recognition for a bond posted in another [jurisdiction]. This means that, in each [jurisdiction] with a bonding requirement in which a transporter picks up or delivers hazardous [materials], it must post a separate bond.'' [45] If the City bonding requirement proves to be a financial bond, we see no reason why this bonding requirement should also be preemptive pursuant to 49 U.S.C. 5125(a)(2).

Driver Attendance Requirements Exceed Federal Requirements and Are an Obstacle to the HMTA

Article 79.1205(b) provides that ''[t]ank vehicles shall not be left unattended at any time on residential streets, or within 500 feet of a residential area, apartment or hotel complex, educational facility, hospital, or care facility. Tank vehicles shall not be left unattended at any other place that would, in the opinion of the chief, present an extreme life hazard.'' Federal attendance requirements appear at 49 CFR 177.834(i) and 397.5. Neither of these standards is as stringent as the standard in the Code. The FMCSRs provide that ''motor vehicle[s] containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the [DOT] and which impose a more stringent obligation or restraint.[46] Our concerns with this section of the Code is that the ''in the opinion of the chief'' standard is unreasonably subjective, and the 500 foot standard may not be able to be met at a ''hotel complex'' where a driver may seek rest, and because of ''hours of service'' constraints may not be able to search for a hotel with appropriate parking space. These Code standards would be an incentive for drivers to bypass the City, and thus export ''risk'' to other jurisdictions that ''may not be aware or prepared for a sudden, possibly permanent, change in traffic patterns'', rather than park in the City for food, fuel, rest, or comfort.[47] We request review of this standard under 49 U.S.C. 5125(a)(2).

The Fees Imposed by the Code are not ''Fair'' and Subject to Preemption Under the Obstacle Test

Article 4.109 sets forth fees to be paid for permits and inspections. The schedule of fees is confusing as it appears that the same vehicle could be subject to multiple fee requirements. For example, the fee for a hazardous materials permit is $175. However, the fee for a flammable or combustible liquids permit is also listed at $175. The permit for cryogens is $125. The permit for radioactive materials is $175. The permit for compressed gases is $125. These later materials are all subsets of hazardous materials in the federal classification scheme. It appears, but is not clear, that motor carriers must computer multiple fees for each vehicle used in the City depending on the cargo the carrier anticipates will be carried in the vehicle over the duration of the permit. We have asked the City to clarify how permit fees are computed, but have not yet received a response.[48]

However the City's fees are computed—one or multiple fee assessments per vehicle—it is clear that the fees are flat and unapportioned. The U.S. Supreme Court has declared fees which are flat and unapportioned to be unconstitutional under the Commerce Clause because such fees fail the ''internal consistency'' test.[49] The Court reasoned that a state fee levied on an interstate operation violates the Commerce Clause because, if replicated by other jurisdictions, such fees lead to interstate carriers being subject to multiple times the rate of taxation paid by purely local carriers even though each carrier's vehicles operate an identical number of miles and create the same overall risk of hazardous materials incidents.[50] In addition, because they are unapportioned, flat fees cannot be said to be ''fairly related'' to a feepayer's level of presence or activities in the fee-assessing jurisdiction.[51] In a number of subsequent cases, courts have relied on these arguments to strike down, enjoin, or escrow flat truck taxes and fees.[52] The City's per vehicle fee rate is comparable to that assessed by many states. The substantial financial burden of meeting multiple state fee requirements is magnified many times if local entities are permitted to impose fees on carriers in every jurisdiction in which they operate.

We believe flat fees will also run afoul of the HMTA because some motor carriers, otherwise in compliance with the HMRs, will inevitably be unable to meet multiple flat per vehicle fees to the exclusion of such carriers from some sub-set of fee-imposing jurisdictions. While the ''choice'' of which communities to operate in would be a decision of the motor carrier, the bar to hazardous materials transportation that localities cannot do directly in light of the Commerce Clause would be accomplished indirectly.[53] The result would be not only a generally undesirable patchwork of regulations necessary to collect the various fees, but the balkanization of carrier areas of operation would increase transfers of hazardous materials from one company to another at jurisdictional borders. The increased transfers would pose a serious risk to safety, since ''the more frequently hazardous material is handled during transportation, the greater the risk of mishap.'' [54] The HMTA provides that a ''political subdivision * * * may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material.'' [55] We assert that flat fees are inherently ''unfair'' and that the City's fee scheme would fall to the obstacle test pursuant to 49 U.S.C. 5125(a)(2).

Conclusion

The Ordinance imposes requirements on the transportation of hazardous materials which we believe are preempted by federal law.[56] Inasmuch as we have evidence that the City is indeed enforcing the above suspect requirements, we provided the City written notice of our concerns and our intention of file this application if we had not heard back from the City within a specified period of time.[57] In our notice to the City, we offered to withdraw our application if the City acts on its own to repeal the above referenced section of the Code. Despite our offer, however, we request timely consideration of the concerns we have raised.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments within 45 days to: The Honorable Bob Lanier Mayor, City of Houston, 900 Bagby, Houston, TX 77002.

Respectfully submitted,

Charles Dickhut,

Chairman.

Enclosures

ATTACHMENTS

- City Ordinance 95–279
- Applicable Sections Fire Code of the City of Houston, TX.
- Hazardous Materials Permit Application
- Vehicle Inspection Scheduling Letter
- Permit Sticker Example
- Vehicle Inspection Check List
- Appendix VI–A
- U.F.C. Standard No. 79–4

Note: Copies of these Attachments may be examined at RSPA's Dockets Unit and can be provided at no cost upon request to RSPA's Dockets Unit; see the **ADDRESSES** section of this notice.

[FR Doc. 96–6593 Filed 3–19–96; 8:45 am]

BILLING CODE 4910–60–P

[45] 57 FR 58848 (December 11, 1992), on appeal D.C. Cir. 1995.

[46] 49 CFR 397.2.

[47] 46 FR 18921 (1981).

[48] Letter to Bob Lanier, Mayor, City of Houston, TX, from Charles Dickhut, Chairman, AWHMT, dated January 18, 1996.

[49] *American Trucking Assn's* v. *Scheiner, 483 U.S. 266 (1987).*

[50] *Ibid.*, 284–86.

[51] *Ibid.*, 290–291 (citing *Commonwealth Edison Co. v. Montana,* 453 U.S. 609, 629 (1981).

[52] *American Trucking Assn's Inc.* v. *Secretary of Administration,* 613 N.E.2d 95 (Mass. 1993); *American Trucking Assn's Inc.* v. *Secretary of State,* 595 A.2d 1014 (Me. 1991); *Smith* v. *American Trucking Assn's, Inc.,* 781 S.W.2d 3 (Ark. 1989); *American Trucking Assn's, Inc.* v. *Goldstein,* 541 A.2d 955 (Md. 1988).

[53] *Chemical Waste Management, Inc.* v. *Hunt,* 504 U.S. 334, 338 (1992).

[54] *Missouri Pac. R.R. Co.* v. *Railroad Comm'n of Texas,* 671 F. Supp. 466, 480–81 (W.D. Tex. 1987).

[55] 49 U.S.C. 5125(g).

[56] We note that the Code provides limited authority for the Chief to waive Article 80 requirements ''related to health hazardous as classified in Division II [if] preempted by other * * * statutes.'' (Code § 80.101(c).) Inasmuch as this waiver authority is so narrowly defined, we are uncertain whether this authority is sufficient to address the range of preemptive concerns we have raised absent amendatory language.

[57] Letter to Bob Lanier, Mayor, City of Houston, TX, from Charles Dickhut, Chairman, AWHMT, dated January 18, 1996.

Surface Transportation Board [1]

[Finance Docket No. 32788]

North Coast Railroad Authority—Purchase Exemption— Southern Pacific Transportation Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 11343–45 North Coast Railroad Authority's purchase from Southern Pacific Transportation Company of 74.3 miles of rail line, known as the Willits segment, from milepost 142.5, near Outlet, CA, to milepost 68.2, at Healdsburg, CA, in Mendocino and Sonoma Counties, CA, subject to standard labor protective conditions.

DATES: This exemption will be effective on March 27, 1996. Petitions to reopen must be filed by April 9, 1996.

ADDRESSES: Send pleadings, referring to Finance Docket No. 32788 to: (1) Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Christopher J. Neary, 110 South Main Street, Suite C, Willits, CA 95490.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: March 8, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–6671 Filed 3–19–96; 8:45 am]

BILLING CODE 4915–00–P

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 241 (Rev. 2)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: Authority is delegated from the Commissioner of Internal Revenue to the Assistant Commissioner (Employee Plans and Exempt Organizations) to administer, in addition to the Voluntary Compliance Resolution Program described in Rev. Proc. 94–62 (1994–2 C.B. 778) (for which the authority was previously delegated), the Tax Sheltered Annuity Voluntary Correction Program (TVC program) described in Rev. Proc. 95–24 (1995–18 I.R.B. 7). The delegated authority may be redelegated to the Director, Employee Plans Division, with authority to redelegate such authority to the Chief of the TVC program, and the authority to approve correction statements under Rev. Proc. 95–24 may be redelegated by the Director of the Employee Plans Division to Branch Chiefs within the Division.

EFFECTIVE DATE: February 19, 1996.

FOR FURTHER INFORMATION CONTACT: John H. Turner, CP:E:EP:P:2, room 6702, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–6214 (not a toll-free number).

Order No. 241 (Rev.2)

Effective date: February 19, 1996.

Voluntary Compliance Resolution Program and Similar Programs

(1) Pursuant to authority vested in the Commissioner of Internal Revenue by Treasury Order 150–10, there is hereby delegated to the Assistant Commissioner (Employee Plans and Exempt Organizations) the authority to administer the following programs—

(a) The Voluntary Compliance Resolution Program described in Rev. Proc. 94–62 and its successors; and

(b) The Tax Sheltered Annuity Voluntary Correction Program (TVC program) described in Revenue Procedure 95–24 and its successors.

(2) The authority delegated in paragraph (1)(a) may be redelegated to the Director, Employee Plans Division, and may be further redelegated to the Chief, Voluntary Compliance Resolution Staff, Employee Plans Division. The Director of the Employee Plans Division may redelegate to Branch Chiefs within the Division the authority to approve compliance statements under Rev. Proc. 94–62 and its successors.

(3) The authority delegated in paragraph (1)(b) may be redelegated to the Director, Employee Plans Division, and may be further redelegated to the Chief of the TVC program, Employee Plans Division. The Director of the Employee Plans Division may redelegate to Branch Chiefs within the Division the authority to approve correction statements under Rev. Proc. 95–24 and its successors.

(4) To the extent that the authority consistent with this order may require ratification, it is hereby approved and ratified.

(5) Delegation Order No. 241 (Rev. 1), effective May 19, 1995, is superseded.

Dated: February 19, 1996.

James E. Donelson,

Acting Chief Compliance Officer.

[FR Doc. 96–6717 Filed 3–19–96; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

VA Residency Realignment Review Committee, Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, the VA hereby gives notice of the establishment of the Residency Realignment Review Committee. VA has determined that this action is in the public interest.

The objectives of the Committee are to advise the Under Secretary for Health about the scope and structure of Veterans Health Administration's Residency Program, and about changes necessary to ensure that the program is effective in a future health care setting. The Committee will review various options for restructuring residency programs presently existing with VA and will provide the Under Secretary for Health a report with recommendations for restructuring VHA's graduate medical education programs.

The committee members will be selected on the basis of professional expertise in graduate medical education. Committee members will also represent various constituencies served by VA's Residency Program, including other