

(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.

The Committee on Commerce, Science, and Transportation, when reporting in 1990 on the bill to amend the Hazardous Materials Transportation Act (HMTA) [Pub. L. 93-633 section 112(a), 88 Stat. 2161 (1975)], stated "The original intent of HMTA was to authorize [DOT] with the regulatory and enforcement authority to protect the public against the risks imposed by all forms of hazardous materials transportation, and to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations."<sup>4</sup>

A Federal Court of Appeals has indicated uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments expanding the original preemption provisions.<sup>5</sup> To achieve safety through consistent Federal and State requirements, Congress has also authorized the U.S. Department of Transportation to make grants to States "for the development or implementation of programs for the enforcement of regulations, standards, and orders" "compatible" with the highway-related portions of the Hazardous Materials Regulations.<sup>6</sup>

### III. Preemption Determinations

Title 49 U.S.C. 5125(d) provides for issuance of binding preemption determinations by the Secretary. The Secretary has delegated to FMCSA authority to make determinations of preemption concerning highway routing of hazardous materials<sup>7</sup>. Any directly affected person may apply for a determination whether a requirement of a State, political subdivision or Indian tribe is preempted. The agency must publish notice of the application in the **Federal Register**, and the applicant must not seek judicial relief on that issue for 180 days after the application or until the preemption determination is issued, whichever occurs first. A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court

<sup>4</sup> S. Rep. No. 101-449 (1990), reprinted in 1990 U.S.C.C.A.N. 4595, 4596.

<sup>5</sup> *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. [Pub. L. 103-272, 108 Stat. 745].

<sup>6</sup> See 49 U.S.C. 31102(a).

<sup>7</sup> See 49 CFR 1.73(d)(2).

within 60 days after the determination becomes final.

Preemption determinations are governed by procedures under 49 CFR part 397, Subpart E and 49 U.S.C. 5125. The FMCSA Administrator issues the preemption determination. The preemption determination includes a written statement setting forth the relevant facts and the legal basis for the determination.<sup>8</sup> After the preemption determination is issued, aggrieved persons have 20 days to file a petition for reconsideration.<sup>9</sup> Any party to the proceeding may seek judicial review in a Federal district court.<sup>10</sup>

In making preemption determinations under 49 U.S.C. 5125(d), FMCSA is guided by the principles and policies set forth in Executive Order 13132, titled "Federalism."<sup>11</sup> Section 4(a) of Executive Order 13132 directs agencies to construe a Federal statute to preempt State law only when the statute contains an express preemption provision, there is other clear evidence that Congress intended preemption of State law, or the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute. Section 5125 includes express preemption provisions, which FMCSA has implemented through its regulations.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local jurisdiction or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute.<sup>12</sup>

### IV. Public Comments

FMCSA seeks comments on whether 49 U.S.C. 5125 preempts the District of Columbia's highway routing requirements challenged by ATA. Comments should specifically address the preemption criteria detailed in Part II above.

Issued on: April 13, 2005.

**Annette M. Sandberg**,  
Administrator.

[FR Doc. 05-7910 Filed 4-19-05; 8:45 am]

**BILLING CODE 4910-EX-P**

<sup>8</sup> See 49 CFR 397.211.

<sup>9</sup> See 49 CFR 397.211(c) and 397.223.

<sup>10</sup> See 49 U.S.C. 5125(f) and 49 CFR 397.225.

<sup>11</sup> 64 FR 43255 (August 10, 1999).

<sup>12</sup> *Colorado Pub. Utilities Comm'n v. Harmon*, No. 89-1288 (10th Cir. Dec. 18, 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Safety Advisory 2005-02

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of safety advisory.

**SUMMARY:** The FRA is issuing Safety Advisory 2005-02, which provides information on the potential catastrophic failure of locomotive main reservoir tanks manufactured by R&R Metal Fabricators, Incorporated, and installed on General Electric Transportation System (GETS) locomotives. The GETS has informed FRA that a total of 5,826 suspect main reservoir tanks were manufactured between 1988 and 1995. To date, four of these main reservoir tanks have failed catastrophically while in service, and additional tanks have been removed for leaking through the welded seams.

**FOR FURTHER INFORMATION CONTACT:**

George Scerbo, Railroad Safety Specialist, Motive Power and Equipment Division (RRS-14), FRA Office of Safety Assurance and Compliance, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493-6249 or Darrell Tardiff, Staff Attorney, FRA Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590, telephone: (202) 493-6037.

**SUPPLEMENTARY INFORMATION:** In January of 2005, FRA became aware of concerns being raised by GETS regarding locomotives with main reservoirs manufactured by R&R Metal Fabricators, Incorporated (R&R). The involved main reservoirs were manufactured between 1988 and 1995. R&R provided 5,826 main reservoirs that were manufactured during this period to GETS. At the time of GETS' notification, four of the suspect reservoirs had ruptured while in service, and the ruptures resulted in rapid splitting and deformation of the tank along the longitudinal weld seam. None of the four failed reservoirs has resulted in any injuries. The GETS has informed FRA that a hazard risk assessment process was utilized and it was determined that corrective action is required as soon as practical (i.e. within 120 days).

On January 18, 2005, GETS provided FRA a list of approximately twenty-seven hundred locomotives (2,700) that have likely been equipped with the suspect main reservoirs. Additional main reservoirs may have been mounted onto GETS locomotives through maintenance and repair. No other manufacturer's locomotives have been

equipped with the suspect main reservoir, and any attempt to do so would require major modifications to the mounting system. All suspect main reservoirs can be identified by a name plate attached to the skin of the tank.

The GETS has informed FRA that it has contacted the affected railroads and has provided them each a list of locomotive road numbers and a gauge to determine if the reservoir is geometrically offset (out of round) and seams misaligned, which may result in high bending stresses that can lead to weld failure. The GETS also published a Field Maintenance Instruction number 24-15309 to assist the railroads in performing the inspections, and provided replacement reservoirs for those failing to pass the gauge inspection. Locomotives that have had the main reservoir tanks inspected will be identified as follows: a blue dot next to the reservoir tank badge plate indicates the tank has passed the test, a red X indicates that the tank has failed and must be replaced. The Association of American Railroads is aware of this safety issue and, in conjunction with its member railroads, is planning to issue an industry-wide "Early Warning" letter in the near future.

**Recommended Action:** In recognition of the need to assure safety, FRA recommends that railroads operating and owning GETS locomotives inspect the main reservoir tanks of such locomotives in service and any main reservoirs in inventory to determine if they were manufactured by R&R Metal Fabricators, Incorporated, between 1988 and 1995. The FRA further recommends that the railroads adhere to GETS' Field Maintenance Instruction number 24-15309 when conducting its inspection of any identified main reservoir tank. If a railroad does not have GETS' field maintenance instruction or the required gauging device, it should contact Mr. Len Varan, GETS Product Manager, at (814) 875-2769.

The FRA may modify this Safety Advisory 2005-02, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the nation's railroads.

Issued in Washington, DC on April 15, 2005.

**Daniel C. Smith,**

*Associate Administrator for Safety.*

[FR Doc. 05-7943 Filed 4-19-05; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 13, 2005, and comments were due by March 14, 2005. No comments were received.

**DATES:** Comments must be submitted on or before May 20, 2005.

**FOR FURTHER INFORMATION CONTACT:** Rita Jackson, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: 202-366-0284; FAX: 202-366-7403; or e-mail: [rita.jackson@marad.dot.gov](mailto:rita.jackson@marad.dot.gov). Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

**Title:** U.S. Merchant Marine Academy Candidate Application for Admission.

**OMB Control Number:** 2133-0010.

**Type of Request:** Extension of currently approved collection.

**Affected Public:** Individuals desiring to become students at the U.S. Merchant Marine Academy.

**Forms:** KP 2-65.

**Abstract:** The collection consists of Parts I, II, and III of Form KP 2-65 (U.S. Merchant Marine Academy Candidate Application). Part I of the form is completed by individuals wishing to be admitted as students to the U.S. Merchant Marine Academy.

**Annual Estimated Burden Hours:** 12,500 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection 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.

**Authority:** 49 CFR 1.66.

Issued in Washington, DC, on April 7, 2005.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 05-7903 Filed 4-19-05; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number 2005 20991]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel INTERLUDE.

**SUMMARY:** As authorized by Pub. L. 105-383 and Pub. L. 107-295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005-20991 at <http://dms.dot.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver