FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 9, 2002, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 67 FR 63010. FRA received no comments after issuing the 60-day notice referenced earlier. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Inspection and Maintenance Standards For Steam Locomotives.

OMB Control Number: 2130–0505.

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads.

Abstract: The Locomotive Boiler Inspection Act (LBIA) OF 1911 requires each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. Additionally, the collection of information is used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed, and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Annual Estimated Burden Hours: 314 hours.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Type of Request: Extension of a currently approved collection.

Affected Public: State and local governments, government sponsored authorities and corporations, railroads (including Amtrak), and joint ventures that include at least one railroad.

Abstract: Prior to the enactment of the Transportation Equity Act of the 21st Century (''TEA 21''), Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (the ''Act''), 45 U.S.C. 821 *et seq.*, authorized FRA to provide railroad financial assistance through the purchase of preference shares (45 U.S.C. 825), and the issuance of loan guarantees (45 U.S.C. 831). The FRA regulations implementing the preference share program were eliminated on February 9, 1996, due to the fact that the authorization for the program expired (28 FR 4937). The FRA regulations implementing the loan guarantee provisions of Title V of the Act are contained in 49 CFR part 260. Section 7203 of TEA 21, Public Law 105–178 (June 9, 1998), replaces the existing Title V financing programs. The collection of information is used by FRA staff to determine the financial eligibility of applicants for a loan or loan guarantee regarding eligible projects for the improvement/rehabilitation of rail equipment or facilities, the refinancing of outstanding debt for these purposes, or the development of new intermodal or railroad facilities. The aggregate unpaid principal amounts of obligations can not exceed $3.5 billion at any one time and not less than $1 billion is to be available solely for projects benefitting freight railroads other than Class I carriers.

Annual Estimated Burden Hours: 5,881 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on December 9, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–31340 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–02–13481 (PDA–29(R))]

Massachusetts Regulations on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste

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 the Medical Waste Institute for an administrative determination whether

Federal hazardous materials transportation law preempts requirements of the Commonwealth of Massachusetts concerning regulations on the storage and disposal of infectious or physically dangerous medical or biological waste.

DATES: Comments received on or before January 27, 2003, and rebuttal comments received on or before March 12, 2003, 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–02–13481 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 Web site at *http://dms.dot.gov,* and click on ''Help'' to obtain instructions. You may also sign up on the DOT's DMS ''List Serve'' at this Web site. This service will automatically notify you when certain documents are put into a docket that is of interest to you.

A copy of each comment must also be sent to (1) Alice P. Jacobsohn, Esq., Director, Public Affairs and Industry Research, Medical Waste Institute, 4301 Connecticut Avenue, NW., Suite 300, Washington, DC 20008, and (2) Howard S. Wensley, M.S., C.H.O., Director, Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Public Health, Division of Community Sanitation, 305 South Street, Jamaica Plain, MA 02130–3597. 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 Ms. Jacobsohn and Mr. Wensley 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://rapa-atty.dot.gov.*'' A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

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

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The Medical Waste Institute (the ''Institute'') has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.,* preempts requirements contained in Title 105 of the Code of Massachusetts Regulations (CMR) Section 480.000 *et seq.* applicable to the storage and disposal of ''infectious or physically dangerous medical or biological waste.'' In its application, the Institute challenges packaging, labeling, and manifesting requirements for this waste that it states are not substantially the same as requirements in the HMR. The test of the Institute's application is set forth in Addendum A to this notice.

Packaging. The Institute asserts that Massachusetts' storage requirements in 105 CMR 480.100 provide that storage containers must be ''rodent-proof'' and ''fly-tight'' without defining these standards, which are not contained in the HMR, and which could be shown only by additional, different testing. The Institute also states that, with one exception, Massachusetts' requirements do not distinguish between materials stored purely for on-site treatment and those stored in preparation for transport and disposal off-site: certain wastes must be stored in ''a non-permeable three mil or greater polyethylene bag (or equivalent which is securely sealed to prevent leaks'' but that, under 105 CMR 480.200, wastes must be ''placed in a second three mil bag if they are to be transported off-site for disposal.''

Labeling. The Institute alleges that, unlike the HMR, 105 CMR 480.300 requires (1) a special label to be used on containers of ''sharp wastes,'' and (2) a label with the name, address, and telephone number of the generator on ''every container or bag of waste that has not been rendered infectious and which will be transported off the premises of the waste generator.'' The Institute asserts that these differences may confuse emergency responders and users of packaging, and that interstate shipments may be frustrated if a transporter must stop at the State border and re-label packages.

Manifest. The Institute asserts that Massachusetts requires a specific manifest form which is not required in the HMR. The Institute states that the manifest requirements in 105 CMR 480.500 cover items that fall outside the HMR's definition of hazardous waste, including blood and blood products, pathological waste, cultures and stocks of infectious agents and associated biologicals, sharps, biotechnological by-product effluents, and contaminated animal carcasses, body parts, and bedding. It refers to PD–23(FR), Morrisville, PA Requirements for Transportation of ''Dangerous Waste,'' 66 RR 37260 (July 17, 2001), decision on petition for reconsideration, 67 FR 2948 (Jan. 22, 2002), where RSPA explained that regulated medical waste is not a ''hazardous waste'' regulated by the Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.* In PD–23(RF), RSPA concluded that a local requirement to carry a hazardous waste manifest on a truck transporting medical waste is not ''substantively the same as'' requirements in the HMR ''because the HMR does not require the use of any specific form for shipments of regulated medical wastes (or other hazardous materials that are not hazardous wastes).'' 66 FR at 37265.

The Institute also notes that definitions in 105 CMR 480.010 may not be consistent with revised provisions in the HMR that become effective on February 14, 2003, as issued in the final rule in Docket No. RSPA–98–3971 (HM–226), Hazardous Materials: Revisions to Standards for Infectious Substances, 67 FR 53118 (Aug. 14, 2002), corrections, 67 FR 54967 (Aug. 27, 2003), 67 FR 57635 (Sept. 11, 2002).

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to the Institute's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under 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 the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which 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 wavier 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 law 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 101–614 § 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 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(d). 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 to another Federal law or whether a fee is fair. 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 principals 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 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 whether 49 U.S.C. 5125 preempts the Massachusetts requirements challenged by the Institute. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which these requirements are applied and enforced, including but not limited to:

(1) What are the differences between Massachusetts' packaging requirements and the HMR packaging requirements?

(2) What do the requirements for a ''rodent proof'' and ''fly-tight'' container mean?

(3) Are Massachusetts' packaging, labeling, and manifesting requirements ''substantively the same as'' the requirements in the HMR?

(4) Do Massachusetts' packaging, labeling, and manifesting requirements ''present an obstacle'' to accomplishing and carrying out Federal hazmat law and the HMR?

(5) Are any of Massachusetts' requirements ''authorized by another Federal law''?

Issued in Washington, DC on December 6, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Addendum A

National Solid Wastes Management Association
4301 Connecticut Avenue, NW., Suite 300, Washington, DC 20008, 800–424–2869

Application of the Medical Waste Institute for a Preemption Determination as to

Massachusetts' Regulations on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste

In accordance with Title 49 of the Code of Federal Regulations (CFR), Part 107, Subsection C, the Medical Waste Institute (Institute) is submitting this application for a preemption determination requesting that certain sections of the Massachusetts Code be found in violation of federal transportation law.

Anyone with questions about this application, may contact Alice Jacobsohn at 202–364–3724 (phone), 202–364–3792 (fax), or alicej@envasns.org (e-mail).

Submitted By:

Alice P. Jacobsohn, Esq.
Director, Public Affairs and Industry Research.

August 30, 2002.

Table of Contents

A. List of Massachusetts Requirements for Which the Preemption Determination Applies

Each of the regulations is detailed in full below. The specific text at issue in this application is highlighted by the use of capital letters.

1. Title 105 of the Code of Massachusetts Regulations (CMR) Section 480.010 Definition of *Infectious or Physically Dangerous Medical or Biological Waste* [1]

Waste which because of its characteristics may: cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The following types of waste are identified and defined as infectious or physically dangerous medical or biological waste, and shall be subject to the requirements of 105 CMR 480.000:

(a) *Blood and Blood Products:* Discarded bulk human blood and blood products in free draining liquid state; body fluids contaminated with visible blood; and materials saturated/dripping with blood.

(b) *Pathological Waste:* Human anatomical parts, organs, tissues and body fluids removed and discarded during surgery or autopsy, or other medical procedures and specimens of body fluids and their containers.

(c) *Cultures and Stocks of Infectious Agents and Associated Biologicals:* All discarded cultures and stocks of infectious agents and associated biologicals, biotechnological by-product effluents, cultures of specimens from medical and pathological laboratories, cultures and stocks of infectious agents from research laboratories, wastes from the production of biologicals, and discarded live and attenuated vaccines intended for human use.

(d) *Contaminated Animal Carcasses, Body Parts and Bedding:* The contaminated carcasses and body parts and bedding of all research animals known to be exposed to pathogens.

(e) *Sharps:* Discarded medical articles that may cause puncture or cuts, including but not limited to all used and discarded hypodermic needles and syringes, pasteur pipettes, broken medical glassware, scapel blades, disposable razors, and suture needles.

(f) *Biotechnological By-Product Effluents:* Any discarded preparations made from genetically altered living organisms and their products.

2. 105 CMR 480.020 When Waste is Subject to 105 CMR 480.000

(a) Once material becomes waste, as defined in 105 CMR 480.010, such material shall remain waste and shall be subject to the requirements of 105 CMR 480.000 unless and until it has been both labeled in compliance with 105 CMR 480.300 and disposed of in compliance with 105 CMR 480.200 as applicable.

(b) The requirements of 105 CMR 480.000 shall not apply to waste which is contained in a mixture which, due to the presence of other materials, is subject to regulation as a hazardous or radioactive waste.

3. 105 CMR 480.100 Storage

(a) WASTE GENERATIONS SHALL CONTAIN AND STORE MEDICAL WASTE AT ALL TIMES IN LEAK PROOF, RODENT PROOF, FLY-TIGHT CONTAINERS WHICH ENSURE THAT NO DISCHARGE OR RELEASE OF SUCH WASTE OCCURS AND THAT NO ODOR OR OTHER NUISANCE IS CREATED.

(b) All onsite storage of containers of waste shall be held in an area away from general traffic flow patterns, preferably in a room identified for this purpose. The manner of storage shall restrict access or contact with such waste to authorized persons only. SHARPS SHALL BE SEGREGATED FROM OTHER WASTES AND AGGREGATED IN LEAK PROOF, RIGID, PUNCTURE-RESISTANT, SHATTERPROOF CONTAINERS IMMEDIATELY AFTER USE.

(c) WASTES OTHER THAN FREE DRAINING BLOOD AND BLOOD PRODUCTS, SHARPS AND BIOTECHNOLOGY BY-PRODUCT EFFLUENTS SHALL BE PLACED IN A NON-PERMEABLE THREE MIL OR GREATER POLYETHYLENE BAG (OR EQUIVALENT) WHICH IS SECURELY SEALED TO ELIMINATE LEAKS. FREE DRAINING BLOOD AND BLOOD PRODUCTS AND BIOTECHNOLOGY BY-PRODUCT EFFLUENTS SHALL BE STORED AT ALL TIMES IN LEAK PROOF CONTAINERS THAT ARE SECURELY SEALED.

4. 105 CMR 480.200 *Disposal*

(C) *Blood Saturated Materials, Cultures, and Stocks of Infectious Agents and Associated Biologicals, Dialysis Waste and Laboratory Waste*

(2) Disposed of on-site at an approved incinerator facility, OR PLACED IN A SECOND 3 MIL BAG FOR TRANSPORT TO AN APPROVED INCINERATION FACILITY OFF-SITE.

(E) Pathological waste and contaminated animal carcasses shall be disposed of at an approved incineration facility or by interment, provided however, that liquid pathological waste may also be disposed in accordance with 105 CMR 480.200(A) and discarded teeth and tissue may also be disposed of in accordance with 105 CMR 480.200(C)(1). THESE WASTES SHALL BE PLACED IN A SECOND THREE MIL BAG IF THEY ARE TO BE TRANSPORTED OFF-SITE FOR DISPOSAL.

5. 105 CMR 480.300 *LABELING*

(A) EVERY CONTAINER OR BAG OF WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS SHALL:

(2) IN THE CASE OF SHARP WASTES, BE DISTINCTIVELY LABELED TO INDICATE THAT IT CONTAINS SHARP WASTE CAPABLE OF INFLICTING PUNCTURES OR CUTS.

(B) EVERY CONTAINER OR BAG OF WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS AND WHICH WILL BE TRANSPORTED OFF THE PREMISES OF THE WASTE GENERATOR SHALL IN ADDITION TO THE REQUIREMENTS OF 105 CMR 480.300(A):

BEAR A LABEL WHICH STATES THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE GENERATOR. THE LABEL SHALL BE AFFIXED IN A MANNER WHICH ENSURES THAT IT CANNOT BE EASILY REMOVED.

6. 105 CMR 480.500 *MANIFESTS*

(A) GENERATORS SHALL PREPARE MANIFESTS BEFORE SHIPPING WASTE WHICH HAS NOT BEEN RENDERED NONINFECTIOUS OFF-SITE. THE MANIFEST IS A TRACKING DOCUMENT DESIGNED TO RECORD THE MOVEMENT OF WASTE FROM THE GENERATOR THROUGH ITS TRIP WITH A TRANSPORTER TO AN APPROVED DISPOSAL FACILITY AND FINAL DISPOSAL. THE GENERATOR SHALL APPOINT A DESIGNEE TO PREPARE, SIGN AND MAINTAIN SUCH MANIFESTS.

(B) THE MANIFEST MUST INCLUDE THE FOLLOWING INFORMATION:

(1) DESCRIPTION OF WASTE TO BE SHIPPED;

(2) TOTAL QUANTITY OF WASTE; AND

(3) TYPE OF CONTAINER IN WHICH WASTE IS TRANSPORTED.

(C) A GENERATOR SHALL DESIGNATE ON THE MANIFEST THE ADDRESS OF THE SITE TO WHICH THE WASTE IS TO BE

[1] The Institute believes that Massachusetts regulations found in 105 CMR 480.010 that include definitions for terms used in the Commonwealth's medical waste provisions may now be in violation of the HMR under the revised rules published on August 14, 2002 (67 Fed. Reg. 53117; HM–226). We do not take issue with those terms in this application for preemption because the federal rules are new. However, we hope that the commonwealth will review these provisions soon and make appropriate adjustments.

DELIVERED AND SIGN IT. THE TRANSPORTER OF THE WASTE OR AN AGENT OF THE TRANSPORTER SHALL SIGN THE MANIFEST TO INDICATE THAT THE TRANSPORTER HAS RECEIVED THE WASTE AND WILL COMPLY WITH THE GENERATOR'S TRANSPORTATION INSTRUCTIONS. WHEN THE WASTE ARRIVES AT THE APPROVED OFF-SITE DISPOSAL FACILITY, AND HAS BEEN DISPOSED OF, THE DISPOSAL FACILITY OWNER OR AGENT SHALL SIGN THE MANIFEST AND RETURN THE ORIGINAL TO THE GENERATOR.

(D) IF THE GENERATOR DOES NOT RECEIVE THE MANIFEST FROM THE DISPOSAL FACILITY WITHIN 30 DAYS AFTER SHIPMENT OF WASTE BY THE GENERATOR, THE GENERATOR SHALL REPORT THIS FACT TO THE DEPARTMENT OF PUBLIC HEALTH.

(E) THE GENERATOR SHALL MAINTAIN A COPY OF THE MANIFEST BOTH AS INITIALLY SENT OUT AND AS RETURNED BY THE DISPOSAL FACILITY FOR A PERIOD OF THREE YEARS.

(F) IN THE ABSENCE OF ANY RESTRICTION CONCERNING INDIVIDUALS WHO ARE AUTHORIZED TO TRANSPORT WASTE, INCLUDING BUT NOT LIMITED TO THOSE IMPOSED BY BOARDS OR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, GENERATORS WHO TRANSPORT THEIR OWN WASTE SHALL FOLLOW THE MANIFEST REQUIREMENTS SET FORTH IN 105 CMR 480.500.

B. Each Requirement of the HMR for Which the State Regulations Are Being Compared

Under 49 CFR § 107.202(a), a state regulation that is not substantively the same as any provision of federal hazardous material transportation law concerning the following subjects is preempted:

1. Designation, description, and classification of hazardous material;

2. Packing, repacking, handling, labeling, marking, and placarding of hazardous material; and

3. Preparation, execution, and use of shipping documents pertaining to hazardous material and requirements related to the number, content, and placement of those documents.

In addition, under 49 CFR § 107.202(b), a state regulation is preempted if, as applied or enforced, it is an obstacle to accomplishing and carrying out the federal hazardous material transportation law or regulation.

The Institute asserts that Massachusetts' requirements are in conflict with the federal hazardous material transportation rules found in:

- 49 CFR §§ 172.200 et seq. Shipping papers
- 49 CFR §§ 172.300 et seq. Marking
- 49 CFR §§ 172.400 et seq. Labeling
- 49 CFR § 173.24 General requirements for packagings and packages
- 49 CFR § 173.24a Additional general requirements for non-bulk packagings and packages
- 49 CFR § 173.134 Class 6, Division 6.2—Definitions, exceptions and packing group assignments
- 49 CFR §§ 178.600 et seq. Testing of non-bulk packagings and packages

C. Explanation of Why the State Regulations Should Be Preempted

1. Packaging Requirements

When Congress enacted the Hazardous Materials Transportation Act, it intended to create one system of commerce for the transport of hazardous materials throughout the United States. Congress found that preemption was necessary to avoid the potential for unreasonable hazards created by multiple and conflicting requirements in other jurisdictions. Shippers and carriers should not be confused by the rules regardless of where they are conducting business nor should they be required to stop at every town and state border to repackage, re-label, and prepare new shipping documents. See Pub. L. 101–615 §§ 2(3) and 2(4), 104 Stat. 3244 (Nov. 16, 1990) (preemption provisions found in 49 U.S.C. § 5125(c)).

In 105 CMR 480.100, Massachusetts established several packaging requirements that are not substantively the same as the U.S. Department of Transportation's (DOT) Hazardous Materials Regulations (HMR) found in 49 CFR. As applicable to storage incidental to transportation, the packaging requirements in 105 CMR 480.100(b) include requirements that the HMR do not. For example, the CMR requires that containers be rodent proof and fly-tight. The HMR does not require testing or other proof to ensure that a container is rodent proof and fly-tight. A laboratory or self-tester of the performance tests required by the HMR cannot use those tests to certify that the containers will meet Massachusetts' requirements. Different tests would be required. We can speculate that a container tested to HMR standards for infectious substances may also be rodent and fly proof, but this is not certain and the performance tests in 49 CFR § 178.600 et seq. were not designed for that purpose.

The Massachusetts' storage requirements do not distinguish between materials stored purely for on-site treatment and disposal and those stored in preparation for transport and disposal off-site. In fact, interpretation letters from the commonwealth do not make this distinction (see Appendix A) and provisions in 105 CMR 480.200 that reference to off-site treatment require a ''second * * * bag'' before transport, implying a first packaging found in the storage provisions.

In addition, both 105 CMR 480.100 and 480.200 require the use of three mil or greater polyethylene (or equivalent) bags. The HMR does not require this type of packaging. The requirements in 49 CFR §§ 173.24, 173.24a, 173.196, and 173.197 include significant detail on packaging requirements, none of which refers to three mil or greater polyethylene (or equivalent) bags. Instead, the HMR allows for a variety of packaging materials as long as the user can show that the packaging complies with the performance tests or requirements in the exceptions to the rules.

2. Labeling Requirements

Massachusetts' labeling requirements in 105 CMR 480.300 are not substantially the same as the labeling and marking requirements found in HMR—49 CFR §§ 172.400, 172.301, 172.332, and 172.336. The HMR does not require a special label to be used on sharps containers nor does it require a label to indicate information about the generator. The Institute does not take issue in this application with the intent of Massachusetts regulations. The problem occurs when states or localities require their own and different labeling requirements. This confuses users of packaging and emergency responders. To comply with Massachusetts regulations, transporters would have to stop at state borders and re-label each package or hope that federal and other state enforcement officers would look the other way when they see a Massachusetts label on a package. The conflict is an obstruction to commerce, the very problem Congress aimed to resolve in the Hazardous Materials Transportation Act.

3. Manifesting

The manifesting requirements in 105 CMR 480.500 conflict with the HMR's shipping paper requirements in 49 CFR § 172.200. Manifesting in the HMR is required for hazardous waste not hazardous materials and is part of the HMR because of the relationship between the U.S. Environmental Protection Agency's (EPA) regulations under the Resource Conservation and Recovery Act and transportation requirements under the HMR.

The DOT already concluded in its Notice of administrative determination of preemption—Morrisville, PA Requirements for Transportation of ''Dangerous Waste'' (PD–23) (July 17, 2001; 66 FR 37260, at 37265) [2] that manifesting by state and local governments for other than hazardous waste is in conflict with the HMR. The CMR manifesting requirements apply to blood and blood products; pathological waste; cultures and stocks of infectious agents and associated biologicals; contaminated animal carcasses, body parts, and bedding; sharps; and biotechnological by-product effluents. Setting aside differences in definitions for these terms between the CMR and HMR, none of these items fall within the definition of hazardous waste under the HMR or any other federal agency, i.e., EPA.

D. Explanation of How the Applicant Is Affected by the Commonwealth's Regulations

The Institute, a policy-making group within the National Solid Wastes Management Association, represents companies that transport regulated medical waste and infectious substances, assist shippers in complying with hazardous material packaging requirements, and manufacture and distribute packaging used to transport regulated medical waste and infectious substances. When state transportation requirements are in conflict with federal transportation laws, Institute members are placed in a difficult position. They are subject to enforcement actions where they cannot show compliance. This, in

[2] This determination was appealed on the grounds that the DOT did not have jurisdiction to make a determination; however, the DOT did not change its opinion in the final decision and further discussion on manifesting was not provided. The detailed discussion found in DOT's determination is not repeated in this application.

turn, jeopardizes their relationship with existing and potential customers. In addition, many state permit requirements include a company's compliance record; thus, an untenable position on compliance may prevent a company from conducting business.

E. Conclusion

Congress passed a law to avoid the precise problems created by the CMR. For purposes of intra and interstate transportation, Congress mandated a national system whereby generators, shippers, transporters, emergency responders, enforcement officers, and the public would all follow the same protective rules.

The Commonwealth of Massachusetts has the same opportunity as the Institute and all other living in the United States to file a petition for rulemaking with the DOT to make changes to the HMR. In fact, Massachusetts could have filed comments on the advanced notice of proposed rulemaking and notice of proposed rulemaking that led to the revised infectious substance rule published on August 14, 2002.

The Institute continues to offer its services to states to ensure appropriate rules for the management of medical waste. We make the same offer to Massachusetts in revising the CMR to reflect federal requirements.

Appendix A

The Commonwealth of Massachusetts

February 28, 2000

Paul Hartman,
Stericycle, Inc., 369 Park East Drive, Woonsocket, RI 02895

Dear Mr. Hartman: It has come to my attention that my letter to you relative to acceptable equivalency to the required 3.0 mil red plastic bags did not contain sufficient information. The following equivalency statement should eliminate any questions.

The equivalency to the 3.0 mil is a bag meeting ASTM D 1709–85 and ASTM D 959–80 standards. 1709–85 is the Dart Impact Resistance—165 grams and the 959–80 is the load drop test, requiring a 125 pound load to be dropped from a four foot height, five times without rupturing.

Sincerely,

Howard S. Wensley, M.S., C.H.O.,
Director.

[FR Doc. 02–31339 Filed 12–11–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 558 (Sub-No. 6)]

Railroad Cost of Capital—2002

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 2002 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2002. The decision solicits comments on: (1) The railroads' 2002 current cost of debt capital; (2) the railroads' 2002 current cost of preferred stock equity capital; (3) the railroads' 2002 cost of common stock equity capital; and (4) the 2002 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than January 13, 2003. Statements of the railroads are due by March 28, 2003. Statements of other interested persons are due by April 21, 2003. Rebuttal statements by the railroads are due by May 12, 2003.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 9.0, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339.)

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *www.stb.dot.gov*. In addition, copies of the decision may be purchased from Da-2-Da Legal Copy Service by calling 202–293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 6, 2002.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 02–31337 Filed 12–11–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Electronic Transfer Account (ETA) Financial Agency Agreement

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning form FMS 111, ''Electronic Transfer Account (ETA) Financial Agency Agreement.''

DATES: Written comments should be received on or before February 10, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Birdie M. McKay, Director, Program Compliance Division, 401 14th Street, SW., Washington, DC 20227, (202) 874–6630.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Electronic Transfer Account (ETA) Financial Agency Agreement.

OMB Number: 1510–0073.

Form Number: FMS 111.

Abstract: Any financial institution that offers the ETA must do so subject to the terms and conditions of the agreement. The agreement incorporates the final features of the account and other account criteria, such as standards for opening and closing accounts.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Federally insured financial institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 40.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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