates an Obstacle to Carrying Out the HMTA

The Associate Administrator should also issue a determination that these State law designations are preempted pursuant to 49 C.F.R 107.202(b)(2) [4] (see attached hereto) because the designations contained therein create obstacles to the efficient and uniform application of the HMTA. The obstacle test as determined by the Supreme Court, examines whether the State law ''stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.'' *Colorado Public Utilities Commission* v. *Harmon*, 951 F.2d 1571, 1580 (10th Cir. 1991) (quoting *Hillsborough County* v. *Automated Medic. Labs*, 471 U.S. 707, 713, 105 S.Ct. 2371, 2375, 85 L.Ed. 2d 714(1985)). The original intent of Congress in enacting the HMTA stressed the importance of uniform safety requirements in interstate transport of hazardous materials and authorized the Department of Transportation to preclude State and local regulations from creating conflicts and variances from Federal regulations. *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d at 1580 (analyzing Congressional intent through H.R. Rep No. 444 (Part 1), 101st Cong., 2d Ses., at 22 (1990), and S.Rep. No. 449, 101st Cong., 2d Sess., at 2 (1990)).

The regulations promulgated by the Secretary designating ''hazardous'' materials include extensive lists of substances and quantities that fall under HMTA regulation. See 49 C.F.R. 107.101, Appendix A (attached hereto). Likewise, Massachusetts has also promulgated statewide regulation of ''hazardous'' materials under the designations found in M.G.L.A. c. section 21K, section 1 and c. 21E, section 2.

The Secretary is authorized to designate certain materials as ''hazardous'' by 49 U.S.C. 5103(a). Pursuant to this authority, the Secretary has determined which materials are capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has promulgated regulations designating those materials as ''hazardous''. 49 C.F.R. 171.8.

Where State regulations designate materials as ''hazardous'' that are not

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[1] MGL c. 21K, section 1, defines ''Hazardous'' Materials as follows: ''Hazardous material'', material including, but not limited to, material, in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with a substance, constitutes a present or potential threat to human health, safety or welfare or to the environment when improperly stored, treated, transported, disposed of, used or otherwise managed. Hazardous materials shall include, but not be limited to, oil and all substances which are included under 42 U.S.C. Sec. 9601(14)

MGL c. 21E, section 2, defines ''Hazardous'' Materials as follows: ''Hazardous material'', material including but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall not include oil. The term shall also include all those substances which are included under 42 U.S.C. Sec. 9601(14), but it is not limited to those substances.

[2] 49 U.S.C. 5103(a) states: Designating material as hazardous—The Secretary of Transportation shall designate material (including an explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas) or a group or a class of material as hazardous when the Secretary decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety of property.

49 C.F.R. 171.8 defines ''Hazardous'' Materials as follows: Hazardous material means a substance or material, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in this section, materials designated as hazardous under the provisions of § 172.101 of this subchapter, and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter.

[3] 49 C.F.R. 107.202(a)(1): Standards for determining preemption:

(a): Except as provided in § 107.221 and unless authorized by Federal law, any requirement of a State, political subdivision thereof or Indian tribe, that concerns one of the following subjects and that is not substantively the same as any provision of the Hazardous materials transportation law, this subchapter or subchapter C that concerns that subject, is preempted:

(1) The designation, description, and classification of hazardous material.

[4] 49 C.F.R. 107.202(b)(2) states the following:

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous materials transportation law or regulations issued thereunder.

included as materials designated ''hazardous'' by the Secretary, this discrepancy subjects interstate carriers to undue burdens and creates myriad obstacles to uniform regulation of transportation of those materials in interstate commerce. Here, the overly broad State designation of ''hazardous'' materials potentially subjects common carriers to a multitude of different regulations because each State could have different standards requiring additional packaging requirements, labeling, storage, and documentation for a host of substances based upon the designation of ''hazardous'' material adopted by each individual State.

Subjecting the railroad and other interstate carriers to different designations in each State disrupts the congressional purpose of promoting uniform regulation of the safe transportation of hazardous materials under HMTA. RSPA should therefore issue a determination preempting the enforcement of M.G.L.A. c. 21K, section 1, and c. section 21E, section 2, as they apply to transportation in interstate commerce, because the designations contained in these statutes are not authorized by Federal law, and create multiple obstacles to the uniform enforcement of HMTA and unduly burdens interstate transportation of hazardous materials.

49 CFR 107.203(b)(5): Statement of How the State Regulations Affect the Applicant

The designation of ''hazardous'' contained State laws such as Mass. Gen. Laws Ann. c. 21K, section 1 and c. 21E, section 2, subjects the applicant to overly broad and disjointed regulation of transportation in interstate commerce by potentially requiring the applicant to adhere to markedly different regulations in each State in which it operates. Accordingly, subjecting the applicant to the different ''hazardous materials'' regulations and requirements of each State in which it operates would unduly burden interstate transport of materials by railroad in interstate commerce.

Respectfully submitted,

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the Survey for the 2001 Electronic Tax Administration Attitudinal Tracking Study

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Survey for the 2001 Electronic Tax Administration Attitudinal Tracking Study.

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the survey should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Survey for the 2001 Electronic Tax Administration Attitudinal Tracking Study.

OMB Number: 1545–1587.

Abstract: This is a survey for quantitative research to establish changes to baseline measures of public knowledge and acceptance of Electronic Tax Administration (ETA) programs. The data developed in this research will be used as a guide when making decisions on the development of future ETA products and effective marketing techniques. The survey will provide the level of detail needed to focus product development efforts and enhance current products. This information will be used to make quality improvements to products and services.

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

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 1,100.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 275. The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

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BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–112–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–112–88 (TD 8337), Allocation and Apportionment of Deduction for State Income Taxes (Section 1.861–8(e)(6)).

DATES: Written comments should be received on or before January 16, 2001 to be assured of consideration.