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INDEX TO PREEMPTION OF STATE AND LOCAL LAWS AND REGULATIONS UNDER THE FEDERAL HAZARDOUS MATERIAL TRANSPORTATION LAW *(49 U.S.C. §§ 5101-5128)*

This document contains an alphabetized subject matter index of issues arising under the preemption provisions of the Federal hazardous material transportation law (Federal hazmat law, 49 U.S.C. §§ 5101-5128. The original Hazardous Materials Transportation Act (HMTA), Pub. L. 93-633, 88 Stat. 2156 (1975), was codified in 1994 as Chapter 51 of Title 49, United States Code. Chapter 51 and DOT's regulations issued under Chapter 51 govern the transportation of hazardous materials in commerce.

This index analyzes the implementation of the preemption provisions in Federal hazmat law in court decisions and DOT's inconsistency rulings (IRs) from 1978 to 1990 and preemption determinations (PDs) from 1992 to the present. All of DOT's inconsistency rulings and preemption determinations are listed at the end of this index, with the citation to the volume and page of the Federal Register where each was published.

Preemption Standards

Generally. Sections 5125(a) and (b) of 49 U.S.C. provide that, in the absence of a waiver of preemption by the Department or specific authority in another Federal law, a requirement of a State, political subdivision of a State, or Indian tribe is preempted when:

--(the "dual compliance" test) it is not possible to comply with both the non-Federal requirement and the Federal hazmat law, a regulation prescribed under Federal hazmat law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security (DHS);

--(the "obstacle" test) as applied or enforced, the non-Federal requirement is an obstacle to accomplishing and carrying out the Federal hazmat law, a regulation prescribed under Federal hazmat law, or a hazardous material transportation security regulation or directive issued by DHS; or

--(the "substantively the same as" test) the non-Federal requirement concerns any of the following subjects and is not "substantively the same as" a requirement in the Federal hazmat law, a regulation prescribed under Federal hazmat law, or a hazardous material security regulation or directive issued by DHS:

(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 and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident.

(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.

A more general preemption standard ("inconsistent") was contained in the original HMTA, "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. 1192, 93rd Cong., 2nd Sess. 37 (1974). The "dual compliance" and "obstacle" tests are alternate tests of "conflict" preemption, and they were the regulatory criteria used by the Research and Special Programs Administration (RSPA) and the courts before 1990. In 1990, these tests and the "substantively the same as" test (which sets forth specific subject areas where any substantive difference creates an "obstacle") were added to the statute along with the following:

Highway Routing. Section 5125(c) provides that, with certain exceptions, a State or Indian tribe may establish, maintain, or enforce highway routing designations, limitations, and requirements for hazardous materials only when those designations, limitations, or requirements meet Federal procedural and substantive requirements. Regulations of the Federal Motor Carrier Safety Administration (FMCSA) set forth the procedures that States and Indian tribes must follow in order to designate or limit highway routing of hazardous materials, in 49 C.F.R. Part 397, subpart C (with respect to non-radioactive materials) and 49 C.F.R. Part 397, subpart D (with respect to radioactive materials).

Hazmat Fees. Section 5125(f) provides that a State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

Waiver of Preemption

Section 5125(e) provides that DOT may waive preemption of a State, local, or Indian tribe requirement, in response to an application that "acknowledges" preemption, if DOT determines that the non-Federal requirement: (1) provides the public with "at least as much protection as do requirements" of the Federal hazardous material transportation law and the regulations issued under that law, and (2) is not "an unreasonable burden on commerce."

Issuance of a Preemption Determination or Waiver

DOT has delegated to the Pipeline and Hazardous Materials Safety Administration (PHMSA, the successor to RSPA) the authority to decide applications for a preemption determination and for a waiver of preemption, except for those concerning highway routing which have been delegated to FMCSA. 49 C.F.R. §§ 1.97(b), 1.87(d). The procedures for deciding applications for a

preemption determination or waiver of preemption are set forth at 49 C.F.R. §§ 107.201 - 107.227 (PHMSA) and §§ 397.201 - 397.225 (FMCSA).

Petition for Reconsideration and Judicial Review

Any person "aggrieved" by a decision on an application for a preemption determination or a waiver of preemption may file a petition for reconsideration within 20 days of service of that decision. 49 C.F.R. §§ 107.211(a) & 107.223(a) (PHMSA), 397.223(a) (FMCSA). A person adversely affected or aggrieved by a preemption determination or a waiver of preemption proceeding may also seek judicial review of DOT's decision in the United States Court of Appeals for the District of Columbia or the Court of Appeals for the circuit in which the person resides or has its principal place of business. The petition for review must be filed within 60 days after the decision becomes final. 49 U.S.C. § 5127(a).

Abbreviations Used in this Document

CFR - Code of Federal Regulations
DOT - U.S. Department of Transportation
EPA - U.S. Environmental Protection Agency
"Four-Pack" - Group of four preemption determinations (PDs 8(R) - 11(R)) issued 2/15/95
FR - Federal Register
HM-XXX - Hazardous Material Regulations Docket of PHMSA (e.g., HM-181)
HMR - Hazardous Materials Regulations (49 CFR Parts 171-180)
HMTA - Hazardous Materials Transportation Act (now codified at 49 U.S.C. §§ 5101-5128)
HRCQ - Highway route controlled quantities (of RAM)
IR-XX - Inconsistency Ruling issued by DOT (e.g., IR-18)
IR-XX(A) - Decision on Appeal re Inconsistency Ruling IR-XX (e.g., IR-18(A))
IRA-XX - Inconsistency Ruling Application filed with DOT (e.g., IRA-44)
LNG - Liquefied natural gas
LPG - Liquefied petroleum gas
"Nine-Pack" - Group of nine inconsistency rulings (*IRs 7 - 15) issued 11/27/84
NRC - Nuclear Regulatory Commission
OHMS - Office of Hazardous Materials Safety, RSPA
PD-XX(F) - Preemption Determination issued by FWHA or FMCSA (Routing) (e.g., PD-3(F))
PD-XX(R) - Preemption Determination issued by RSPA or PHMSA (e.g., PD-2(R))
PD-XX(RF) - Preemption Determination issued jointly by RSPA/PHMSA and FHWA/FMCSA (e.g., PD-20(RF))
PDA-XX - Preemption Determination application filed with DOT (e.g., PDA-6(R))
PHMSA - Pipeline and Hazardous Materials Safety Administration
RAM - Radioactive materials
RSPA - Research and Special Programs Administration

An asterisk (*) denotes a case, IR or other provision involving only RAM.

A cross-hatch (#) denotes a case, IR or other provision involving both RAM and other hazardous material.

Please advise Frazer C. Hilder, PHMSA Office of the Chief Counsel (202-366-4400), of any additions, corrections or other changes.

SUBJECT-MATTER HEADINGS IN
INDEX OF PREEMPTION DETERMINATIONS/INCONSISTENCY RULINGS
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Absence of HMR Requirement

- Obstacle test preempts only state rules that "pose an obstacle to fulfilling explicit provisions, not general policies, of HMTA." Massachusetts v. DOT, 93 F.3d 890 (D.C. Cir. 1996), reversing Civ. No. 93-1581 (HHG) (D.D.C. Apr. 7, 1995) and PD-1(R).

- Fact that HMR requires escort vehicles only for RAM shipments shows intent not to require them for transport of other hazardous material. Chlorine Institute, Inc. v. Calif. Hwy. Patrol, Civ. S-92-396 (E.D.Cal., Sept. 16, 1992), aff'd, 29 F.3d 495 (9th Cir. 1994).

- Absence of HMR regulation on a specific topic may reflect Federal determination that no regulation is needed on that topic. PD-6(R).

- In the absence of evidence that DOT has weighed the competing considerations and decided that the transportation of a material should be free of all regulation, there is no preemption of state common law claims alleging the failure to properly package and warn about the dangers of a material not regulated under the HMR. Waering v. BASF Corp., No. 3:CV-99-0906 (M.D. Pa., May 23, 2001).

Accident/Incident Reporting Requirements (Also see "covered subjects" discussion on pp. 1-2.)

- State requirement to submit written report of each hazardous waste discharge during transportation is preempted because it is not substantively the same as Federal requirement. State may require a carrier to file a written incident report with RSPA, but it may not require the carrier to file a copy of the Federal form, or a separate incident report, directly with the State. PD-21(R); PD-18(R), PD-27(R). See discussion of "substantively the same as" test on pp. 1-2.

- Requirements for immediate, oral accident/incident reports for emergency response purposes generally are consistent. IR-2; IR-3; #IR-28; #IR-31; #IR-32; National Tank Truck Carriers, Inc. v. Burke, 535 F. Supp. 509 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983); Union Pacific R.R. v. California Publ. Util. Comm'n, No. C-97-3660-TEH (N.D. Cal. Dec. 14, 1998); PD-18(R), PD-27(R).

- Incident reporting requirements concerning irradiated reactor fuel incidents are inconsistent because of redundancy and possible conflict with NRC rules incorporated into HMR. *IR-8, #IR-28; IR-32. However, such requirements may be consistent where they are clear and not in conflict with the NRC rule (incorporated into the HMR) requiring shippers to arrange with local law enforcement agencies for emergency response. #IR-31.

- Requirements for written accident/incident reports are redundant with Federal requirements, tend to undercut compliance with them, and thus are inconsistent. IR-2; IR-3; IR-3(A); #IR-31; PD-18(R).

Advance Notice - See "Notice Requirements" and "Delays of Transportation."

Agency Interpretation

- Local government need not obtain an inconsistency ruling before enforcing a local requirement. National Tank Truck Carriers, Inc. v. Burke, 608 F.2d 819, 821-2 (1st Cir. 1979); City of New York v. Ritter Transportation, Inc., 515 F. Supp. 663, 668 (S.D. N.Y. 1981), aff'd sub nom. National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982); Seaboard System R.R., Inc. v. Bankester, et al., 254 Ga. 455, 330 S.E. 2d 700, 705 (1985). Contra (based on doctrine of primary jurisdiction): Consolidated Rail Corp. v. City of Dover, 450 F. Supp. 966, 974 (D. Del. 1978).

- "Because the DOT authored the HMR, its determination of what constitutes an obstacle to the accomplishment or execution of those regulations is deserving of substantial deference." #Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada, 909 F.2d 352, 359 (9th Cir. 1990).

- DOT improperly issued an FR policy statement which had the effect of determining that Ohio's radioactive material prenotification requirement was inconsistent with the Federal requirement -- without affording Ohio the protections of the IR regulations. *State of Ohio v. U.S. Dept. of Transportation, No. C81-1394 (N.D. Ohio Oct. 5, 1989).

Approval Requirements (Also see "Permit Requirements.")

- Transportation approval requirements identical to Federal are not preempted. *IR-14; *IR-15.

- Transportation approval requirements different from Federal are preempted. *IR-8; *IR-8(A); *IR-10; *IR-11; *IR-12; *IR-13, *IR-15; *IR-15(A); #IR-19; #IR-19(A).

- Transportation approval requirements may not include preempted provisions: "A requirement for compliance with an inconsistent provision is itself inconsistent." *IR-8(A), 52 FR 13000, 13006.

- Unfettered discretion to approve or disapprove transportation is preempted. *IR-8(A); *IR-15(A); *IR-18; #IR-20; accord *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community, 991 F.2d 458 (8th Cir. 1993), affirming 781 F. Supp. 612 (D. Minn. 1991).

- "In light of the virtually total occupation of the field of radioactive materials transportation by the HMTA and the HMR, State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations) constitute unauthorized prior restraints on shipments that are presumptively safe based on their compliance with Federal regulations and are inconsistent with the HMTA and the HMR." *IR-15(A), 52 FR 13062, 13063; quoted and followed, #IR-19.

Approvals - See "Exemptions (Special Permits) and Approvals."

"Authorized by Another Law of the United States"

- A State requirement is not "otherwise authorized by Federal law" -- and thus not preempted under 49 U.S.C. § 5125 HMTA -- merely because it is not preempted by another Federal statute. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- EPA approval of a State program imposing bonding or other additional requirements on hazardous waste carriers does not make those requirements "otherwise authorized by federal law." PD-1(R), reversed on other grounds, Massachusetts v. DOT, 93 F.3d 890 (D.C. Cir. 1996); PD-12(R); PD-25(R).

- While RCRA allows State regulations that go beyond EPA requirements, those regulations are not part of the EPA-approved program, and are not insulated from Federal hazmat law preemption. PD-1(R), reversed on other grounds, Massachusetts v. DOT, 93 F.3d 890 (D.C. Cir. 1996); PD-2(R); PD-7(R); PD-12(R).

- State requirements to implement basic provisions of SARA Title III or the Clean Air Act § 112(r), or to implement, thru an EPA-approved program, EPA regulations under those statutes, are "authorized by another law of the United States," and therefore not preempted. PD-10(R), 60 FR 8790; PD-9(R), 60 FR 8781.

- RCRA does not authorize a State or locality to impose additional requirements on the transportation of regulated medical waste. PD-23(RF).

Bans on Hazardous Material Transportation - See "Prohibitions of Hazardous Material Transportation."

Bonding Requirements - See "Insurance or Indemnification Requirements."

Certification Requirements (Also see "Information/ Documentation Requirements," "Marking Requirements," "Packaging Design and Construction Requirements" and "Shipping Paper Requirements.")

- Required markings on packagings (cargo tanks and portable tanks) to certify current registration and inspection are preempted since they are not substantively the same as the markings required by the HMR. PD-4(R).

Civil Penalties - See "Penalties."

Classification of Hazardous Material - See discussion of "substantively the same as" test on pp. 1-2.

"Commerce" (Also see 49 U.S.C. § 5012(1); 49 CFR 171.1(d)(4), (d)(6) and 171.8)

- Transportation entirely on private industrial property is not transportation "in commerce" and therefore is not subject to the HMR. PD-10(R), 60 FR 8792; PD-9(R), 60 FR 8785.

- Loading or unloading of hazardous materials incidental to the movement of those materials on a public roadway is a safety aspect of the transportation of hazardous materials

in commerce and subject to the HMR, regardless of whether the loading or unloading takes place on private property. PD-24(R).

Communication Requirements (Also see "Placarding and Other Hazard Warning Requirements.")

- State requirement for communication equipment aboard motor vehicles transporting toxic material is preempted as an obstacle. Chlorine Institute, Inc. v. California Hwy. Patrol, 29 F.3d 495 (9th Cir. 1994).

- Requirement that motor vehicles carrying LPG or natural gas use two-way radio communications is not preempted. IR-2.

- RAM communications requirements which are different from, or authorized to be different from, Federal requirements are preempted. *IR-8; *IR-8(A).

- City requirements that vehicles carrying hazardous waste have and monitor CB radio is not preempted except as to radioactive material. #IR-32.

Confidentiality Requirement

- Requirements to keep RAM shipment information confidential which are same as Federal are not preempted. *IR-8; *IR-15.

Container Design and Certification Requirements - See discussion of "substantively the same as" test on pp. 1-2 and "Packaging Design and Construction Requirements."

Curfew - See "Time Restrictions"

Definitions - See "Hazard Class and Hazardous Material Definitions."

Delays in Transportation (Also see "Inspection Requirements," "Routing Requirements" and "Time Restrictions.")

- RSPA encourages State and local governments to enforce valid requirements thru inspections. The time involved to conduct an inspection, including the time awaiting "one's turn" for an inspector already present, is not "unnecessary delay" and does not create an obstacle. The wait for an inspector to arrive from another location, however, is "unnecessary delay" and will cause an inspection program to be preempted. PD-4(R) (dec. on reconsid.); PD-22(R).

- State and local requirements likely to cause unreasonable transportation delays are preempted. IR-2; IR-3; IR-3(A); IR-6; IR-16; #IR-19; #IR-19(A); #IR-20; *IR-21; :*IR-21(A); IR-22; #IR-28; *IR-30; PD-22(R).

- "The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation." IR-2; PD-22(R).

- "The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or prepared for a sudden, possibly permanent, change in traffic patterns." IR-3; #IR-20; *IR-21(A); PD-22(R).

- Local highway routing requirements for hazardous material through-traffic not based on complete safety analysis and consultations with all affected jurisdictions are inconsistent with § 177.853(a) of the HMR. IR-3; IR-3(A); IR-23.

- "Since safety risks are 'inherent in the transportation of hazardous materials in commerce' [former 49 U.S.C. § 1801, now § 5101], an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR § 177.853 [now § 177.800(d)], which directs highway shipments to proceed without unnecessary delay, and at 49 CFR § 174.14, which directs rail shipments to be expedited within a stated time frame." IR-6, 49 FR 760, 765; see also *IR-16, 50 FR 20872, 20879; quoted, #IR-19, 52 FR 24404, 24409.

- Acute delays at State border inevitably resulting from State imposing documentary prerequisites upon non-domiciliaries for transport of hazardous material render those requirements inconsistent with 49 CFR § 177.853 [now § 177.800(d)]. #IR-26.

- State fees for hazardous material transport not causing unnecessary transportation delays are not preempted. *IR-17; *IR-17(A); *IR-27; # New Hampshire Motor Transport Ass'n v. Flynn, 751 F.2d 43 (1st Cir. 1984); *Colorado Pub. Utilities Comm'n v. Harmon, No. 88-Z-1524 (D. Colo. 1989), rev'd on other grounds, 951 F.2d 1571 (10th Cir. 1991).

- Time-consuming state permitting process with no definite decision date creates possibility of transportation delay and thus is preempted. #IR-19, #IR-19(A); *IR-21; *IR-21(A).

- Two-hour advance approval requirement not shown to serve any purpose causes delay and is preempted. #IR-20; *IR-21; *IR-21(A).

- City 20-car limitation on unloaded and loaded butane railcars at a site will cause delays and temporary storage elsewhere and thus is preempted. Consolidated Rail Corp. v. City of Bayonne, 724 F. Supp. 320 (D.N.J. 1989). "The obvious conclusion is that the more frequently hazardous material is handled during transportation, the greater the risk of mishap. Accordingly, these [HMR] provisions require that the material reach its destination as quickly as possible, with the least amount of handling and temporary storage." Ibid. at 330.

- Additional switching, handling and delays of hazardous material caused by state requirement for caboose on certain trains carrying hazardous material create obstacle, and requirement is preempted. Missouri Pacific R.R. Co. v. Railroad Commission of Texas, 671 F. Supp. 466 (W.D. Tex. 1987), aff'd on other grounds, 850 F.2d 264 (5th Cir. 1988), cert. denied, 109 S. Ct. 794 (1989).

- State statute providing three days for a permit issuance decision on each RAM shipment is preempted. *IR-21; *IR-21(A). Local ordinance requiring 45 days' prenotification of

RAM shipments is preempted. *IR-30. Prohibition on permit applications more than one day prior to scheduled shipment also is preempted. *IR-21; *IR-21(A).

- RAM requirements unnecessarily delaying transportation are preempted. *IR-8(A), *IR-18; *IR-18(A); *IR-21; *IR-21(A); #IR-26, *IR-30.

- City tank truck regulations causing delays for cargo transfers, vehicle permit inspections and obtaining specifications, certifications and affidavits, are preempted. IR-22.

- City truck regulations, requiring bulk gases to be transported around City unless no practical alternative route exists and the fire commission authorizes trip, promote safety, do not cause "unnecessary delay" under 49 CFR § 177.853(a) [now § 177.800 (d)], and thus are not preempted. City of New York v. Ritter Transp., Inc., 515 F. Supp. 663 (S.D. N.Y. 1981), aff'd, National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982).

- "While states do have a role in effectuating the safe transportation of radioactive materials, it does not follow that they have unfettered discretion to take actions which have the effect of restricting or delaying transportation being conducted in compliance with Federal law." *IR-8(A), 52 FR 13000 at 13003; quoted in #IR-19, 52 FR 24404, 24409.

- The time involved in undergoing an inspection, or waiting one's turn to be inspected when an inspector is present at the inspection location, is not unnecessary within the meaning of 49 CFR § 177.853(a) [now § 177.800(d)] prohibiting unnecessary delays in the transportation of hazardous material. IR-17; IR-31; PD-4(R).

- Delays waiting for a required inspection to be conducted are unnecessary when the inspector is not present at the inspection location but must come from another location. Thus, the inspection requirement as applied and enforced is preempted. PD-4(R).

- An annual inspection requirement may not be applied to trucks based outside the borders of the inspecting jurisdiction unless the State or county is able to conduct the equivalent of a “spot” inspection upon the truck’s arrival within the jurisdiction. PD-13(R) (dec. on reconsid.); PD-28(R); see also PD-4(R) (dec. on reconsid.); PD-22(R).

Designation/Description of Hazardous Material - See discussion of "substantively the same as" test on pp. 1-2.

Documentation - See "Information/Documentation Requirements."

Drivers' Licenses - See "Information/Documentation Requirements" and "Training Requirements."

Effect of Preemption

- A State, local or tribal rule, if applied and enforced without those elements that create an obstacle to accomplishing the purposes of the HMR, no longer is an obstacle and is not preempted under the obstacle test. (See Ray v. Atlantic Richfield, Inc., 435 U.S. 151 (1978)). PD-7(R) (dec. on reconsid.), 60 FR 10421.

Effect of Requirements (Also see "Language of Requirements.")

- "[I]t is the effect, both actual and potential, not the intent of state or local rules which determines their consistency with the HMTA and the HMR." IR-8(A), 52 FR 13000, 13003.

- Even if a state bonding requirement on hazardous waste carriers is characterized as an "enforcement tool," the preemption inquiry looks not to the purpose of a non-Federal requirement, but to its effect. PD-1(R) (dec. on reconsid.), reversed, Massachusetts v. DOT, 93 F.3d 890 (D.C. Cir. 1996).

- State's safety-related purpose not relevant under "covered subject" or "obstacle" test; preemption inquiry looks not to purpose of non-Federal requirement, but to its effect. PD-6(R).

Emergency Response

- "Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and state planning and preparation, when an accident does occur, response is, of necessity, a local responsibility." IR-2, 44 FR 75565, 75568.

- Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR-18; *IR-18(A). Thus, non-Federal emergency response-related information requirements, such as a cleanup plan or vehicle equipment failure plan, cannot be used as a prerequisite to hazardous material transportation. #IR-19; *IR-27; #IR-28. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- "RSPA's emergency response information requirements for hazardous materials transportation, including the loading, unloading, or storage incidental to such transportation exclusively occupy that field. Therefore, state and local requirements not identical to these HMR provisions will cause confusion concerning the nature of such requirements, undermine compliance with the HMR requirements, constitute obstacles to the implementation of these provisions, and thus be inconsistent and preempted." #IR-28; see also PD-30(R).

- Federal hazardous material transportation law preempts state requirements to provide emergency responders, at an incident scene, with information that the HMR does not require to be carried on the train, including the contents of rail cars that are not carrying hazardous materials. Union Pac. R.R. v. California Pub. Util, Comm’n, No. C97-3660-TEH (N.D. Cal. Dec. 14, 1998).

Emergency Requirements (Also see "Loading and Unloading.")

Enforcement and Violations Provisions (Also see "Penalties.")

- Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.)

are consistent with Federal statute and HMR if used to enforce consistent provisions. IR-3; #IR-31.

- Enforcement and violations provisions (such as criminal or civil sanctions, private attorney general lawsuits, injunctions, cease-and-desist orders, cut-off of city services, etc.) are inconsistent with Federal hazmat law and HMR if used to enforce inconsistent provisions. *IR-18; *IR-18(A); *IR-30, #IR-31.

- A state bonding requirement on hazardous waste carriers, as an "enforcement tool," is not preempted as an obstacle. Massachusetts v. DOT, 93 F.3d 890 (D.C. Cir. 1996) reversing PD-1(R) (dec. on reconsid.).

- The preemption provisions in 49 U.S.C. § 5125 do "not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material." 49 U.S.C. § 5125(h), as adopted Aug. 10. 2005, effectively reversing:

  - State civil penalty provision not explicitly imposing a "knowingly" standard is not preempted under the obstacle test if provision is "enforced and applied" with "knowingly" standard. Roeder Cartage Co. v. Ohio PUC, Case No. 90CVF-12-9532 (Ohio Ct. Common Pleas, Judgment Entry, Jan. 7, 1994).

  - The absence of a "knowingly" requirement for imposition of a civil penalty is inconsistent because it promotes strict or absolute liability instead of liability for negligence. IR-31.

Equipment Requirements (Also see discussion of "substantively the same as" test on pp. 1-2 and "Packaging Design and Construction Requirements.")

- State requirements for communication equipment, a self-contained breathing apparatus and, in some cases, a sleeper berth aboard motor vehicles transporting toxic material are preempted as obstacles. Chlorine Institute, Inc. v. California Hwy. Patrol, 29 F.3d 495 (9th Cir. 1994).

- Tank truck back-up alarm is not part of the hazardous material "package or container," and therefore back-up alarm requirement not considered under "covered subject" test. PD-5(R).

- Truck back-up alarm required only for intrastate flammable material tank truck operators does not create delay and is not preempted under "obstacle" test. PD-5(R).

- Cargo containment-related equipment requirements, including those vesting discretionary approval authority in State or local officials, are preempted. IR-2; *IR-8; *IR-8(A); *IR-15; IR-22; Nat'l Paint & Coatings Ass'n. et al v. City of New York, Index No. CV 84-4525 (ERK) (E.D. N.Y. Oct. 18, 1991).

- "In summary, RSPA, OHMT and their predecessor agencies have established in a series of inconsistency rulings issued during the past decade the principle that the HMR provisions concerning hazardous materials transportation cargo containment systems, equipment,

accessories and packagings, and the certification, marking, testing and permitting of same, have fully occupied that regulatory field. Those subjects are the exclusive province of the Federal Government. As a result, state or local requirements concerning those subjects detract from and create confusion concerning the Federal requirements, are inconsistent with the HMTA and the HMR, and, therefore, are preempted under section 112(a) of the HMTA. [now 49 U.S.C. § 5125(b)]. Similarly, these rulings have demonstrated RSPA's position that permitting systems and information or documentation requirements relating to or containing such requirements likewise are inconsistent with the HMTA and the HMR and, therefore, preempted." IR-22, 52 FR 46574, 46582.

- "Headlights on" requirement is not preempted. IR-2; IR-3; #IR-32 (with reasonable notice); National Tank Truck Carriers, Inc. v. Burke, 535 F. Supp. 509 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983); *Colorado Pub. Utilities Comm'n v. Harmon, No. 88-Z-1524 (D. Colo. 1989), rev'd on other grounds, 951 F.2d 1571 (10th Cir. 1991).

- RAM transportation requirement for mobile telephone equipped with multiple channels is not preempted. *Colorado Pub. Utilities Comm'n v. Harmon, No. 88-Z-1524 (D. Colo. 1989), rev'd on other grounds, 951 F.2d 1571 (10th Cir. 1991).

- State requirement for caboose on certain trains carrying hazardous material would cause additional switching, handling and delays of hazardous material and thus is preempted. Missouri Pacific RR Co. v. Railroad Commission of Texas, 671 F. Supp. 466 (W.D. Tex. 1987), aff'd on other grounds, 850 F.2d 264 (5th Cir. 1988), cert. denied, 109 S. Ct. 794 (1989).

- Requirement for illuminated rear bumper signs conflicts with DOT lighting regulations and would divert attention from DOT placards and thus is preempted. IR-2.

- Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is preempted since DOT comprehensively regulates cargo tank containment. IR-2.

- City 20-car limitation on unloaded or loaded butane railcars at a site is preempted. Consolidated Rail Corp. v. City of Bayonne. 724 F. Supp. 320 (D. N.J. 1989).

- "A state or local rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce impedes the Congressional purposes of increased safety and regulatory uniformity underlying the HMTA." IR-8(A), 52 FR 13000, 13003.

- Vehicle equipment requirements which might conflict with those provisions of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR Parts 390-397, which are incorporated in the HMR only by 49 CFR § 177.804, must only meet the "dual compliance" test, not the "obstacle" test. IR-3; 43 FR 4858 (Feb. 6, 1978); National Paint & Coatings Ass'n, Inc. v. City of New York, No. CV-4525 (ERK) (E.D. N.Y. 1985); 52 FR 18668-9 (May 18, 1987); IR-22. However, those FMCSR requirements specifically incorporated into the HMR by other HMR regulations must meet both tests. IR-22.

- Waiver of preemption denied with regard to tank truck design and capacity requirements for flammable and combustible liquids and gases, because they do not provide an equal level

or greater level of protection to the public as the Federal requirements, and they unreasonably burden commerce. In this specific case, there is no evidence that local design requirements and capacity limits increase the level of safety by a sufficient amount to offset an expected reduction in deaths, injuries, and property damage, when larger-capacity trucks allow fewer trips. WPD-1.

Escort Requirements

- RAM transportation front and rear escort requirements identical to DOT/NRC standards, *IR-14, and notice requirements facilitating escorts under the DOT/NRC requirements, *IR-17, are not preempted.

- Requirements for additional or special escorts re RAM transportation not required by DOT/NRC regulations are preempted, *IR-11; *IR-13; *IR-15(A); *IR-18; *IR-18(A); *IR-21.

- Requirements for carriers to delay for escorts re RAM transportation other than those in NRC standards are preempted. *IR-15.

- Escort requirements linked to inconsistent equipment requirements are preempted. IR-22; IR-23.

- Fact that HMR requires escort vehicles only for RAM shipments shows intent not to require them for transport of other hazardous material. State requirement for escort vehicle for chlorine and oleum highway transport is preempted as interfering with Federal uniformity in unsafe and burdensome manner. Chlorine Institute, Inc. v. Calif. Hwy. Patrol, Civ. S-92-396 (E.D.Cal., Sept. 16, 1992), aff'd, 29 F.3d 495 (9th Cir. 1994).

- Requirements for explosives carrier to notify Fire Prevention Bureau 24 hours in advance of arrival in the city and, if more than 250 pounds of explosives are being transported, have a police escort are preempted because of the potential for delay in transportation. PD-20(RF).

Exemptions (Special Permits) and Approvals

- "A state must implicitly or explicitly recognize the validity of OHMT's exemptions and approvals; a state may not establish its own exemptions and approvals program." #IR-31, 55 FR 25572, 25581; see also PD-9(R), 60 FR 8789.

Federal Motor Carrier Safety Regulations (FMCSR) (Also see "Insurance and Indemnification Requirements.")

- Those parts of the FMCSR (49 CFR Parts 390-397 (excluding §§ 397.3 and 397.9) incorporated into the HMR by 49 CFR § 177.804 have preemptive effect only under the "dual compliance" standard, as specifically provided in § 390.9. IR-2; IR-22; IR-23; IR-32.

- Those parts of the FMCSR added since 1978, including the financial responsibility requirements in Part 387, have not been incorporated into the HMR and have no direct

preemptive effect under 49 U.S.C. § 5125. IR-25; PD-1(R), reversed on other grounds, Massachusetts v. DOT, No. 95-5175 (D.C. Cir. Aug. 27, 1996).

- 49 CFR part 383 has not been incorporated into the HMR, and therefore cannot be the basis for a determination of preemption. PD-7(R).

Federal Requirements (Also see "Standing," "Authorized by Another Law of the United States")

- Only conflicts with Federal requirements under 49 U.S.C. §§ 5101-5128 and the HMR are cognizable in inconsistency proceedings (not Commerce Clause issues or preemption issues under other Federal statutes or regulations). IR-17(A).

- Absence of a Federal regulation addressing the same subject as a challenged State or local requirement is not determinative of whether that requirement is preempted. *IR-17(A).

- Requiring compliance with Federal requirements is not preempted. IR-3; *IR-7.

- State or local requirements identical to Federal ones are not preempted. *IR-8.

- Adequacy of Federal requirements is irrelevant. *IR-8(A).

Fee Requirements

- A fee on hazardous materials transportation that fails the fairness or "used for" tests creates an obstacle to carrying out the Federal hazardous materials transportation law and thus fails the "obstacle" test in 49 U.S.C. § 5125(a)(2); PD-18(R); PD-22(R).

- Annual State remedial action fee that transporter must pay to pick up or deliver hazardous waste within the State is preempted as not fair when (1) it is the same for both interstate and intrastate transporters and has no approximation to the transporter's use of roads or other facilities within the State and (2) genuine administrative burdens do not prevent the application of a more finely graduated user fee. State annual remedial action fee on hazardous waste transporters is also preempted when commingled in fund primarily used to clean up Superfund sites and there is no evidence that State is actually spending fees collected from transporters for purposes related to transporting hazardous material. PD-21(R); PD-18(R).

- Fees on hazardous material transportation must be fair and used for purposes related to hazardous material transportation, including enforcement and planning, development and maintenance of emergency response capability. 49 U.S.C. § 5125(g). PD-9(R), 60 FR 8784; PD-22(R).

- Dormant commerce clause test under Evansville, 92 S.Ct. 1349 (1972), is to be used to determine whether a fee is “fair.” Under that test, the fee is fair if it is: (a) based on fair approximation of use of state facilities; (b) not excessive in relation to benefits conferred; (c) does not discriminate vs. interstate commerce. American Trucking Ass'ns, Inc. v. New Hampshire, No. 92-E-604, N.H. Superior Ct., Merrimack Cty. (May 16, 1994) (hazardous waste transporter fee; order denying summary judgment); American Trucking Ass'ns, Inc. v.

Flynn, No. 89-E-405, N.H. Superior Ct., Merrimack Cty. (May 6, 1994) (flat fee for hazardous material transporters; order denying summary judgment); PD-22(R).

- Flat hazardous material transporter fee that provides credit for in-state transporters does not violate Commerce Clause. American Trucking Ass'ns, Inc. v. Wisconsin, No. 93-CV-3708, Wisc. Cir. Ct., Branch 14, Dane Cty. (July 28, 1994).

- Standard for whether hazardous waste transporter fee is fair under 49 U.S.C. § 5125(g) incorporates dormant commerce clause test: whether the fee discriminates against out-of-state transporters or unreasonably burdens commerce. American Trucking Ass'ns, Inc. v. New Jersey, No. 011562-92, New Jersey Tax Ct. (July 8, 1994) (order denying summary judgment).

- Reasonable fees to fund non-preempted activities are not preempted. *IR-17; *IR-17(A); *IR-27; #New Hampshire Motor Transport Ass'n v. Flynn, 751 F.2d 43 (1st Cir. 1984); * Colorado Pub. Utilities Comm'n v. Harmon, No. 88-Z-1524 (D. Colo. 1989), rev'd on other grounds, 951 F.2d 1571 (10th Cir. 1991).

- A fee levied on non-transportation activity is not preempted. PD-9(R), 60 FR 8784.

- Fees levied in connection with the transportation of hazardous materials must be used for a purpose related to the transportation of hazardous materials. Fees that are not used for a purposed related to hazardous materials transportation are preempted. PD-9(R); PD-18(R); PD-21(R), PD-22(R).

- While Federal hazmat law does not prohibit a State from directing the deposit of fees into the State's general fund, Federal hazmat law does require that the funds be used for hazardous materials transportation purposes. PD-22(R).

- A fee on tank car unloading activities that is not used for purposes related to hazardous material transportation is preempted. PD-9(R), 60 FR 8789.

- Fees which are unreasonably high or are related to inconsistent activities are preempted. *IR-11; *IR-13; *IR-15; *IR-18(A); #IR-19; *IR-27; *IR-30; #New Hampshire Motor Transport Ass'n v. Flynn, supra.

- State's $1,000 per cask fee for spent nuclear fuel transportation to fund inspection, enforcement, State escorts and emergency response, not related to inconsistent provisions, and not causing transportation delays or diversions is not preempted. *IR-17; *IR-17(A). Similar State RAM shipment fees are not preempted. *IR-27.

- State's $25/year or $15/trip fee for hazardous material transportation to fund transportation and environmental programs and related to a minimal delay licensing system was not preempted by the Federal statute. New Hampshire Motor Transport Ass'ns, Inc. v. Flynn, supra. However, the State was preliminarily enjoined from depositing the proceeds from that fee into the State treasury, and ordered to place these monies in an escrow account pending final disposition of court case challenging validity of the fees under the Commerce Clause, because plaintiffs established the likelihood of their success on the merits.

American Trucking Ass'ns, Inc. et al. v. New Hampshire, No. 89-E-00405-B (Sup. Ct. NH 1989).

- State's $1,000 per shipment fee for spent nuclear fuel transportation apparently to fund preempted state monitoring activities is preempted. *IR-15. State's RAM permit fee is preempted. *IR-27.

- State's $500 annual permit fee and $200 shipment fee for RAM transportation are not preempted. *Colorado Pub. Utilities Comm'n v. Harmon, No. 88-Z-1524 (D. Colo. 1989), rev'd on other grounds, 951 F.2d 1571 (10th Cir. 1991).

- State's hazardous material license fee of $25 per vehicle or $15 per trip per vehicle found to be a "flat tax", failed Commerce clause "internal consistency" test, and therefore was preempted as an undue burden on interstate commerce. American Trucking Ass'ns, Inc. v. Secretary of State, 595 A.2d 1014 (Me. 1991). A State's $200 annual fee for each vehicle transporting hazardous waste was preempted on similar grounds. American Trucking Ass'ns, Inc. v. Secretary of Administration, 613 N.E.2d 95 (Mass. 1993).

- The imposition and use of an "equitable fee" as part of a City's permit and inspection system for purposes related to the transportation of hazardous material is not preempted. WPD-1.

- Per vehicle fees imposed on transporters who pick up or deliver hazardous waste within the State are preempted under the Commerce Clause, because these fees are not fairly apportioned, discriminate in favor of intrastate commerce, and are unrelated to services provided by the State. A “fair” fee, as set forth in 49 U.S.C. § 5125(g)(1), cannot include fees which are discriminatory or malapportioned. American Trucking Ass’ns, Inc. v. New Jersey, No. 011562-92 (NJ Tax Court, Morris Cty., Mar. 11, 1998).

- Permit fee that is related to the cost of performing a required vehicle inspection, and does not cover all costs of permit administration and hazardous materials enforcement is not preempted as “unfair” or used for purposes that are not related to transporting hazardous material. PD-13(R).

Findings

- Findings regarding hazardous material transportation are not "requirements" subject to preemption under the Federal statute. *IR-18.

Forms - See "Motor Carrier Registration and Permitting Forms.”

Handling of Hazardous Material (Also see discussion of "substantively the same as" test on pp. 1-2.)

- Prohibition against transporting blasting caps on the same motor vehicle with more than 5,000 pounds of other commercial explosives is preempted when interpreted and applied to a vehicle on a public road or during activities on private property that are incidental to the movement of property and involve a safety aspect of transportation on a public road. PD-24(R).

Hazard Class and Hazardous Material Definitions (Also see discussion of "substantively the same as" test on pp. 1-2.)

- In order to be preempted under the Federal hazardous materials transportation law, as applied and enforced, definitions must be related to the areas regulated by DOT. PD-18(R).

- Non-Federal hazardous materials requirements that use preempted definitions are also preempted. PD-18(R).

- State and local hazard class and hazardous material definitions differing from those in the HMR and used to regulate hazardous material transportation are preempted because the Federal role is exclusive. *IR-18; *IR-18(A); #IR-19; #IR-19(A); #IR-20; *IR-21; #IR-26; #IR-28; IR-29; *IR-30; #IR-31; #IR-32; Missouri Pacific R.R. Co. v. Railroad Commission of Texas, 671 F. Supp. 466 (W.D. Tex. 1987), aff'd on other grounds, 850 F.2d 264 (5th Cir. 1988), cert. denied, 109 S. Ct. 794 (1989); PD-18(R), PD-30(R).

- State and local hazardous material definitions and classifications which result in regulating the transportation, including loading, unloading or storage incidental thereto, of more, fewer or different hazardous material than the HMR are obstacles to uniformity in transportation regulation and thus are preempted. IR-5; IR-6; #IR-28; IR-29; #IR-31; #IR-32; PD-18(R).

- Application of state requirements to selected DOT hazardous material can contribute to the overall inconsistency of a series of interrelated regulations. #IR-19.

- "The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing state and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations." IR-6, 48 FR 760, 764.

- "State government or political subdivisions may not regulate--let alone prohibit--the transportation of radioactive or other hazardous materials specifically excepted from regulation under the HMTA or the HMR. The determination of what hazardous materials may or may not be regulated in the transportation field is the essence of DOT's exclusive authority to define and classify hazardous materials." #IR-20, 52 FR 24396, 24401.

- "Radioactive Material" definitions different from HMR definitions are preempted. *IR-8; *IR-12, *IR-15; *IR-16; *IR-18; *IR-21; *IR-30; *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community, 991 F.2d 458 (8th Cir. 1993), affirming 781 F. Supp. 612 (D. Minn. 1991) (enjoining enforcement of ordinance). But essentially identical definitions are not preempted. *IR-18.

- "If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety." *IR-12, 49 FR 46650, 46651.

- City definitions of RAM and flammable material differed from Federal definitions and thus were preempted and their use enjoined. #Union Pac. R.R. Co. v. City of Las Vegas, No. LV-85-932 HDM (D. Nev. 1986).

- City definition of "hazardous waste" consisting of ambiguous and subjective standards and including non-HMR material is preempted. #IR-32.

- State law is preempted when it includes as hazardous materials additional materials defined in differing terms from the definitions and classifications in the HMR. Union Pacific R.R. v. California Publ. Util. Comm'n, No. C-97-3660-TEH (N.D. Cal. June 18, 1998), decision on reconsideration on other issues, (Dec. 14, 1998); PD-18(R).

- A non-Federal requirement is not preempted simply because it does not apply to all hazard classes and all materials governed by the HMR, but a State may need to justify its decision to single out one hazardous material for different types of traffic control than hazardous materials generally. PD-13(R)(dec. on reconsid.); IR-15 (A).

- Borough definitions of "infectious waste," "hospital waste," and "dangerous waste" are preempted when used to create a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR. In addition, "dangerous" is preempted when used and defined in a manner that is substantively different from the use of the word "dangerous" in the HMR. PD-23(RF).

- The scope of "hazardous waste" covered by the HMR is limited to "any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 C.F.R. § 262." 49 C.F.R. § 171.8, PD-32(R).

- Federal hazmat law does not preempt non-Federal requirements on the transportation of materials that are not defined as hazardous in the HMR, except in situations where the non-Federal requirement (a) effectively broadens the category of hazardous materials to include materials that are not regulated under the HMR, or (b) is "tantamount to the creation of an additional class of hazardous materials with its own marking requirements." PD-32(R).

Hazard Warning Requirements - See "Placarding and Other Hazard Warning Requirements."

Hazardous Substances and Wastes (Also see discussion of "substantively the same as" test on pp. 1-2.)

- Dicta in footnotes indicate that State's hazardous substances transportation regulations appeared to be valid under the Federal hazmat law because they regulated only transportation from points in Maryland [but decision overlooked RSPA's 1980 amendment of 49 CFR § 171.1 applying HMR to intrastate transportation of hazardous substances and wastes]. Browning-Ferris, Inc. v. Anne Arundel County, Maryland, 292 Md. 136, 438 A.2d 269, 274 (1981).

- City requirement that driver transporting hazardous waste carry a hazardous waste manifest is same as HMR and is not preempted. #IR-32.

- City definition of hazardous waste consisting of ambiguous and subjective standards and including non-HMR material is preempted. #IR-32.

- City definition of hazardous gases different from that in HMR does not afford as much protection to the public and unreasonably burdens commerce, and therefore waiver of preemption is denied. WPD-1.

- A state bonding requirements for a carrier of hazardous waste to pick up or deliver within the State is not preempted under the "obstacle" test. Massachusetts v. DOT, No. 95-5175 (D.C. Cir. Aug. 27, 1996), reversing PD-1(R).

- Hazardous waste manifest is a "covered subject." PD-2(R); PD-12(R); PD-18(R); PD-232(RF).

- State's hazardous waste manifest requiring, contrary to DOT/EPA Uniform Hazardous Waste Manifest, (1) use of second manifest when there is insufficient room on first manifest and (2) rounding of total hazardous waste quantity to nearest whole number, is preempted as not "substantively the same." PD-2(R).

- State requirement to mark hazardous-waste-hauling trucks with non-HMR markings is preempted under "covered subject" test; requirement to mark trucks hauling waste not designated as hazardous material with non-HMR markings sufficiently similar to HMR markings to cause confusion is preempted under the "obstacle" test. PD-6(R).

- Federal hazardous materials transportation law preempts State requirements which restrict hazardous waste transporters' activities at transfer facilities by (1) prohibiting the repackaging of hazardous wastes; and (2) requiring an indication on the manifest of a transfer of hazardous wastes between vehicles. (PD-12(R).

- RSPA makes no determination with regard to a requirement for secondary containment at a transfer facility where hazardous wastes are stored or transferred, when there is insufficient information whether, as applied and enforced, this requirement is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR. PD-12(R).

- Dormant commerce clause test under Evansville, 92 S.Ct. 1349 (1972), is to be used to determine whether a hazardous waste transporter fee is “fair.” Under that test, the fee is fair if it is: (a) based on fair approximation of use of state facilities; (b) not excessive in relation to benefits conferred; (c) does not discriminate vs. interstate commerce. American Trucking Ass'ns, Inc. v. New Hampshire, No. 92-E-604, N.H. Superior Ct., Merrimack Cty. (May 16, 1994) (order denying summary judgment).

- Requirement prohibiting a registered transporter from allowing non-employees to operate the transporter’s vehicles within the State is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR which allow motor carriers to use independent owner-operators for the transportation of hazardous waste. Wills Trucking, Inc. v. Shinn (Comm’r DEP), Civ. 97-2131 (GEB) (D.N.J. Jan. 28, 1998).

- Per vehicle fees imposed on transporters who pick up or deliver hazardous waste within the State are preempted under the Commerce Clause, because these fees are not fairly apportioned, discriminate in favor of intrastate commerce, and are unrelated to services provided by the State. A "fair" fee, as set forth in 49 U.S.C. § 5125(g)(1), cannot include fees which are discriminatory or malapportioned. American Trucking Ass'ns, Inc. v. New Jersey, No. 011562-92 (NJ Tax Court, Morris City., Mar. 11, 1998).

- State requirement to submit written report of each hazardous waste discharge during transportation is preempted because it is not substantively the same as Federal requirement. State may require a carrier to file a written incident report with RSPA, but it may not require the carrier to file a copy of the Federal form, or a separate incident report, directly with the State. PD-21(R).

- Annual State remedial action fee that transporter must pay to pick up or deliver hazardous waste within the State is preempted as not fair when (1) it is the same for both interstate and intrastate transporters and has no approximation to the transporter's use of roads or other facilities within the State and (2) genuine administrative burdens do not prevent the application of a more finely graduated user fee. State annual remedial action fee on hazardous waste transporters is also preempted when commingled in fund primarily used to clean up "Superfund" sites and there is no evidence that State is actually spending fees collected from transporters for purposes related to transporting hazardous material. PD-21(R).

- Regulated medical wastes are not hazardous wastes. PD-23(RF), PD-29(R), PD-35(R).

- State requirement to submit written report of each hazardous waste discharge during transportation is preempted because it is not substantively the same as Federal requirement. State may require a carrier to file a written incident report with RSPA, but it may not require the carrier to file a copy of the Federal form, or a separate incident report, directly with the State. PD-21(R).

- The scope of "hazardous waste" covered by the HMR is limited to "any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 CFR 262." 49 CFR 171.8. PD-32(R).

Incident Reporting - See "Accident/Incident Reporting Requirements."

Incorporation by Reference

- NRC regulations incorporated by reference in HMR provide basis for consistency comparison with state and local requirements. *IR-8(A).

- DOT encourages state adoption or incorporation by reference of the HMR as state law - and enforcement thereof. *IR-17; #IR-19; #IR-31; WPD-1.

- State and local requirements which incorporate by reference specific superseded Federal regulations are inconsistent. *IR-8; *IR-8(A); *IR-18. However, state and local governments may incorporate by reference specific CFR volumes of the HMR for a

reasonable time (up to two years) after their publication, although a later-published HMR rule would control over an inconsistent state or local requirement. #IR-19.

Indemnification Requirements - See "Insurance or Indemnification Requirements."

Indian Tribe Requirements

- Tribal ordinance is preempted by Federal statute; therefore, tribe lacked power to enact ordinance, and consequently cannot invoke sovereign immunity against declaratory injunction. Further, plain language of the Federal hazmat law expressly waives tribal sovereign immunity for preemption purposes. *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community, 991 F.2d 458 (8th Cir. 1993), affirming 781 F. Supp. 612 (D. Minn. 1991). Tribe was permanently enjoined from enacting ordinance in conflict with the Federal hazmat law. Ibid., Civ. No. 4-93-747 (D. Minn. March 18, 1994).

- Federal hazmat law waives sovereign immunity of Indian tribes, and thereby allows tribes to be sued in Federal court, regarding preemption of tribal requirements. Public Serv. Co. of Colorado v. Shoshone-Bannock Tribes, 30 F.3rd 1203, 1206 (9th Cir. 1994).

Information/Documentation Requirements (Also see discussion of "substantively the same as" test on pp. 1-2 and "Shipping Paper Requirements," "Emergency Response," "Notice Requirements," and "Placarding and Other Warning Requirements.")

- Requirements for information or documentation in excess of Federal requirements create potential delay, constitute an obstacle to execution of the Federal hazmat law and the HMR, and thus are preempted. IR-2; IR-6; *IR-8; *IR-8(A); *IR-15; *IR-15(A); *IR-18; *IR-18(A); #IR-19; #IR-19(A); *IR-21; #IR-26; *IR-27; #IR-28; *IR-30; *Chem-Nuclear Systems, Inc. v. City of Missoula, No. 80-18-M (D. Mont. 1984); #Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada, 909 F.2d 352 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988); *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989); PD-18(R). There is no de minimis exception to the "obstacle" test because thousands of jurisdictions could impose de minimis information requirements. *IR-8(A); PD-18(R).

- Because the HMR does not require a governmental body to certify hazmat training, the requirement to obtain a certificate of training from the State is "more strict" than the HMR, within the meaning of 49 CFR 172.701. PD-7(R), 60 FR 10420; PD-22(R) (requirement to obtain an identification card as proof of training is preempted).

- "In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and HMR and thus are inconsistent with them." #IR-19, 52 FR 24404 at 24408 quoted in #IR-28. See also PD-30(R).

- Preliminary injunction was granted against City requirements to have decal and carry copy of permit. American Trucking Ass'ns, Inc. v. City of Boston, No. 81-628-MA, Fed. Carr. Cas. ¶82,938 (CCH) (D. Mass. 1981).

- Emergency response-related information requirements cannot be used as a prerequisite to hazardous material transportation. #IR-19; *IR-27, PD-30(R).

- State may require, as prerequisite to motor vehicle transport of hazardous material, a driver's license or documentary evidence of hazardous material training from its own domiciliaries but not from non-domiciliaries-- except, on or after April 1, 1992, from non-domiciliaries not having hazardous material endorsements on their commercial drivers' licenses. #IR-26; #IR-31; #IR-32.

- "DOT and NRC have determined what information and documentation requirements are needed for the safe transportation of radioactive materials, and state and local requirements going beyond them create confusion, impose burdens on transporters, are obstacles to the accomplishment of the HMTA's objectives, and thus are inconsistent." *IR-8(A), 52 FR 13000, 13004; quoted in *IR-27; quoted and applied to non-RAM in #IR-19, 52 FR 24404, 24408; see also *IR-15(A).

- "No matter what the form, any state or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations." IR-2, 44 FR 75566, 75571. Requirements for multiple submissions of same information are inconsistent. *IR-8(A).

- Requirements for RAM transportation route plans or other shipment-specific documentation or information are preempted. *IR-21. Also preempted are requirements for RAM shipment information on possible alternate routes, proposed means of conveyance, estimated date and time of departure, emergency response or recovery plans, attestations re safety inspections, certification of compliance with laws and regulations (latter being same as required on DOT shipping papers), telephone numbers, inspection reports, state permits, proof of driver training, proof of insurance, and equipment replacement or repair plans. *IR-8(A); *IR-15; *IR-15(A); *IR-27; *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989); PD-18(R).

- RAM information requirements identical to NRC's are not preempted, but requirement for submission to state of NRC approvals and licenses is preempted. *IR-8; *IR-8(A); *IR-15; *IR-15(A).

- Requirement to carry proof of insurance is preempted. *IR-27; #IR-32; *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Mere requirement in permit application of some information required on DOT shipping papers may not require preemption. Dicta in National Tank Truck Carriers, Inc. v. Burke, 535 F. Supp. 509 (D. R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983).

- "The Secretary's regulations contain hundreds of information and documentation requirements, all of which have been established by the Secretary to ensure the health and safety of citizens in every jurisdiction. Congress specifically found that additional documentation and information requirements in one jurisdiction create 'unreasonable hazards in other jurisdictions' and could confound 'shippers and carriers which attempt to

comply with multiple and conflicting regulations.' [Pub. L. 101-615 § 2, formerly 49 U.S.C. app. § 1801]. Colorado's regulations clearly exceed the information and documentation requirements set forth in the Secretary of Transportation's regulations governing the transportation of radioactive materials. The enactment of separate information and documentation requirements in even a few of the thousands of local jurisdictions across the country would lead to the multiplicitous regulations Congress sought to avoid by enacting the HMTUSA. Because Colorado's regulation forces transporters of hazardous materials to generate and maintain additional documentation and information, we conclude that it is likely to confound shippers and carriers and to increase the potential for hazards in other jurisdictions. Colorado's regulations simply do not further the Federal purpose of promoting safety through uniformity. Therefore, we hold that NT-8 is preempted. * * * In addition to obstructing Congress' objective that safety be achieved through uniformity, the expense of burdensome documentation and information requirements also is contrary to Congress's intent that regulation of hazardous materials transportation be as cost-effective as possible." *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Lengthy pre-notification requirement, license requirement and unfettered discretion to require information before issuing license for single-trip RAM transport causes license requirement to be preempted as "obstacle." *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community, 991 F.2d 458 (8th Cir. 1993), affirming 781 F. Supp. 612 (D. Minn. 1991).

- Federal hazardous material transportation law preempts State requirements to provide emergency responders, at an incident scene, with information that the HMR does not require to be carried on the train, including the contents of rail cars that are not carrying hazardous materials. Union Pac. R.R. v. California Pub. Util. Comm'n. No. C97-3660-TEH (N.D.Cal. Dec. 14, 1998).

Inspection Requirements (Also see "Monitoring of Shipments," "Permit Requirements," and "Registration Requirements.")

- Inspection requirements relating to Federal and non-preempted requirements are encouraged by RSPA and are not preempted. IR-2; *IR-8; *IR-15; *IR-17; #IR-20; *IR-27; #IR-31; *Colorado Pub. Utilities Comm'n v. Harmon, No. 88-Z-1524 (D. Colo. 1989), rev'd on other grounds, 951 F.2d 1571 (10th Cir. 1991).

- Inspection requirements relating to inconsistent requirements are preempted. #IR-20; *IR-21; *IR-21(A); *IR-27, *IR-30; #IR-31.

- State may not require carrier to retain inspection report in vehicle. Such an additional documentation requirement could create confusion and increase hazards. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Annual inspections for tank trucks hauling flammable and combustible liquids and compressed gasses, to determine the vehicles' general safety levels, are not preempted. However, waiver of preemption was denied with respect to inspections to enforce vehicles' conformity to local design requirements (truck size and tank design and capacity). WPD-1.

- The time involved in undergoing an inspection, or waiting one's turn to be inspected when an inspector is present at the inspection location, is not unnecessary within the meaning of 49 C.F.R. § 177.853(a) [now § 177.800(d)] prohibiting unnecessary delays in the transportation of hazardous material. IR-17; IR-31; PD-4(R); see also PD-4(R) (dec. on reconsid.); PD-22(R).

- Requirement of annual inspection of tanks carrying hazardous material is preempted when the inspection cannot be carried out without unnecessary delay because inspectors are not available at the inspection location but must come to the point of inspection from another location. PD-4(R); see also PD-4(R) (dec. on reconsid.); *IR-15.

- A State or county may require an annual inspection of trucks based within its borders, as a condition for issuance of an annual permit, because the carrier should be able to plan and schedule the required inspection without any interruption of the transportation of hazardous material. However, an annual inspection requirement may not be applied to trucks based outside the borders of the inspecting jurisdiction unless the State or county is able to conduct the equivalent of a "spot" inspection upon the truck's arrival within the jurisdiction. PD-13(R) (dec. on reconsideration); PD-18(R); see also PD-4 (R) (dec. on reconsideration); PD-22(R).

Insurance or Indemnification Requirements

- Hazardous material transportation indemnification, bonding or insurance requirements differing from Federal requirements are preempted. *IR-10; *IR-11; *IR-15; *IR-15(A); *IR-18; *IR-18(A); #IR-25; #IR-31. (See also *IR-13; *IR-14.) State may not require proof of insurance meeting the Federal requirements. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- The absence of a bonding, insurance, or indemnity requirement in the HMR "is a reflection of OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR." #IR-25, 54 FR 16308, 16311. "[N]o such requirement is necessary--particularly because 49 CFR §§ 387.7 and 387.9 already require insurance or surety bonds of between $1,000,000 and $5,000,000 for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials." Ibid.

- "The indemnification level established through the HMR, coupled with the indemnification provisions of the Price-Anderson Act (42 U.S.C. § 2210), provides the exclusive standard for radioactive materials transportation indemnification. They have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR." *IR-15(A), 52 FR 13062, 13063.

- Requirement to carry proof of insurance is inconsistent. #IR-32.

- State bonding requirements do not fail the "dual compliance" test; federal and state financial responsibility requirements may both be met. PD-1(R), reversed on other grounds, Massachusetts v. DOT, No. 95-5175 (D.C. Cir. Aug. 27, 1996).

- A state bonding requirement for a carrier of hazardous waste to pick up or deliver within the State is not preempted under "obstacle" test. Massachusetts v. DOT, No. 95-5175 (D.C. Cir. Aug. 27, 1996), reversing PD-1(R).

Jurisdiction (Also see 49 CFR § 171.1)

- To the extent that RSPA (under the HMR) and EPA (under SARA Title III and the Clean Air Act § 112(r)) both regulate consignee tank car unloading, RSPA focuses on the physical aspects of unloading, while EPA focuses on accident prevention planning and risk management. These areas of regulation do not necessarily conflict, and may coexist. PD-8(R), 60 FR 8780.

- Under SARA Title III, a material is stored "incident to transportation" if it is under active shipping papers and has not yet reached the ultimate consignee. 40 CFR § 355.40(b)(4). A "stationary source" under Clean Air Act § 112(r) includes a transportation container that is no longer under active shipping papers or that is connected to equipment at the stationary source for temporary storage, loading or unloading. 59 FR 4490, 4493 (codified at 40 CFR § 68.3). PD-8(R), 60 FR 8781.

- Transportation entirely on private industrial property is not transportation "in commerce" and therefore not subject to the HMR. PD-10(R), 60 FR 8792; PD-9(R), 60 FR 8785.

- Hazardous material stored (1) at a consignee's facility or (2) at a manufacturing facility awaiting use in a manufacturing process is not stored incidental to transportation in commerce, and therefore is not subject to the HMR. PD-9(R), 60 FR 8787.

- Regulation of consignee storage tanks is not within HMR jurisdiction; therefore, State or local requirements as to the types of storage tanks at a consignee's facility into which a hazardous material may be unloaded from a tank car are not preempted. PD-9(R), 60 FR 8788.

- Federal hazmat law waives sovereign immunity of Indian tribes, and thereby allows tribes to be sued in Federal court, regarding preemption of tribal requirements. Public Serv. Co. of Colorado v. Shoshone-Bannock Tribes, 30 F.3d 1203. 1206 (9th Cir. 1994).

- Local government need not obtain an RSPA inconsistency ruling before enforcing a local requirement. National Tank Truck Carriers, Inc. v. Burke, 608 F.2d 819, 821-2 (1st Cir. 1979); City of New York v. Ritter Transportation, Inc., 515 F. Supp. 663, 668 (S.D. N.Y. 1981), aff'd sub nom. National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982); Seaboard System R.R., Inc. v. Bankester, et al., 254 Ga. 455, 330 S.E. 2d 700, 705 (1985). Contra (based on doctrine of primary jurisdiction): Consolidated Rail Corp. v. City of Dover, 450 F. Supp. 966, 974 (D. Del. 1978).

- "Because the DOT authored the HMR, its determination of what constitutes an obstacle to the accomplishment or execution of those regulations is deserving of substantial deference." #Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada, 909 F.2d 352, 359 (9th Cir. 1990).

- Local fire code requirements do not apply to the transportation of hazardous materials in commerce, and are not preempted, when those requirements contain an express exception for the transportation of hazardous materials in accordance with the HMR. PD-14(R).

- Loading or unloading of hazardous materials incidental to the movement of those materials on a public roadway is a "safety aspect" of the transportation of hazardous materials in commerce and subject to the HMR, regardless of whether the loading or unloading takes place on private property. PD-24(R).

Labeling of Hazardous Material (Also see discussion of "substantively the same as" test on pp. 1-2.)

- Requirements for a distinctive label on a container of "sharp wastes" and a label on the outer container of medical waste with the name, address, and telephone number of the generator are preempted because they are not "substantively the same as" HMR requirements for marking and labeling. PD-29(R).

- State requirement that the words "Medical Waste" or "Infectious Waste" must be labeled on the outside of the package containing untreated medical waste is preempted because it is not "substantively the same as" HMR requirements for marking and labeling. PD-35(R).

Land Use Restrictions

- Regulations which apply only to transportation activities are not the type of non-transportation land use restrictions which might not be preempted. #IR-19; see IR-16.

Language of Requirements (Also see "Effect of Requirements.")

- Absent contrary evidence in the record, RSPA presumes that a state rule is applied and enforced by its clear terms. PD-7(R) (dec. on reconsid.), 60 FR 10420; see also PD-14(R).

- State civil penalty provision not explicitly imposing a "knowingly" standard is not preempted under the obstacle test if provision is "enforced and applied" with "knowingly" standard. Roeder Cartage Co. v. Ohio PUC, Case No. 90CVF-12-9532 (Ohio Ct. Common Pleas, Judgment Entry, Jan. 7, 1994).

- Actual language of state and local requirements, rather than later statements of intent, is controlling, *IR-8(A), IR-16, #IR-19(A), unless there is a demonstrated actual practice to the contrary. *IR-17.

- State requirements are not preempted when (1) the written requirements are consistent with the HMR, and (2) there is no evidence that the State applies or enforces requirements in a different manner than provided in the HMR. PD-15(R).

- An inconsistent or erroneous interpretation of a non-Federal regulation should be addressed in the appropriate State or local forum, because isolated instances of improper enforcement (misinterpretation of regulations) do not render such provisions inconsistent with the HMR. IR-31, PD-4(R), PD-14(R), PD-15(R).

Licensing - See "Information/Documentation Requirements" and “Permit Requirements.”

Loading and Unloading (Also see discussion of "substantively the same as" test on pp. 1-2, "Smoking Limitations," and 49 CFR § 171.1)

- Railroad tank car unloading is "handling," which is a "covered subject." PD-9(R).

- A county requirement prohibiting a tank car from remaining on a siding for more than 24 hours while connected for transfer, as applied to a tank car that has been transported in commerce, is preempted. Unloading is a covered subject, and such a requirement is not "substantively the same" as the HMR, which do not impose a time requirement. PD-9(R).

- RSPA makes no determination with regard to requirement for secondary containment at a transfer facility where hazardous wastes are stored or transferred, when there is insufficient information whether, as applied and enforced, this requirement is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR. PD-12(R).

- State and local requirements for hazardous material loading and unloading incidental to transportation (including loading and unloading by consignors and consignees) must be consistent with the Federal hazmat law and HMR. Such requirements are preempted if they differ from, or add to, the HMR requirements--particularly if they are subjective. #IR-19; #IR-19(A); #IR-28; #Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada, 909 F.2d 352 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988).

- "Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress's goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." #Southern Pac. Transp. Co., v. Public Serv. Comm'n of Nevada, 909 F.2d 352, 358 (9th Cir. July 18, 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988).

- Waiver of preemption was granted as to a local transfer requirement, which restricted the emergency transfer of flammable or combustible liquids from a tank or platform truck to vehicles with Fire Department permits or to those otherwise authorized and when authorized by a Fire Department representative. WPD-1.

- Waiver of preemption was granted for a local requirement that gasoline be discharged by gravity into underground tanks, because such a requirement affords an equal or greater level of protection to the public as the HMR and does not unreasonably burden commerce. However, waiver of preemption was denied as to other flammable liquids and to the discharge of gasoline into tanks which are not underground. WPD-1.

- Loading or unloading of hazardous materials incidental to the movement of those materials on a public roadway is a safety aspect of the transportation of hazardous materials

in commerce and subject to the HMR, regardless of whether the loading or unloading takes place on private property. PD-24(R).

Marking Requirements - (Also see discussion of "substantively the same as" test on pp. 1-2.)

- Requirements for identification plate (other than identification and specification plates required by the HMR) and marking of registration number and inspection certification on packagings (cargo tanks and portable tanks) are preempted since they are not substantively the same as the markings required by the HMR. PD-4(R).

- A permit sticker placed on the vehicle, rather than on the cargo tank, is not a marking of hazardous materials and is not preempted in the absence of information that the sticker is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR. PD-13(R); PD-18(R).

- Requirements for a distinctive label on a container of "sharp wastes" and a label on the outer container of medical waste with the name, address, and telephone number of the generator are preempted because they are not "substantively the same as" HMR requirements for marking and labeling. PD-29(R).

- Common law tort claim alleging failure to mark or label cylinder with warnings of the potential hazard of rusting over time is preempted as not substantively the same as requirements in the HMR. PD-34(R).

- Requirements for (1) additional marking of containers of medical waste to include the transporter's name, date of shipment, any intermediate handler's name, and other specific information, and (2) for each transporter (when a container of medical waste is transferred between transporters) to place a water resistant tag on the container (below the generator's marking) with the transporter's name, solid waste registration number, and date of receipt are preempted as not substantively the same as requirements in the HMR. PD-35(R).

- Requirements to mark a motor vehicle or rail car used to transport medical waste to be marked with the name of the transporter, State sold waste transporter registration number, and the words "Medical Waste" or "Infectious Waste" preempted as not substantively the same as requirements in the HMR. PD-35(R).

Mode or Means of Transportation - See "Prohibitions of Hazardous Material Transportation."

Monitoring of Shipments (Also see "Inspection Requirements.")

- Monitoring of hazardous material shipments by State officials is not preempted. *IR-17. However, a carrier cannot be required to stop and wait for State officials assigned to monitor shipments. *IR-15, PD-4(R).

Motor Carrier Registration and Permitting Forms and Procedures - See discussion on p. 2.

Non-Regulatory Actions - See "Statements of Intent to Regulate."

Notice Requirements (Also see "Accident/Incident Reporting Requirements," "Delays of Transportation," and "Information/Documentation Requirements.")

- Advance notice requirements of hazardous material transportation generally are preempted. IR-6; *IR-8(A); *IR-16; #IR-28; *IR-30; #IR-32.

- "Through its rulemaking process and related studies, DOT has determined what prenotification (including information, documentation and certification) requirements are necessary for the safe transportation of radioactive materials. In the process of analyzing rulemaking comments and studies it has commissioned or examined, DOT has determined what prenotification requirements are not necessary. This field has been totally occupied by the HMR. State and local provisions either authorizing less prenotification or requiring greater prenotification than the HMR, therefore, constitute obstacles to the accomplishment and execution of the objectives of the HMTA and the HMR, are inconsistent, and are preempted." *IR-8(A).

- Local requirements for advance notice of hazardous material transportation have potential to delay and redirect traffic and thus are preempted. IR-6; #IR-32.

- Notice requirements re RAM shipment schedule changes identical to NRC regulations (incorporated by HMR) are not preempted. *IR-8.

- Notice requirements re RAM shipment schedule or changes thereto different from NRC regulations (incorporated by HMR) are preempted. *IR-14; *IR-15; *IR-16;; *IR-18; *IR-18(A); *IR-27; *IR-30; #IR-32; *Chem-Nuclear Systems, Inc. v. City of Missoula, No. 80-18-M (D. Mont. 1984).

- "The State's prenotification requirements differ from, and are more burdensome than, the radioactive materials prenotification requirements in §§ 173.22 and 177.825 [now § 397.101] of the HMR and 10 C.F.R. §§ 71.97 and 73.97 (NRC regulations incorporated by reference in § 173.22 of the HMR). [Its rule] requires more information about more shipments and thereby creates confusion and undermines the likelihood of proper compliance with the HMR prenotification requirements. Therefore, [it] is inconsistent with the HMR to the extent that it exceeds NRC requirements by requiring greater prenotification concerning non-spent fuel HRCQ radioactive materials shipments." *IR-27, 54 FR 16326, 16331. Affirmed in *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- "Congress expressly found that state 'notification' requirements that 'vary from Federal laws and regulations' create 'unreasonable hazards' and pose a 'serious threat to public health and safety.' [Pub. L. 101-615 § 2, formerly 49 U.S.C. app. § 1801]. Colorado's prenotification requirement varies from Federal law, poses a threat to uniformity, and thereby threatens public safety and obstructs the purpose and objective of Congress and the Secretary." *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Lengthy pre-notification requirement, license requirement and unfettered discretion to require information before issuing license for single-trip RAM transport causes license requirement to be preempted as "obstacle." *Northern States Power Co. v. Prairie Island

Mdewakanton Sioux Indian Community, 991 F.2d 458 (8th Cir. 1993), affirming 781 F. Supp. 612 (D. Minn. 1991).

- Requirements that a carrier provide advance notification are preempted because they have an inherent potential to delay the transportation of hazardous materials, and also when the advance notification is linked to a requirement for a police escort. PD-20(RF).

Operations Suspension/Requirements - See "Traffic Controls/ Regulations."

Other Federal laws - See "Authorized by Another Law of the United States."

Packaging Design and Construction Requirements (Also see discussion of "substantively the same as" test on pp. 1-2.)

- Truck back-up alarm is not part of hazardous material "package or container" so as to trigger application of "covered subject" test. PD-5(R).

- Packaging and cargo containment design, construction, testing, accessories, equipment, certification and permit requirements, including those vesting discretionary authority in state or local officials, are preempted. IR-2; *IR-8; *IR-8(A); *IR-18; *IR-18(A); IR-22; National Paint & Coatings Ass'n, Inc. v. City of New York, No. CV-4525 (ERK) (E.D. N.Y. 1985).

- "State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations." IR-2, 44 FR 75566 at 75568.

- Hazardous gas container-testing requirements are preempted. National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982).

- RAM container testing and certification requirements are preempted. *IR-8; *IR-8(A); *IR-15.

- Requirement for frangible shank-type lock on tank trailers carrying LNG or LPG is preempted since DOT comprehensively regulates cargo tank containment. IR-2.

- Initially, plaintiffs failed to demonstrate "obstacle" test violations or to obtain summary judgment enjoining city cargo containment system regulations, including requirements that flammable liquid cargo tanks be constructed of steel, not aluminum, and contain compartments and baffles, that flammable liquids not be transported in semi-trailers nor gases or combustible liquids in full trailers, and that trucks be inspected annually and carry a permit evidencing that inspection and imposing capacity limits on tank truck shipments. National Paint & Coatings Ass'n, Inc. v. City of New York, No. CV 4525 (ERK) (E.D. N.Y. 1985). However, those requirements were preempted by the packaging "covered subject" provision of HMTUSA. Ibid., Oct. 18, 1991; WPD-1.

- State authority to set design and construction standards for cargo tanks and portable tanks is not preempted when that authority is applied only for "grandfathered" tanks used only by intrastate carriers and the State does not attempt to enforce design and construction

requirements, with respect to tanks meeting DOT specifications, that are not substantively the same as the requirements in the HMR. PD-4(R).

- State requirements are not preempted when (1) the written requirements are consistent with the HMR, and (2) there is no evidence that the State applies or enforces requirements in a different manner than provided in the HMR. PD-15(R).

- Common law tort claim alleging failure to design and manufacture cylinder with greater resistance to rusting is preempted as not substantively the same as requirements in the HMR. PD-34(R).

- Tort claim that rail tank car should have been equipped with additional safety valves is preempted as not substantively the same as requirements in the HMR. Roth v. Norfalco LLC, 651 F.3d 367 (3d Cir. 2011).

Packing/Repacking of Hazardous Material (Also see discussion of "substantively the same as" test on pp. 1-2.)

- State prohibition against any repackaging of hazardous wastes is preempted as not substantively the same as requirements in the HMR. PD-12(R).

- State prohibition against recontainerization of hazardous wastes at transfer facilities is not substantively the same as requirements in the HMR and preempted. PD-25(R).

- Differing requirements for packaging and containers for medical waste transported off-site, including standards of "rodent proof" and "fly tight" and use of 3 mil bags (including double bagging), are preempted because they are not "substantively the same as" HMR requirements for packing of hazardous materials. PD-29(R).

- Requirements that a generator separate sharps, fluids (greater than 20 cc), and other regulated medical waste into different containers before transport, and allowing shipment of unpackaged “oversized” medical waste preempted as not substantively the same as requirements in the HMR. PD-35(R).

Penalties (Also see "Enforcement and Violations Provisions").

- Penalties (such as fines, imprisonment or civil penalties) for violating consistent State or local rules are consistent unless they are so extreme or arbitrarily applied as to reroute or delay shipments; mere differences in amount do not undermine consistency. IR-3; *IR-27; #IR-28.

- Penalties (such as fines, imprisonment or civil penalties) for violating preempted State or local rules are themselves preempted. *IR-18; *IR-18(A); *IR-27; #IR-28; *IR-30; *Jersey Cent. Power & Light Co. v. Township of Lacey, 772 F.2d 1103 (3d Cir. 1985), cert. denied, 475 U.S. 1013 (1986).

Permit Requirements (Also see "covered subjects" discussion on pp. 1-2, "Approval Requirements," "Fee Requirements" and "Inspection Requirements.")

- Transportation permit is not preempted per se; preemption depends upon its requirements. IR-2; IR-3; #IR-20; #IR-28; New Hampshire Motor Transport Ass'n v. Flynn, 751 F.2d 43 (1st Cir. 1984); *Colorado Pub. Utilities Comm'n v. Harmon, No. 88-Z-1524 (D. Colo. 1989), rev'd on other grounds, 951 F.2d 1571 (10th Cir. 1991); PD-9(R), 60 FR 8785; PD-22(R).

- State permitting system which prohibits or requires certain transportation activities depending upon whether a permit has been issued (regardless of whether the activity is in compliance with the Federal hazmat law), applies to selected hazardous material, involves extensive information and documentation requirements and contains considerable discretion as to permit issuance, is preempted. "Cumulatively, these factors constitute unauthorized prior restraints on shipments of nonradioactive hazardous materials that are presumptively safe based on their compliance with Federal regulations." #IR-19, 52 FR 24404, 24407. Affirmed in #IR-19(A) and #Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada, 909 F.2d 352 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988).

- Local permit for hazardous material storage is preempted with respect to storage incidental to transportation because of its burdensome information and documentation requirements, its discretionary nature, and its delay-inducing tendencies. #IR-28.

- Certain over-the phone permits for transportation of hazardous gases are not preempted. National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982).

- Permit requirements for each shipment involving application 4 hours to 2 weeks prior to shipment, carrying of permit on vehicle and "an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper" involve high probability of transportation delay and thus are preempted. IR-2.

- Local RAM transportation permit was not preempted -- prior to DOT's issuance of HM-164 re routing of certain RAM. *IR-1.

- Requirements implementing, inextricably related to, or "fleshing out" preempted permitting requirements are themselves preempted. *IR-21; *IR-21(A).

- If permit system is not preempted, requirements to carry permit and display decal are not preempted. IR-3. But requirement to display permit decal was preempted. American Trucking Ass'ns, Inc. v. City of Boston, C.A. 81-628-MA, Fed. Carr. Cas. 82,938 (CCH) (D. Mass. 1981).

- Since Federal hazmat law and HMR have almost completely occupied the field of RAM transportation safety, state and local requirements are limited to: (1) traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 C.F.R. § 177.825 [now § 397.101 et seq.], (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, RAM transportation permits generally are

preempted. *IR-8; *IR-8(A); *IR-10; *IR-11; *IR-12; *IR-13; *IR-15; *IR-18; *IR-18(A); #IR-19; #IR-19(A); #IR-20; *IR-21; *IR-21(A); *IR-27. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Permit requirement calling for annual inspections to determine trucks' general safety levels is not preempted, but waiver of preemption was denied with regard to the enforcement of preempted local tank truck design and capacity requirements. WPD-1.

- Lengthy pre-notification requirement, license requirement and unfettered discretion to require information before issuing license for single-trip RAM transport cause license requirement to be preempted as "obstacle." *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community, 991 F.2d 458 (8th Cir. 1993), affirming 781 F. Supp. 612 (D. Minn. 1991).

- Permit requirement is not preempted when its issuance, including required inspection, does not cause unnecessary delays in the transportation of hazardous material. PD-13(R).

- Permit requirement for vehicles based within the State or county issuing the permit is not preempted, even when an inspection is required for the permit, because the carrier should be able to plan and schedule the required inspection without any interruption of the transportation of hazardous material. However, the State or county may not require a permit for vehicles based outside its borders when it requires an inspection for the permit and is unable to conduct the equivalent of a spot inspection upon the truck's arrival within the jurisdiction. PD-13(R) (dec. on reconsid.); see also PD-4 (R) (dec. on reconsid.).

- Uniform Fire Code requirements for a permit to store, handle, transport on site hazardous materials at a carrier's transfer facility, and which require the submission of a hazardous materials management plan and a hazardous materials inventory statement are preempted because (1) the designation, description, and classification of hazardous materials in the Fire Code are not substantively the same as in the HMR; (2) these requirements are not substantively the same as HMR requirements regarding the use of shipping papers to provide emergency response information; and (3) these requirements require advance notification of the transportation of hazardous materials. PD-30(R).

- A city's decision after November 14, 1994, to revoke existing permits for transportation of hazardous materials through the city, and not to issue any new through-permits creates a new limitation or prohibition which requires compliance with FMCSA's standards for designating or limiting highway routes over which hazardous materials may be transported. PD-33(F).

Persons Subject to Requirements (Also see "Transportation Subject to Requirements.")

- Definitions of persons subject to State or local requirements which include fewer persons than HMR minimize inconsistency possibilities and are themselves consistent. *IR-18.

Placarding and Other Hazard Warning Requirements (Also see "covered subjects" discussion on pp. 1-2.)

- State requirement to mark hazardous-waste-hauling truck in manner different from HMR, including marking of empty truck, is preempted as not "substantively the same" as HMR. PD-6(R).

- Requirement to mark truck is marking requirement, even where marking is not on packaging itself, if the marking: (1) is in a location where it purports to communicate hazards posed by the material in the truck and (2) uses language to do so that may be confused with HMR-required markings. PD-6(R).

- Requirement to mark trucks carrying wastes not designated as hazardous material is preempted as "obstacle" where the required marking differs from HMR-required markings, but is sufficiently similar to HMR markings that it appears to be an HMR hazard warning. PD-6(R).

- "Covered subject" of hazardous material "labeling, marking and placarding" only includes those subjects, and does not encompass any "hazard communication" requirement. PD-5(R).

- Placarding and other hazard warning requirements are preempted if they are in addition to or different from Federal placarding requirements. IR-2; IR-3; IR-24; *IR-30; Kappelmann v. Delta Air Lines, Inc., 539 F.2d 165 (D.C. Cir. 1976), cert. denied, 429 U.S. 1061 (1977); National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982). Such requirements are not preempted if they do not differ from the HMR. #IR-31; #IR-32.

- "Hazard warning systems are another area where [OHMT] perceives the Federal role to be exclusive. . . . Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information." IR-2, 44 FR 75565, 75568.

- Requirement for illuminated rear bumper sign conflicts with DOT lighting regulations, would divert attention from DOT placards and thus is preempted. IR-2.

- Requirements for unique placards and identification of products are preempted. IR-3; American Trucking Ass'ns, Inc. v. City of Boston, C.A. 81-628-MA, Fed. Carr. Cas. &82,938 (CCH) (D. Mass. 1981).

- Requirement to display permit decal is preempted. American Trucking Ass'ns, Inc. v. City of Boston, C.A. 81-628-MA, Fed. Carr. Cas. 82,938 (CCH) (D. Mass. 1981).

- "It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the

safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions." IR-24, 53 FR 19848, 19850.

- But plaintiffs, prior to IR-24, failed to obtain summary judgment or make sufficient showing that Federal placarding regulations were intended to occupy field and preempt city hazard warning sign requirements with respect to local deliveries. National Paint & Coatings Ass'n, Inc. v. City of New York, No. 84-4525 (E.D. N.Y. 1985).

- Waiver of preemption was denied for local requirement mandating color and size of permanent "GASOLINE" lettering on trucks used to transport gasoline. Although not directly in conflict with the HMR, the requirement would mandate the maintenance of a separate fleet of trucks to transport gasoline and lead to an increase in the number of trips required. Further, the requirement would unreasonably burden commerce while not affording a greater level of public protection. WPD-1.

Prenotification Requirements - See "Notice Requirements."

Prohibitions of Hazardous Material Transportation (Also see "Permit Requirements.")

- Prohibitions of hazardous material transportation generally are inconsistent. IR-3; IR-3(A); IR-10; *IR-16; #IR-20.

- Power to ban, rather than to channel or guide, hazardous material traffic is exclusively Federal. "A unilateral local ban is a negation, rather than an exercise, of local responsibility, since it isolates the local jurisdiction from the risks associated with the commercial life of the nation." IR-3(A), 47 FR 18457, 18458.

- Town order requiring railroad to remove its railcars containing vinyl chloride from Town is preempted. Consolidated Rail Corp. v. Hancock, No. 79-0983-MA (D. Mass. 1979).

- City ban on hazardous material pickups and deliveries by non-city-permitted vehicles is preempted. Likewise preempted is a City ban on fueling or stopping of hazardous material through-traffic. IR-23.

- "A State or local government may not resolve the problem by effectively exporting it to another jurisdiction." *"Nine-Pack" Preamble, citing Kassel v. Consolidated Freightways, 450 U.S. 662 (1981) and IR-3.

- But local prohibition on liquefied gases transportation through City unless no practical alternative route existed is not preempted. National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982), aff'g City of New York v. Ritter Transportation, Inc., 515 F. Supp. 663 (S.D. N.Y. 1981).

- Prohibition of RAM or explosives transportation, including storage incidental thereto, is preempted. *IR-16; #IR-20; *IR-30.

- De facto prohibitions are preempted. *IR-10.

- Prohibition of RAM transportation which RSPA has excepted from HMR requirements is preempted. #IR-20.

- Inadequacy of emergency response capabilities cannot provide basis for prohibiting transportation. *IR-18; *IR-18(A).

- To the extent it prohibits rail, air or water transportation of fireworks, State regulation allowing fireworks delivery by motor vehicle is inconsistent and thus is preempted. South Dakota Dep't of Public Safety ex rel. Melgaard v. Haddenham, 339 N.W.2d 786 (S.D. 1983).

- City requirement that a shipper must use the "safest" means of transportation constitutes an inconsistent ban on transportation by other modes of transportation. *IR-30. The Federal hazmat law does not require or authorize the mandatory selection of a single "safest" mode of transportation. *City of New York v. U.S. Department of Transportation, 715 F.2d 732 (2d Cir. 1983), cert. denied, 465 U.S. 1055 (1984); *IR-30.

- An otherwise non-preempted requirement is not preempted because it applies only to certain modes of transportation. *IR-18.

- County ordinance prohibiting spent fuel or radioactive waste transportation into County for storage on nuclear power plant sites is preempted. *Jersey Cent. Power & Light Co. v. Township of Lacey, 772 F.2d 1103 (3d Cir. 1985), cert. denied, 475 U.S. 1013 (1986).

- A State statute designating only two ports of entry for RAM shipments into the State is in the nature of a RAM transportation ban via other routes. Local bans are the sort of "piecemeal requirements" Congress intended to preempt unless adopted through a process including views of all affected jurisdictions. *PD-3(F).

- A city's decision after November 14, 1994, to revoke existing permits for transportation of hazardous materials through the city, and not to issue any new through-permits. creates a new limitation or prohibition which requires compliance with FMCSA's standards for designating or limiting highway routes over which hazardous materials may be transported. PD-33(F).

Radio Requirements - See "Communications Requirements."

Railroad-related Requirements

- State or local hazardous material railroad transportation requirements may be preempted under the Federal Railroad Safety Act (FRSA), 49 U.S.C. App. § 434 [now § 20106], without consideration of whether they might be consistent under the Federal hazmat law. CSX Transportation, Inc. v. City of Tallahoma, No. 4-87-47 (E.D. Tenn. 1988); CSX Transportation, Inc. v. Public Utilities Comm'n of Ohio, 701 F. Supp. 608 (D. Ohio 1988), affirmed, 901 F.2d 497 (6th Cir. 1990), cert. denied 111 S.Ct. 781 (1991). Court decisions exclusively concerning FRSA preemption are irrelevant to Federal hazmat law preemption issues. #IR-31.

- State definition of "train" which results in regulation of transportation specifically exempted from regulation by the HMR is preempted. #IR-31.

- Requirement that a railroad immediately report any incident resulting in the release or threatened release of a hazardous material is not preempted, but requirement to provide emergency responders with certain information at the incident scene beyond that required by the HMR to be carried on the train, is preempted. Union Pacific R.R. v. California Publ. Util. Comm'n, No. C-97-3660-TEH (N.D. Cal. Dec. 14, 1998).

Registration Requirements (Also see "Approval Requirements," "Fee Requirements," "Inspection Requirements" and "Permit Requirements.")

- Annual registration requirement is not preempted when the registration requirement, standing alone, does not cause unnecessary delays (or depend on other requirements which are preempted). PD-4(R).

Reporting Requirements - (Also see "Accident/Incident Reporting Requirements.")

- Requirements that a transporter must deliver the entire quantity of regulated medical waste listed on a shipping paper to the proper party listed on the shipping form; that intermediate handlers and destination facilities must certify that they received the regulated medical waste listed on a shipping paper; and that a generator must file an exception report (and retain a copy for three years) whenever it is notified (by a transporter or destination facility) of any discrepancy between the shipment as accepted by the initial transporter and delivered to the destination facility are not preempted. PD-35(R).

Ripeness of IR/PD Application (Also see "Standing To Apply for IR/PD.")

- Pendency of a judicial proceeding concerning the same issues as are in an IR application does not bar the issuance of an IR but instead increases possible usefulness of an IR. *IR-27; *IR-30.

Routing Requirements (Also see highway routing discussion on p. 2 and "Delays of Transportation," "Prohibitions of Hazardous Material Transportation," "Time Restrictions," and "Traffic Controls/Regulations.")

- Without adequate safety justification and appropriate coordination with, and concern for safety of people in, adjoining affected jurisdictions, routing restrictions (including time and weather restrictions) are preempted -- particularly if they result in increased transit times. *IR-1; IR-2; IR-3; IR-3(A); *IR-10; *IR-11; *IR-14; *IR-16; #IR-20; IR-23; #IR-32.

- Local routing restrictions prohibiting transport of liquefied gases through City except to areas for which no practical interstate or major highway alternative route exists are not preempted. National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982), aff'g City of New York v. Ritter Transportation, Inc., 515 F. Supp. 663 (S.D. N.Y. 1981).

- State preferred route designations for highway route controlled quantity RAM are not preempted if in accordance with 49 CFR § 177.825(b) [now § 397.101].

- "[T]he Department, through promulgation of 49 C.F.R. § 177.825 [now § 397.101], has established a near total occupation of the `field of routing . . . requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation routing . . . requirements other than (1) those identical to Federal requirements or (2) state designated alternate routes under 49 C.F.R. § 177.825(b) [now § 397.101], are very likely to be inconsistent and thus preempted under § 112(a) of the HMTA." *IR-8(a), 52 FR 13000, 13003. Accord *PD-3(F).

- Local routing restrictions on RAM are preempted if they prohibit transportation on routes authorized by 49 CFR Part 177 [now Part 397] or authorized by a State routing agency under those regulations. *IR-18; *IR-18(A); #IR-20; accord *PD-3(F).

- Suspension or regulation of spent nuclear fuel shipments on non-Interstate highways (not needed for access to or from Interstate or preferred routes) is not preempted. *IR-7.

- Routing restrictions on highway route controlled quantity RAM not in accordance with 49 CFR § 177.825(b) [now § 397.101], which authorizes State (not local) designation of certain preferred routes, are preempted. *IR-8(A); *IR-16; *IR-18; *IR-18(A); #IR-20; *IR-21; *IR-30; #IR-32; *Jersey Cent. Power & Light Co. v. State of New Jersey, No. 84-5883 (D. N.J., Dec. 27, 1984), appeal dismissed as moot, 772 F.2d 35 (3d Cir. 1985).

- Routing restrictions on non-highway route controlled quantity RAM required by 49 CFR Part 172 to be placarded are preempted unless identical to 49 CFR § 177.825(a) [now § 397.101]. *IR-18; *IR-18(A); *IR-21; *IR-30; #IR-32; accord *PD-3(F).

- Local highway routing restrictions on other types of RAM are preempted. *IR-30; #IR-32.

- Non-highway routing restrictions on RAM are preempted. *IR-30.

- "Congress' dual purposes in enacting the HMTA were: (1) To protect the Nation against the risks inherent in hazardous materials transportation; and (2) to prevent a patchwork of varying and conflicting State and local regulations. Commissioners' Ordinance No. 0-31-80 impedes both purposes. By delaying hazardous materials shipments and causing traffic to be diverted from established routes, the Ordinance increases exposure to the risks inherent in hazardous materials transportation; and to the extent that the Ordinance results in the diversion of hazardous materials traffic into adjacent jurisdictions, it constitutes a routing requirement adopted without consideration of the safety impacts on other affected jurisdictions. To the extent that the Ordinance creates a precedent for the establishment of independent and uncoordinated local prenotification systems, it contributes to the creation of the regulatory patchwork which Congress intended to preclude." IR-6, 48 FR 760, 766.

- Routing requirements linked to preempted equipment requirements are preempted. IR-22; IR-23.

- State statute designating only two ports of entry for RAM shipments into the State fails the "dual compliance" test as carrier cannot meet State requirement and also minimize

radiological risk, use shortest distance route or use interstate bypass, as required by 49 CFR 397.101. *PD-3(F).

- State RAM routing restriction not identical to 49 CFR 397.101(a) & (b) [incorporating without substantial change 49 CFR 177.825] preempted as "obstacle." *PD-3(F).

- City ordinance limiting trucks carrying hazardous materials to one street in the Borough is preempted when the city failed to comply with routing standards in 49 CFR part 397. PD-23(RF).

- District of Columbia prohibition against transporting certain types and quantities of hazardous materials within 2.2 miles of the U.S. Capitol Building is preempted because the City failed to comply with the routing standards in 49 CFR part 397. PD-31(F).

- Boston's decision to revoke existing permits for transporting hazardous materials through the City, and not to issue any more through-permits, amounts to a de facto prohibition and is preempted because it was made after November 14, 1994, and the City failed to comply with the routing standards in 49 CFR part 397. PD-33(F).

- Any change from one roadway to another constitutes a modification of an existing designation or restriction which was previously "grandfathered" under 49 U.S.C. § 5125(c)(2) and 49 CFR 397.67(c). PD-33(F).

Sanctions -- See "Enforcement and Violations Provisions" and "Penalties."

Segregation and Separation Requirements -- See "Storage Provisions."

Shipping Paper Requirements (Also see "covered subjects" discussion on pp. 1-2 and "Information/Documentation Requirements.")

- "Shipping papers" and "shipping documents" are interchangeable terms. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Virtually identical shipping paper requirements (to those of the HMR) generally are not preempted. #IR-31.

- Additional or different shipping paper requirements generally are preempted. IR-4, IR-4(A). State shipping document requirements not substantively the same as HMR are preempted. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Requirement for red or red-bordered shipping papers for intrastate hazardous material shipments is an obstacle to uniform national system and thus is preempted. IR-4.

- Requirements for certification to state of shipment's compliance with law are redundant, constitute obstacles to Federal hazmat law, and thus are preempted. *IR-8, *IR-15; *IR-21.

- Requirement to carry State Patrol phone number with shipping papers is not "substantively the same" and is preempted. *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- Hazardous waste manifest is a "covered subject." PD-2(R); PD-18(R); PD-23(RF).

- State's hazardous waste manifest requiring, contrary to DOT/EPA Uniform Hazardous Waste Manifest, (1) use of second manifest when there is insufficient room on first, and (2) rounding of total hazardous waste quantity to nearest whole number; is preempted as not "substantively the same." PD-2(R).

- State requirement to indicate on the manifest any transfer of hazardous wastes between vehicles (of the same transporter) is preempted as not substantively the same as requirements in the HMR. PD-12(R).

- Local requirement to carry uniform manifest for shipments of regulated medical waste (or other hazardous materials that are not hazardous wastes) is preempted because it is not substantively the same as the HMR which requires the use of a specific form only for hazardous wastes. PD-23(RF).

- The following requirements for preparation and use of a medical waste manifest are preempted because they are not "substantively the same as" shipping paper requirements in the HMR: that the generator must designate on a manifest the address of the delivery site; the transporter and disposal facility must sign the manifest; the disposal facility must return the signed original to the generator; the generator must retain more than one copy of the manifest; and the generator must retain a copy of the manifest for more than 375 days after the material is accepted by the initial carrier. PD-29(R)

- Requirements for use of a specific “tracking form” to accompany shipments (including consolidation of shipments) of regulated medical waste are preempted, because they are not substantively the same as requirements in the HMR; but requirements which simply require a generator and transporter to retain copies of a shipping paper for three years are not preempted. PD-35(R).

Smoking Limitations

- Local smoking ban in vicinity of motor vehicle carrying flammable or combustible liquids or flammable gases, which is more extensive than the HMR, is not preempted. WPD-1.

Sovereign Immunity (Also see "Indian Tribe Requirements" and "Jurisdiction.")

- Federal hazmat law waives sovereign immunity of Indian tribes, and thereby allows tribes to be sued in Federal court, regarding preemption of tribal requirements. Public Serv. Co. of Colorado v. Shoshone-Bannock Tribes, 30 F.3d 1203, 1206 (9th Cir. 1994).

- A State’s sovereign immunity does not prevent DOT from making an administrative determination whether Federal hazmat law preempts a State requirement on the transportation of hazardous material, because the notice-and-comment procedure used by

DOT allows it to interpret the Federal law that it is empowered to enforce, does not offend the dignity of the States, and does not force a State to adjudicate claims brought by private citizens as if the State were sued in an Article III tribunal. Tennessee v. DOT, 326 F.3d 729 (6th Cir.), cert. denied, 124 S.Ct. 464 (2003).

Speed Limit -- See "Traffic Controls/Regulations."

Standing To Apply for IR/PD (Also see "Ripeness of IR/PD Application.")

- Threshold requirements for obtaining an IR are liberally construed, and an organization or association may apply for an IR concerning requirements that affect members of the organization or association. *IR-21; #IR-32.

- The signing of contract to comply with local requirements does not preclude applying for inconsistency ruling. #IR-28.

- To apply for a determination of preemption, after the 1990 amendments to the HMTA, an applicant must demonstrate that it is directly affected by the non-Federal requirement. If the requirement does not affect the applicant or any other party submitting comments, no decision on preemption will be made. PD-4(R).

- Standing to apply for PD governed by "directly affected" standard, construed liberally. An industry association may apply for a determination whether non-Federal requirements are preempted when those requirements apply to individual members of the association. PD-2(R); PD-6(R); PD-12(R); PD-19(R).

Statements of Purpose or of Intent to Regulate

- State or local statements of purpose or of intent to regulate are not preempted. *IR-9; *IR-12; *IR-15; *IR-18; *IR-30.

State Requirements

- Local requirements for compliance with otherwise consistent state requirements are not preempted. IR-3.

Storage Provisions

- Hazmat stored (1) at a consignee's facility or (2) at a manufacturing facility awaiting use in a manufacturing process is not stored incidental to transportation in commerce, and therefore is not subject to the HMR. PD-10(R), 60 FR 8792; PD-9(R), 60 FR 8787.

- Regulation of consignee storage tanks is not within HMR jurisdiction; therefore, State or local requirements as to the types of storage tanks at a consignee's facility into which a hazmat may be unloaded from a tank car are not preempted. PD-9(R), 60 FR 8788.

- RSPA makes no determination with regard to a requirement for secondary containment at a transfer facility where hazardous materials (including wastes) are stored or transferred, when there is insufficient information whether, as applied and enforced, this requirement is

an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR. PD-12(R), PD-30(R).

- State or local prohibition of hazardous material storage incidental to transportation without a state or local permit at places where, and for times when, the HMR allow such storage is preempted. #IR-19; #IR-19(A); #IR-28; #Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada, 909 F.2d 352 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988).

- City prohibition of hazardous waste storage is preempted as applied to storage incidental to transportation. #IR-32.

- City 20-car limitation on unloaded or loaded butane railcars at a site is preempted. Consolidated Rail Corp. v. City of Bayonne, 724 F. Supp. 320 (D. N.J. 1989).

- "In summary, the HMR contain a comprehensive series of regulations relating to the storage of hazardous materials incidental to transportation by rail. These regulations authorize or prohibit specific types of hazardous materials storage under specified circumstances. Creation by the PSC of a separate regulatory regime for rail transport-related storage of hazardous materials raises the spectre of widespread confusion. The PSC regulations are so open-ended and discretionary that they authorize the PSC to approve storage prohibited by the HMR or prohibit storage authorized by the HMR." #IR-19, 52 FR 24404, 24410.

- "State or local imposition of containment and segregation requirements for the storage of hazardous materials incidental to the transportation thereof different from, or additional to those in, § 177.848(f) of the HMR create confusion concerning such requirements and the likelihood of noncompliance with § 177.848(f)." #IR-28, 55 FR 8884, 8893.

- Separation requirements in the Uniform Fire Code, as applied by the Houston Fire Chief to the storage of hazardous materials during transportation, are preempted because these requirements are not substantively the same as the segregation requirements in the HMR. PD-30(R).

- "Despite DOT's extensive regulation of loading, unloading, transfer and storage incidental to the transportation of hazardous materials, the Nevada regulations require a carrier to obtain an annual permit prior to engaging in these activities within the state of Nevada. The Nevada regulations, thus, create a separate regulatory regime for these activities, fostering confusion and frustrating Congress's goal of developing a uniform, national scheme of regulation. The resulting confusion is exacerbated by the fact that the Nevada regulations only apply to some of the hazardous materials covered by the HMTA and HMR and not to others." #Southern Pac. Transp. Co., v. Public Serv. Comm'n of Nevada, 909 F.2d 352 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev. 1988).

Time Restrictions (Also see "Routing Requirements" and "Delays of Transportation.")

- Time restrictions are a subset of routing restrictions. IR-3. Thus, without adequate safety justification and appropriate coordination with adjoining affected jurisdictions, time

restrictions, except as to in-city pickup and deliveries, are preempted. IR-3(A); IR-23; #IR-32.

- Statewide prohibition on hazardous material carriage between 7-9 a.m. and 4-6 p.m. on weekdays resulted in delay and are preempted. IR-2; National Tank Truck Carriers, Inc. v. Burke, 535 F. Supp. 509 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983). Also preempted is statewide prohibition on RAM transportation other than during non-holiday weekdays from 9 a.m. to 4 p.m. *IR-21.

- Citywide rush-hour curfew (no transport between 6-10 a.m. and 3-7 p.m.) on liquefied gas transportation is not preempted. National Tank Truck Carriers, Inc. v. City of New York, 677 F.2d 270 (2d Cir. 1982), aff'g City of New York v. Ritter Transportation Co., 515 F. Supp. 663 (S.D. N.Y. 1981).

- With the exception of time-sensitive radiopharmaceuticals, City weekday time restrictions against pickup and delivery of hazardous material in a defined downtown area are not preempted because they are far less likely to affect other local jurisdictions and cause delays in transportation. IR-3; IR-23; PD-20(RF).

- No decision on consistency of 6-10 a.m. and 3-7 p.m. bridge and tunnel prohibition is possible without information on safety justification, coordination with other jurisdictions, and delays or diversions of hazardous material. #IR-20.

- Restriction of RAM transportation to May-October period and prohibition of holiday or inclement weather shipments is preempted. *IR-14.

- County's assertion of unfettered authority to change dates, routes and times of hazardous material shipments is preempted. *IR-18.

- Time restrictions linked to inconsistent routing requirements are preempted. IR-22; IR-23.

- City restriction of hazardous material through-traffic on weekdays to 10 a.m. - 3 p.m. and 7 p.m. - 6 a.m. for explosives and "prohibited materials" and to 9 a.m. - 4 p.m. and 6 p.m. - 7 a.m. for other "hazardous cargo" is preempted because not based on adequate safety analysis or preceded by consultations with all affected jurisdictions. IR-23. City prohibition of hazardous waste transportation between 6:30 a.m. and 8:30 a.m. and 2 and 3 p.m. is preempted for same reason. #IR-32.

Traffic Controls/Regulations (Also see "Routing Requirements.")

- So long as reasonably administered on a case-by-case basis, the local authority to restrict or suspend operations when road, weather, traffic or other hazardous conditions or circumstances warrant is not preempted. IR-3; *IR-15(A); #IR-20; American Trucking Ass'ns, Inc. v. City of Boston, supra; National Tank Truck Carriers, Inc. v. Burke, 535 F. Supp. 509 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983).

- Local traffic controls are presumed to be valid. #IR-20; IR-23; #IR-32. This includes speed limits. #IR-32.

- "To the extent that nationwide regulations do not adequately address a particular local safety hazard, state and local governments can regulate narrowly for the purpose of eliminating or reducing the hazard." IR-2, 44 FR 75565, 75568.

- Radioactive material may not be singled out for different types of control than hazardous material generally, nor may controls conflict with carrier discretion and responsibility provided by the HMR. *IR-15(A).

- Requirement to comply with lawful orders, instructions and directives of authorized bridge personnel is not preempted. #IR-20.

- Local "rules of road" restrictions on vehicles carrying hazardous material are not preempted. Thus, requirements for separation distances between moving or parked vehicles carrying hazardous material which do not create hazards or unreasonable delays are not preempted. IR-3; #IR-20; #IR-32. But separation distance requirements that vary for differing hazardous materials, may apply to unplacarded vehicles, and have an uncertain scope and application because of lack of enforcement are preempted under the Aobstacle@ standard. PD-20(RF).

- Local provision that carriers must use major city thoroughfares and that otherwise Federal motor carrier safety routing rules (49 CFR § 397.9(a)) apply is not preempted. IR-3. Likewise not preempted is a local regulation requiring hazardous material through-traffic to avoid congested areas so far as practicable and to use highway exits as close as possible to final destination. IR-23.

- Weight restriction applying only to hazardous material and their containers, not to entire vehicles and contents, is not a bona fide traffic control measure and is preempted. #IR-20.

- State order prohibiting railroads cars carrying hazardous material from being cut off in motion, struck by other cars moving under their own momentum or coupled into with unnecessary force is preempted by the Federal hazmat law, HMR, and the Federal Railroad Safety Act. Atchison, Topeka and Santa Fe R.R. Co. v. Illinois Commerce Comm'n, 453 F. Supp. 920 (N.D. Ill. 1977).

- Traffic controls linked to inconsistent equipment requirements are preempted. IR-22; IR-23.

Training Requirements

- Training requirements on non-domiciled drivers more strict than the HMR violate 172.701 and therefore are preempted as an "obstacle." Requirements to pass examination administered by the state, to be trained in state regulations, and for trainer experience are stricter than the HMR. PD-7(R); PD-22(R).

- Motor carrier driver examination requirements, the specification of training subjects, training instructor experience criteria, and a driver certification requirement based on demonstrating adequate knowledge all are "training requirements" within the meaning of 49 CFR § 172.700(b). PD-7(R) (dec. on reconsid.), 60 FR 10420.

- Because the HMR do not require a governmental body to certify hazmat training, the requirement to obtain a certificate of training from the State is "more strict" than the HMR, within the meaning of 49 C.F.R. § 172.701. PD-7(R) (dec. on reconsid.), 60 FR 10420; PD-22(R).

- "[S]tate may impose more stringent training requirements [than HMR] on motor carrier operators so long as those requirements do not directly conflict with the HMR requirements and apply only to individuals domiciled in that state and on or after April 1, 1992 to individuals domiciled in other states who do not have hazardous materials endorsements on their CDL's [commercial drivers' licenses]." #IR-26, 54 FR 16314, 16322. This principle applies to RAM and other hazardous material. Ibid.

- "[T]the Department, through promulgation of 49 C.F.R. § 177.825 [now § 397.101], has established a near total occupation of the field of training requirements relating to the transportation of radioactive materials. Thus, state and local radioactive materials transportation . . . training requirements other than . . . those identical to Federal requirements . . . are very likely to be inconsistent and thus preempted under § 112(a) of the HMTA." [now 49 U.S.C. § 5125]. *IR-8(A), 52 FR 13000, 13003; quoted and relied upon in *IR-27 and *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989). However, see preceding paragraph.

- State requirement for submission of company's driver training program, including provisions for RAM and mountain driving training, as prerequisite to certain RAM transportation is preempted. *IR-27; *Colorado Pub. Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989).

- County requirement that the motor vehicle driver have a certificate of fitness to deliver or transfer LPG (including propane) is preempted because only a State may require additional training of motor vehicle drivers domiciled within that State. PD-13(R); PD-28(R).

- Town requirement that an applicant for a certificate of fitness must take a written examination Aregarding the use, makeup and handling of LPG as well as a practical test constitutes an obstacle to accomplishing and carrying out training requirements in the HMR as applied to drivers engaged in the transportation of hazardous materials. People v. Paraco Gas Corp., No. SMTO 398-99 (Dist. Ct. Suffolk Co., Mar. 20, 2000).

Transportation Subject to Requirements (Also see “Hazard Class and Hazardous Material Definitions” and "Persons Subject to Requirements.")

- Where a specific decision has been made in the HMR that certain transportation in commerce of hazardous material should not be subject to the general requirements of the HMR, state or local regulation of that transportation is preempted under the “obstacle' test." #IR-31, 55 FR 25572, 25581.

- A non-Federal requirement is not preempted simply because it does not apply to all hazard classes and all materials governed by the HMR, but a State may need to justify its decision to single out one hazardous material for different types of traffic control than hazardous materials generally. PD-13(R)(dec. on reconsid.); IR-15 (A).

- Local fire code requirements do not apply to the transportation of hazardous materials in commerce, and are not preempted, when those requirements contain an express exception for the transportation of hazardous materials in accordance with the HMR. PD-14(R).

- An otherwise non-preempted requirement is not preempted because it applies only to certain modes of transportation. *IR-18.

Tunnel Restrictions

- Except for RAM, State and local regulations regarding the kind, character or quantity of hazardous material permitted to be carried through any urban vehicular tunnel used for mass transportation are not preempted. 49 C.F.R. § 177.810. But prohibition on RAM transportation through a tunnel is preempted. #IR-20.

Unloading -- See "covered subjects" discussion on pp. 1-2 and "Loading and Unloading."

Waiver of Preemption

- Under HMTA as originally enacted, if non-Federal requirement afforded an equal or greater level of protection to the public than the HMTA or HMR, and the requirement did not unreasonably burden commerce, such requirement was not preempted. Therefore, RSPA was obliged to issue a "non-preemption determination" if those two tests were met. *New York City v. U.S. Department of Transportation, 87 Civ. 1443 (MGC)(S.D.N.Y. 1988).

- After 1990 amendments, DOT has discretion under the Federal hazmat law to grant a waiver of preemption where the non-Federal requirement affords an equal or greater level of protection to the public than the Federal requirement, and does not unreasonably burden commerce. 49 U.S.C. § 5125(e). WPD-1.

Weight Restrictions -- See "Traffic Controls/Regulations."

INCONSISTENCY RULINGS

*IR-1	New York City/Brookhaven	43 FR 16954	Apr. 20, 1978
IR-2	Rhode Island[1]	44 FR 75566	Dec. 20, 1979
	Appeal	45 FR 71881	Oct. 30, 1980
	Correction	45 FR 76838	Nov. 20, 1980
IR-3	Boston, MA	46 FR 18918	Mar. 26, 1981
	Appeal	47 FR 18457	Apr. 29, 1982
IR-4	Washington State	47 FR 1231	Jan. 11, 1982
	Appeal	47 FR 33357	Aug. 2, 1982
	Correction	47 FR 34074	Aug. 5, 1982
IR-5	New York City/Ritter	47 FR 51991	Nov. 18, 1982
IR-6	Covington, KY	48 FR 760	Jan. 6, 1983

Nine-pack:

	Preamble	49 FR 46632	Nov. 27, 1984
*IR-7	New York State	49 FR 46635	Nov. 27, 1984
*IR-8	Michigan	49 FR 46637	Nov. 27, 1984
	Appeal	52 FR 13000	Apr. 20, 1987
*IR-9	Governor of Vermont	49 FR 46644	Nov. 27, 1984
*IR-10	New York State Thruway	49 FR 46645	Nov. 27, 1984
	Correction	50 FR 9939	Mar. 12, 1985
*IR-11	Ogdensburg Bridge & Port Auth.	49 FR 46647	Nov. 27, 1984
*IR-12	St. Lawrence County, NY	49 FR 46650	Nov. 27, 1984
*IR-13	Thousand Islands Bridge Auth.	49 FR 46653	Nov. 27, 1984
*IR-14	Jefferson County, NY	49 FR 46656	Nov. 27, 1984
*IR-15	Vermont Agency of Trans.	49 FR 46660	Nov. 27, 1984
	Appeal	52 FR 13062	Apr. 20, 1987

*IR-16	Tucson, AZ	50 FR 20872	May 20, 1985
*IR-17	State of Illinois	51 FR 20926	June 9, 1986
	Appeal	52 FR 36200	Sep. 25, 1987
	Correction	52 FR 37399	Oct. 6, 1987
*IR-18	Prince George's County, MD	52 FR 200	Jan. 2, 1987
	Appeal	53 FR 28850	July 29, 1988
#IR-19	Nevada PSC[2]	52 FR 24404	June 30, 1987
	Correction	52 FR 29468	Aug. 7, 1987
	Appeal	53 FR 11600	Apr. 7, 1988

[1] Affirmed in National Tank Truck Carriers, Inc. v.Burke, 535 F. Supp. 509 (D.R.I. 1982), aff'd, 698 F.2d 559 (1st Cir. 1983)

[2] Affirmed in #Southern Pac. Transp. Co. v. Public Serv. Comm'n of Nevada, 909 F.2d 352 (9th Cir. 1990), reversing No. CV-N-86-444-BRT (D. Nev.1988)

#IR-20	Triborough Bridge & Tunnel Authority	52 FR 24396	June 30, 1987
	Correction	52 FR 29468	Aug. 7, 1987
*IR-21	Connecticut	52 FR 37072	Oct. 2, 1987
	Appeal	53 FR 46735	Nov. 18, 1988
IR-22	New York City/ATA-NTTC (Equipment)	52 FR 46574	Dec. 8, 1987
	Correction	52 FR 49107	Dec. 29, 1987
	Appeal	54 FR 26698	June 23, 1989
IR-23	New York City/ATA-NTTC (Routing & Time)	53 FR 16840	May 11, 1988
	Appeal dismissed as moot	57 FR 41165	Sept. 9, 1992
IR-24	San Antonio, TX	53 FR 19848	May 31, 1988
#IR-25	Maryland Heights, MO	54 FR 16308	Apr. 21, 1989
	Correction	54 FR 20235	May 10, 1989
#IR-26	California DMV	54 FR 16314	Apr. 21, 1989
	Correction	54 FR 21526	May 19, 1989
*IR-27	Colorado PUC[3]	54 FR 16326	Apr. 21, 1989
	Correction	54 FR 20001	May 9, 1989
#IR-28	San Jose, CA	55 FR 8884	Mar. 8, 1990
	Appeal dismissed as moot	57 FR 41165	Sept. 9, 1992
IR-29	Maine	55 FR 9304	Mar. 12, 1990
*IR-30	Oakland, CA	55 FR 9676	Mar. 14, 1990
	Correction	55 FR 12111	Mar. 30, 1990
#IR-31	Louisiana	55 FR 25572	June 21, 1990
	Appeal dismissed as moot	57 FR 41165	Sept. 9, 1992
#IR-32	Montevallo, AL	55 FR 36736	Sept. 6, 1990
	Appeal dismissed as moot	57 FR 41165	Sept. 9, 1992

[3] Affirmed in *Colorado Pub.Utilities Comm'n v. Harmon, 951 F.2d 1571 (10th Cir. 1991), reversing No. 88-Z-1524 (D. Colo. 1989)

PREEMPTION DETERMINATIONS

PD-1(R)	Pennsylvania, Massachusetts Maryland[4]	57 FR 58848	Dec. 11, 1992
	Action on Pet. for Reconsid.	58 FR 32418	June 9, 1993
PD-2(R)	Illinois	58 FR 11176	Feb. 23, 1993
*PD-3(F)	Washington	58 FR 31580	June 3, 1993
PD-4(R)	California	58 FR 48933	Sept. 20, 1993
	Action on Pet. for Reconsid.	60 FR 8800	Feb. 15, 1995
PD-5(R)	Massachusetts	58 FR 62707	Nov. 29, 1993
PD-6(R)	Michigan	59 FR 6186	Feb. 9, 1994
PD-7(R)	Maryland	59 FR 28913	June 3, 1994
	Action on Pet. for Reconsid.	60 FR 10419	Feb. 24, 1995
Four-Pack:			
PD-8(R)	California Pet. for Reconsid. filed	60 FR 8778	Feb. 15, 1995
PD-9(R)	Los Angeles County, CA Pet. for Reconsid. filed	60 FR 8783	Feb. 15, 1995
PD-10(R)	Los Angeles County, CA Pet. for Reconsid. filed	60 FR 8790	Feb. 15, 1995
PD-11(R)	Los Angeles County, CA Pet. for Reconsid. filed[5]	60 FR 8793	Feb. 15, 1995
PD-12(R)	New York	60 FR 62527	Dec. 6, 1995
	Action on Pet. for Reconsid.[6]	62 FR 15970	Apr. 8, 1997
PD-13(R)	Nassau County, NY	63 FR 45283	Aug 25, 1998
	Action on Pet. for Reconsid.[7]	65 FR 60238	Oct. 10, 2000
PD-14(R)	Houston, TX	63 FR 67506	Dec. 7, 1999
	Action on Pet. for Reconsid.	64 FR 33949	June 24, 1999
PD-15(R)	Pub. Util. Commission of Ohio	64 FR 14965	Mar. 29, 1999
	Action on Pet. for Reconsid[8].	64 FR 44265	Aug. 13, 1999
PD-18(R)	Broward County, FL	65 FR 81955	Dec. 27, 2000
	Action on Pet. for Reconsid.	67 FR 35193	May 17, 2002
PD-20(RF)	Cleveland, OH	66 FR 29867	June 1, 2001

[4] Judicial review dismissed, Massachusetts v. U.S. Dept. of Transportation, C.A. No. 93-1581 (HHG) (D.D.C. April 7, 1995), reversed, 93 F.3d 890 (D.C. Cir. 1996).

[5] Judicial review of PDs 8 - 11 dismissed without prejudice, The Chlorine Institute, Inc. v. U.S Dept. of Transportation, Civil Action No. 00-1312 (WBB) (May 7, 2002).

[6] Judicial review dismissed, New York v. U.S. Dept. of Transportation, 37 F. Supp. 2d 152 (N.D.N.Y. 1999).

[7] Judicial review dismissed, The Office of the Fire Marshal of the County of Nassau v. U.S. Dept. of Transportation, Civil Action No.CV-00-7200 (E.D.N.Y. Mar. 18, 2002).

[8] Judicial review dismissed, William E. Comley, Inc. v. U.S. Dept. of Transportation, Civil No. C1-99-880 (S.D. Ohio, June 6, 2000), appeal dismissed, No. 00-3860 (6th Cir. July 12, 2000).

PD-21(R)	Tennessee[9]	64 FR 54473	Oct. 6, 1999
PD-22(R)	New Mexico	67 FR 59396	Sept. 20, 2002
	Action on Pet. for Reconsid.	68 FR 55080	Sept. 22, 2003
PD-23(RF)	Morrisville, PA	66 FR 37260	July 17, 2001
	Action on Pet. for Reconsid.	67 FR 2948	Jan. 22, 2002
PD-24(R)	New Jersey	66 FR 30985	June 8, 2001
PD-25(R)	Missouri	66 FR 37089	July 16, 2001
PD-27(R)	Louisiana	69 FR 69677	Nov. 30, 2004
PD-28(R)	Town of Smithtown, NY	67 FR 15276	Mar. 29, 2002
PD-29(R)	Massachusetts	69 FR 34715	June 22, 2004
PD-30(R)	Houston, TX	71 FR 9413	Feb. 23, 2006
PD-31(F)	District of Columbia	71 FR 18137	Apr. 10, 2006
PD-32(R)	Maine	74 FR 46644	Sept. 10, 2009
PD-33(F)	Boston	74 FR 59021	Nov. 16, 2009
PD-34(R)	Common law tort claims	77 FR 39567	July 3, 2011
PD-35(R)	New Jersey	78 FR 75672	Dec. 12, 2013

WAIVER OF PREEMPTION DETERMINATIONS

WPD-1	New York City	57 FR 23278	June 2, 1992
	Correction[10]	57 FR 28235	June 24, 1992

[9] Complaint for judicial review, Tennessee v. U.S. Dept. of Transportation, C.A. No. 3-99-1126 (M.D. Tenn.), filed Dec. 3, 1999; order denying claim of state sovereignty (Feb. 27, 2001); affirmed and remanded, 326 F.3d 729 (6th Cir); cert. denied, 124 S.Ct. 464 (2003); judgment in favor of DOT and AWHMT (June 28, 2004).

[10] Judicial review dismissed, City of New York v. Card, No. Misc. 92-137 (DRH) (E.D.N.Y. June 30, 1992).