

prepare an EIS in response to the need for upgrading sections of two urban arterials (Russell Street and South 3rd Street) all within the limits of the City of Missoula, Missoula County, Montana. The Russell Street section begins at the intersection of Mount Avenue, and extends approximately 2.44 km (1.52 mi) northerly to the intersection of West Broadway Street. The South 3rd Street section begins at its intersection with Reserve Street and continues easterly for a distance of approximately 1.60 km (1.0 mi) until it intersects with Russell Street.

The project is needed to meet current and future demand of motorized vehicles, bicycles, pedestrians, and to improve safety. Alternatives are expected to include taking no action; widening of Russell Street; and widening of South 3rd Street. Other alternatives may become evident as a result of public and agency input during the scoping process. All build alternatives will include improvements to non-motorized facilities and will consider a range of transportation system management (TSM) and transportation demand management (TDM) measures. Possible configurations of the Russell Street bridge across the Clark Fork River, will also be considered in the study.

The EIS will examine the short and long-term impacts on the natural and built environment. The impact assessment will include (but not be limited to): Impacts on the social environment; changes in land use; aesthetics; changes in traffic; economic consequences; air, noise and water quality, wildlife, and fisheries. In addition, environmental justice aspects will be addressed as part of the impact assessment. The EIS will also examine measures to mitigate significant adverse impacts resulting from the proposed action.

Comments are being solicited from Federal, State, and local agencies, Tribes and from private organizations and citizens who have interest in this proposal. Public information meetings, feedback sessions, and other outreach efforts will be conducted to discuss the potential alignments.

The draft EIS will be available for public and agency review, and a public hearing will be held to receive comments. Public notice will be given of the time and place of all meetings and hearings. Comments and/or suggestions from all interested parties are requested, to ensure that the full range of all issues, and significant social and environmental issues in particular, are identified and reviewed. Comments or questions concerning this proposed

action and/or its EIS should be directed to the FHWA, MDT or the City of Missoula at the addresses listed previously.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 11, 2000.

Dale W. Paulson,

Program Development Engineer, Federal Highway Administration.

[FR Doc. 00-26563 Filed 10-16-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-00-7906 (PDA-27(R))]

Application by ATOFINA Chemicals, Inc. for a Preemption Determination as to Louisiana Requirements for Hazardous Materials Incident Notification

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 ATOFINA Chemicals, Inc. (ATOFINA) for an administrative determination whether Federal hazardous material transportation law preempts certain Louisiana requirements concerning hazardous materials incident notification and reporting.

DATES: Comments received on or before December 1, 2000, and rebuttal comments received on or before January 16, 2001, 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 in 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-00-7906 and may be submitted to the Dockets Office 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

comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at "http://dms.dot.gov" and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to (1) Ms. Karen P. Flynn, Associate General Counsel, ATOFINA Chemicals, Inc., 2000 Market Street, Philadelphia, PA 19103-3222, and (2) Mr. Paul Schexnayder (Attorney 3), State of Louisiana, Department of Public Safety and Corrections, Office of Legal Affairs, P.O. Box 66614, Baton Rouge, LA 70896-6614. 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. Flynn and Mr. Schexnayder 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://rspa-atty.dot.gov." You may obtain a paper copy of this list and index by contacting Donna O'Berry by mail or telephone as provided below under the heading "For Further Information Contact."

FOR FURTHER INFORMATION CONTACT: Donna L. O'Berry, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590-0001 (Tel. No. 202-366-4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

ATOFINA has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts the requirements in Title 32 section 1510 of Louisiana Revised Statutes (32:1510) applicable to the oral and written reporting of incidents, accidents and cleanups. The text of ATOFINA's application is set forth in Appendix A to this Notice. A paper copy of ATOFINA's application (which has been placed in the public docket) will be provided at no cost upon request to Ms. O'Berry, at the address and telephone number set forth in "For Further Information Contact" above.

In the application for preemption, ATOFINA's challenges section 32:1510, which provides, in part, that:

A. Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of

a hazardous material subject to this Chapter shall report immediately by telephone to the department if that incident, accident, or cleanup of an incident or accident involves:

(1) A fatality due to fire, explosion, or exposure to any hazardous material.

(2) The hospitalization of any person due to fire, explosion, or exposure to any hazardous material.

(3) A continuing danger to life, health, or property at the place of the incident or accident.

(4) An estimated property damage of more than ten thousand dollars.

B. A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.

C. In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

ATOFINA argues that the reporting requirements in section 32:1510 are preempted because they concern "the written notification, recording, and reporting of the unintentional release in transportation of hazardous material" and are not substantively the same as the requirements in 49 CFR 171.15 and 171.16. Section 171.15 contains the Federal requirements for immediate notification of certain hazardous materials incidents, and § 171.16 contains the Federal requirements for submitting detailed hazardous materials incident reports to DOT. ATOFINA states that §§ 171.15 and 171.16 require the carrier to provide immediate notification of certain hazardous materials incidents, whereas Louisiana's statute is much broader and requires that each person involved in certain hazardous material incidents or accidents immediately notify the state. ATOFINA asserts that there can be many persons involved in an incident, such as a carrier or the owner of the goods, and that this "duplicate reporting" could be confusing to the people responding to the incident. Finally, ATOFINA contends that it is impractical to apply section 32:1510 to manufacturers and that it will be difficult for manufacturers to comply with the requirement. ATOFINA contends that manufacturers and carriers do make arrangements to ensure that the carrier has the responsibility for making the immediate notification required under Federal regulations.

ATOFINA indicates that it has received a Notice of Violation of section

32:1510 from the Louisiana State Police. ATOFINA states that it believed the carrier would make the notification since the carrier was directly involved with the incident. ATOFINA argues that to the extent Louisiana believes that immediate notification is necessary for emergency response purposes, the State's concern is satisfied by imposing the immediate notification requirement on the carrier and not on each person involved in the incident. ATOFINA asserts that it is impractical and a burden on interstate commerce to require a large national company to comply with a multitude of different reporting requirements in different jurisdictions, particularly those which impose the same duty on multiple parties.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains the preemption provisions that are relevant to ATOFINA's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 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 reflect the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings before 1990, under the original preemption provisions in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93-633 112(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 materials transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver 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' 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 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.

Pub. L. 101-615 Section 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 which expanded the 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. Pub. L. 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 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 materials transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. 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 F2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255, August 4, 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 of Congress intent 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 Comment

All comments should be limited to the issue of whether 49 U.S.C. 5125 preempts the Louisiana requirements applicable to the oral and written

reporting of certain hazardous materials incidents. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the Louisiana requirements are applied and enforced.

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201-107.211.

Issued in Washington, DC, on September 29, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Appendix A

August 30, 2000

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001, Attn: Hazardous Materials Preemption Docket

Dear Sir or Madam: Enclosed is ATOFINA Chemicals, Inc.'s Application for Determination of Preemption. If you need additional information, please feel free to contact me.

Sincerely,
Karen P. Flynn,
Associate General Counsel.
cc: William Oister (w/ encl.)
Andrea E. Utecht, Esq., (w/o encl.)

Application for Determination of Preemption

Pursuant to 49 CFR 107.203, ATOFINA Chemicals, Inc. (formerly known as Elf Atochem North America, Inc.) is making an application for a determination that 49 CFR 171.15 and 171.16 preempt La. R. S. § 32:1510.

I. Applicable State Statute

La. R. S. § 32:1510 states as follows: Reporting of Incidents, Accidents, and Cleanups

A. Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of a hazardous material subject to this Chapter shall report immediately by telephone to the department if that incident, accident, or cleanup of an incident or accident involves:

1. A fatality due to fire, explosion, or exposure to any hazardous material;
2. The hospitalization of any person due to fire, explosion, or exposure to any hazardous material;
3. A continuing danger to life, health, or property at the place of the incident or accident;
4. An estimated property damage of more than ten thousand dollars.

B. A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description

of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.

C. In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

D. The secretary shall adopt and promulgate rules and regulations in accordance with the Administrative Procedures Act to coordinate the implementation of a Transportation emergency response system.

E. 1. Notwithstanding any other provision of law to the contrary, the provisions of this Section shall not apply to any incidents, accidents, or cleanup of incidents or accidents that occur within a facility that is subject to the release reporting requirements of R.S. 30:2373(B) and is engaged in activities defined or classified under one or more of the following subsectors, industry groups, or industries of the 1997 North American Industry Classification System (NAICS):

- a. 211 (oil and gas extraction).
- b. 22111 (electric power generation).
- c. 3221 (pulp, paper and paperboard mills).
- d. 324 (petroleum and coal products manufacturing).
- e. 325 (chemical manufacturing).
- f. 326 (plastics and rubber products manufacturing).
- g. 331 (primary metal manufacturing).
- h. 4953 (refuse systems).
- i. 4212 (local trucking without storage).
- j. 4789 (trucking without storage).

2. Notwithstanding the provisions of Paragraph 1 of this Subsection, this Section shall apply to any carrier involved in any incident, accident, or clean up of an incident or accident which occurs outside the perimeter of any facility exempted from this Section pursuant to Paragraph 1 of this Subsection.

3. The secretary may develop rules and regulations to implement and clarify the reporting requirements of this Subsection and to address any changes in federal law, rules, or regulations.

II. Applicable Federal Regulations

Section 171.15 of Title 49 of the Code of Federal Regulations provides as follows:

§ 171.15 IMMEDIATE NOTICE OF THE CERTAIN HAZARDOUS MATERIALS INCIDENTS.

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph

(b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which—

(1) As a direct result of hazardous materials—

- (i) A person is killed; or
- (ii) A person received injuries requiring his or her hospitalization; or
- (iii) Estimated carrier or other property damage exceeds \$50,000; or

(iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§ 174.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of infectious substances (etiologic agents); or

(4) There has been a release of a marine pollutant in a quantity exceeding 450 L (119 gallons) for liquids or 400 kg (882 pounds) for solids; or

(5) A situation exists of such a nature (*e.g.*, a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

(b) Except for transportation by aircraft, each notice required by paragraph (a) of this section shall be given to the Department by telephone (toll-free) on 800-424-8802.

Notice involving shipments transported by aircraft must be given to the nearest FAA Civil Aviation Security Office by telephone at the earliest practical moment after each incident in place of the notice to the Department. Notice involving etiologic agents may be given to the Director, Centers for Disease Control, U. S. Public Health Service, Atlanta, GA (800) 232-0124, in place of the notice to the Department or (toll call) on 202-267-2675. Each notice must include the following information:

(1) Name of reporter;

(2) Name and address of carrier represented by reporter;

(3) Phone number where reporter can be contacted;

(4) Date, time, and location of incident;

(5) The extent of injuries, if any;

(6) Classification, name, and quantity of hazardous materials involved, if such information is available;

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by § 171.16.

Section 171.16 of Title 49 of the Code of Federal Regulations provides as follows:

§ 171.16 DETAILED HAZARDOUS MATERIALS INCIDENT REPORTS.

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which any of the circumstances set forth in 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge:

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (Form F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001; and, for incidents involving transportation by aircraft, a copy of the report shall also be sent to the FAA Civil Aviation Security Office nearest the location of the incident. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of a hazardous material—

(1) Transported under one of the following proper shipping names:

i. Consumer commodity;

ii. Battery, electric storage, wet, filled with acid or alkali;

iii. Paint and paint related material when shipped in packaging of five gallons or less.

(2) Prepared and transported as a limited quantity shipment in accordance with this subchapter.

(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:

(1) Incidents required to be reported under § 171.15(a);

(2) Incidents involving transportation aboard aircraft;

(3) Except for consumer commodities, materials in Packing Group I; or

(4) Incidents involving the transportation of hazardous waste.

III. Basis for Preemption

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-federal requirement concerning "(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material" is preempted if "it is not substantively the same as" a provision of federal transportation law or a regulation prescribed under that law. La. R. S. § 32:1510 is a non-federal requirement relating to the written notification and reporting of an unintentional release in transportation of hazardous materials that is not "substantively the same as" the federal regulations.

The federal regulations in 49 CFR 171.15 and 171.16 clearly require "the carrier" to fulfill the immediate reporting requirements for hazardous material accidents. The Louisiana statute is much broader and requires that "each person involved in an incident" make an immediate report to the state police. There can be many persons

involved in an incident, such as the carrier, the owner of the goods, or agents of each of them. Thus, the Louisiana statute requires duplicate reporting which could be confusing to those who may have to respond to the incident. From the standpoint of the manufacturer of the goods, it is an impractical regulation and will be difficult to achieve compliance. Arrangements are made between the manufacturer and the carrier to make sure that the carrier has the responsibility to make the immediate notification required under the federal regulations. The Louisiana requirement is much broader than the applicable federal requirement. Thus, La. R.S. § 32:1510 does not "conform in every significant respect to the Federal requirement," 49 CFR 107.202(d). As such, it is not substantively the same and should be preempted.

A TOFINA Chemicals, Inc. requests this preemption determination because it received a Notice of Violation from the Louisiana State Police identifying a violation of La. R. S. § 32:1510. For the incident in question, ATOFINA believed that the carrier would make any necessary notification since it was directly present on the scene. Thus, to the extent that Louisiana believes that immediate notification is necessary for emergency response purposes, that concern is satisfied by imposing the immediate notification obligation on the carrier rather than on each person involved in the incident, some of whom may not be present at the scene and who would be making a notification based on second hand information received from those at the scene. It would be impractical and a burden on interstate commerce to require a large national company to comply with a multitude of different reporting requirements in the different state jurisdictions, particularly those like Louisiana's which impose the same duty on multiple parties. Procedures would become so cumbersome that ultimately they would not be useful at all. Therefore, ATOFINA Chemicals, Inc. requests that a determination be made that La. R. S. § 32:1510 is preempted by 49 CFR 171.15 and 171.16.

[FR Doc. 00-25589 Filed 10-16-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33931]

Massachusetts Central Railroad Corporation—Acquisition and Operation Exemption—New York Central Lines LLC and CSX Transportation, Inc.

Massachusetts Central Railroad Corporation (MCER), a Class III railroad, has filed a notice of exemption under 49 CFR 1150.41 to acquire from New York Central Lines LLC and CSX Transportation, Inc. (collectively CSX) and operate approximately 1.4 miles ±