single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was 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 Congress expanded the preemption provisions in 1990, it specifically found:

(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 § 2, 104 Stat. 3244. (In 1994, Congress revised, codified and enacted the HMTA ''without substantive change,'' at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745 (July 5, 1994).) A United States Court of Appeals has found uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

III. Preemption Determinations

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 PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.53(b).

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the **Federal Register**. Following the receipt and consideration of written comments, PHMSA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final. 49 U.S.C. 5127(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or 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(f)(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), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled ''Federalism.'' 64 FR 43255 (Aug. 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 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 PHMSA has implemented through its regulations.

IV. Public Comments

All comments should be directed to whether 49 U.S.C. 5125 preempts the Elders' common law tort claims against AMTROL, Inc. in their lawsuit in the Circuit Court of the City of St. Louis, Missouri and in the claims filed in the United States Bankruptcy Court for the District of Delaware. Comments should specifically address the preemption criteria discussed in Part II above, including:

(1) The meaning of a State ''requirement'' in 49 U.S.C. 5125 and whether that term must be construed to include State common law tort claims, in light of the Supreme Court's holding in *Riegel* v. *Medtronic,* ____ U.S. ____, 128 S.Ct. 999, 1007 (2008), ''that common-law causes of action for negligence and strict liability do impose 'requirement[s].' ''

(2) Whether common law tort claims relating to the design and marking or labeling of a DOT specification 39 cylinder by the cylinder's manufacturer are ''about'' the designing, manufacturing, or marking of ''a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.''

(3) Whether and how common law tort claims relating to the design and marking or labeling of a DOT specification 39 cylinder by the cylinder's manufacturer affect transportation of the cylinder when filled with a compressed gas.

(4) The manner in which the Elders' decedent was using the DOT specification 39 cylinder which ruptured, including (a) the identity of the owner of this cylinder; (b) the date on which this cylinder was last refilled and who refilled it; and (c) whether this cylinder was permanently located at the site of the rupture or whether the decedent had transported this cylinder to the location where he was ''preparing to use the cylinder to fill a refrigerator with coolant,'' according to the April 1, 2008 memorandum opinion of the Bankruptcy Court.

Issued in Washington, DC, on January 15, 2009.

David E. Kunz,

Chief Counsel.

[FR Doc. E9–1993 Filed 1–29–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35214]

Shawnee Terminal Railroad Co.—Corporate Family Exemption—Alabama Railroad Co., and Alabama & Florida Railway Co., Inc

Shawnee Terminal Railroad Co. (STR), Alabama Railroad Co. (ALAB), and Alabama & Florida Railway Co., Inc. (A&F), have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. The transaction involves the consolidation of ALAB, A&F, and STR, with STR as the surviving corporate entity. Under an agreement and plan of consolidation,

STR will own all of the assets of ALAB and A&F, and STR will be responsible for all debts, liabilities, and obligations of ALAB and A&F.

The transaction is expected to be consummated on or after February 15, 2009 (30 days after the exemption was filed).

STR, ALAB, and A&F are affiliated Class III rail carriers, all of which are controlled by noncarrier holding company, Pioneer Railcorp (Pioneer). STR operates approximately 2.5 miles of rail line in Illinois. ALAB operates approximately 60 miles of rail line in Alabama. A&F operates approximately 43 miles of rail line in Alabama.

The purpose of the transaction is to simplify Pioneer's corporate structure and reduce overhead costs and duplication by eliminating two corporations while retaining the same assets to serve customers. The transaction will also streamline accounting functions within the Pioneer corporate family. Although ALAB and A&F will cease to exist as separate corporate entities, STR will operate the respective rail properties under the trade name the Alabama Railroad, while retaining the ALAB and A&F reporting marks assigned by the Association of American Railroads.

This is a transaction within a corporate family of the type exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or changes in the competitive balance with carriers outside the Pioneer corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of is employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay will be due no later than February 6, 2009 (at least 7 days before the effective date of the exemption).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35214, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on applicants' representatives, Robert A. Wimbish, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037, and Daniel A. LaKemper, 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 22, 2009.

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

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–1843 Filed 1–29–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 646 (Sub–No. 2)]

Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: By a decision served on January 30, 2009, the Board directed the Association of American Railroads (AAR), and permitted other parties, to file supplemental evidence so that the Board has a full record on which to base its methodology to calculate a railroad-specific average state tax rate for use in the Revenue Shortfall Allocation Method (RSAM).

DATES: AAR is directed to file supplemental evidence by February 19, 2009. Any interested person may reply by March 11, 2009. AAR's rebuttal is due March 25, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy J. Strafford, (202) 245–0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board recently found that the failure to include state and federal taxes in RSAM calculations was material error. The Board concluded that the use of the statutory federal tax rate, combined with a railroad-specific weighted average state tax rate, best approximated the marginal taxes that the carrier would pay on the incremental revenue hypothesized by RSAM.

The decision served on January 30, 2009, directed AAR to submit the evidence and calculations necessary to establish carrier-specific average state tax rates for each Class I railroad, including state corporate income tax rates and the number of miles operated by each carrier in each state it operates in for each of the years 2002–2007, by February 19, 2009. Any interested person may reply by March 11, 2009. AAR's rebuttal is due March 25, 2009. Once there is resolution to any disputes over how to calculate the carrier-specific state tax rates, the Board will publish the new RSAM figures.

Additional information is contained in the Board's decision. A copy of the Board's decision is available for inspection or copying at the Board's Public Docket Room, Room 131, 395 E Street, SW., Washington, DC 20423–0001, and is posted on the Board's Web site, *http://www.stb.dot.gov.*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 23, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–2056 Filed 1–29–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0074]

Agency Information Collection (Request for Change of Program or Place of Training) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before March 2, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human