

to the permit holders, it discriminates against interstate commerce. Furthermore, there is no evidence that a more finely graduated fee would pose genuine administrative burdens on the City. PHMSA therefore finds that the FDNY's permit fee is not fair and is preempted.

## 2. The "Used For" Test

Under the HMTA, a State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material, but only if the fee is used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response. 49 U.S.C. 5125(f)(1). Therefore, non-Federal fees that are collected in relation to the transportation of hazardous materials must be used for a related purpose; otherwise they are preempted. PD-22, New Mexico Requirements for the Transportation of Liquefied Petroleum Gas, 67 FR 59386 (Sept. 20, 2002); PD-18 at 81959; PD-21 at 54479.

In prior preemption determinations, PHMSA has acknowledged that a State, political subdivision of a State, or Indian tribe does not have to create and maintain a separate account for fees related to the transportation of hazardous materials. However, "[i]f the [non-Federal entity] prefers not to create and maintain a separate fund for fees paid . . . then it must show that it is actually spending these fees on the purposes permitted by the law. In this area where only the [non-Federal entity] has the information concerning where these funds are spent, more specific accounting is required." PD-21 at 54479.

FDNY acknowledged that the revenue it receives through its permit program is put into a general City fund; which is permissible, provided it can show the funds are used for purposes related to the transportation of hazardous materials. FDNY believes that the revenue is used for permitted purposes because it contributes to the cost of staffing, training, and equipping its HCU. However, FDNY also indicated that the inspection fee largely covers the cost of the inspection and the administrative processing of the permit. Here, apart from general statements about how the revenue is used, FDNY does not provide specific figures. FDNY's failure to provide definitive information on the allocation of permit revenues is not sufficient to refute ATA's direct challenge of the permit fee on the grounds that FDNY has not sufficiently accounted for revenues

generated by its hazardous materials registration program. Therefore, without any evidence from FDNY on how it uses the permit fees that it collects, PHMSA cannot find that the fees are used for purposes related to hazardous materials transportation, and thus, FDNY's permit fee is preempted under the "used for" test.

## III. Ruling

**Inspection and Permit Requirement**—PHMSA finds that FDNY's permit and inspection requirements, FC 2707.4 and 105.6 (transportation of hazardous materials), create an obstacle to accomplishing and carrying out the HMTA's prohibition against unnecessary delays in the transportation of hazardous materials on vehicles based outside of the inspecting jurisdiction. Accordingly, the HMTA preempts FDNY's permit and inspection requirements with respect to vehicles based outside the inspecting jurisdiction. PHMSA, however, finds that the HMTA does not preempt FDNY's permit and inspection requirements with respect to motor vehicles that are based within the inspecting jurisdiction.

**Permit Fee**—PHMSA finds that FDNY has not shown that the fee it imposes with respect to its permit and inspection requirements is "fair" or "used for a purpose related to transporting hazardous material," as required by 49 U.S.C. 5125(f)(1). Accordingly, the HMTA preempts FDNY's permit fee requirement.

## IV. 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**. 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).

This decision will become PHMSA'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. 5127(a).

If a petition for reconsideration is filed within 20 days of publication in the **Federal Register**, the action by

PHMSA's Chief Counsel on the petition for reconsideration will be PHMSA's final action. 49 CFR 107.211(d).

Issued in Washington, DC, on June 29, 2017.

**Vasiliki Tsaganos,**  
*Acting Chief Counsel.*

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## DEPARTMENT OF THE TREASURY

### Promoting Energy Independence and Economic Growth; Request for Information

**AGENCY:** Department of the Treasury.

**ACTION:** Request for information.

**SUMMARY:** Through this request for information, the Department of the Treasury is soliciting input from the public on implementation and compliance with Executive Order 13783, Promoting Energy Independence and Economic Growth.

**DATES:** *Comment due date:* July 14, 2017.

**ADDRESSES:** Interested persons are invited to submit comments in response to this notice according to the instructions below. All submissions must refer to the document title. Treasury encourages the early submission of comments.

**Electronic Submission of Comments.** Interested persons must submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make comments available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Public Inspection of Comments.** In general, all properly submitted comments will be available for inspection and downloading at <http://www.regulations.gov>.

**Additional Instructions.** In general, comments received, including attachments and other supporting materials, are part of the public record and are made available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:**

Heidi Cohen, Office of the General Counsel at 202-622-1142.

**SUPPLEMENTARY INFORMATION:** Executive Order 13783, published on March 28, 2017, states that it is in the national interest to promote clean and safe development of energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Section 2 of the Order requires the head of each executive department and agency to review all of the agency's existing regulations, orders, guidance documents, policies, and any other similar agency actions that potentially burden the development or use of

domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources.

The Department of the Treasury, pursuant to Executive Order 13783, is undertaking a review of its regulatory, subregulatory, and other policy documents that could potentially burden the safe, efficient development of domestic energy resources. To assist in this effort, the Department invites members of the public to submit views or recommendations on those items, including regulations, forms, policies, orders, and related documents, the removal or modification of which could reduce burdens as outlined in the Executive Order. Comments should include specific references to form

numbers, citations, or other identifiers and should include a description of the burden imposed and how it could best be addressed (*e.g.*, through repeal, modification, streamlining efforts, regulatory flexibilities, etc.).

The Department advises that this notice and request for comments is issued for information and policy development purposes. Although the Department encourages responses to this notice, such comments do not bind the Department to take any further actions related to the submission.

Dated: June 27, 2017.

**Brian Callanan,**  
*Acting General Counsel.*

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