

**RSPA PREEMPTION DETERMINATION APPLICATIONS**

October 20, 2004

<b>Docket Number</b> <b>Filing Date</b> <b>Applicant</b>	<b>Subject</b> <b>Summary</b>	<b>Ruling</b> <b>Status</b>	<b>Disposition</b>
PDA-1(R) (14602)  7/17/91  National Solid Wastes Management Assn.	MA, MD, & PA hazardous waste vehicle bonding requirements  State bonding requirements for vehicles transporting hazardous wastes are <u>not preempted</u> under the HMTA's "obstacle" test.	PD-1(R)  Closed	Public Notice: 8/12/91 (56 FR 38294). Decision: 12/11/92 (57 FR 58848). Action on Petition for Reconsideration: 6/9/93 (58 FR 32418). Judicial review dismissed in <u>Massachusetts v. U.S. Dept. of Transportation</u> , Civil Action No. 93-1581 (HHG) (D.D.C. April 7, 1995), <u>reversed</u> 93 F.3d 890 (D.C. Cir. 1996), <u>petition for rehearing and rehearing en banc denied</u> (Nov. 6, 1996).
PDA-2(R) (14655)  11/25/91 1/3/92  National Tank Truck Carriers, Inc.	Mass. requirement for back-up alarm on tank trucks carrying flammable liquids  State tank truck back-up alarm requirement applicable only to in-state transportation is <u>not preempted</u> under the HMTA's "obstacle" test.	PD-5(R)  Closed	Public Notice: 3/23/92 (57 FR 10098).  Decision: 11/29/93 (58 FR 62707).
PDA-3(RF)  12/19/91  Chemical Waste Transportation Institute	City of Chester, WV hazardous waste transportation requirements  Application dismissed because Ordinance regarding transportation of hazardous waste never went into effect.	N/A  Closed	Public Notice: 4/6/92 (57 FR 11654).  Dismissed: 2/2/94 (59 FR 4962).
PDA-4(F) (14612)  12/1/91	Washington RAM highway routing restrictions	PD-3 (F)  Closed	Public Notice: 4/30/92 (57 FR 18537).  Decision: 6/3/93 (58 FR 31580).

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Oregon Dept. Of Energy	State restrictions on locations where trucks hauling RAM may enter the State are <u>preempted</u> , under "dual compliance" and "obstacle" tests.		
PDA-5(R) (14609)  6/12/92  Chemical Waste Transportation Institute	Illinois EPA's hazardous waste manifest  State hazardous waste manifest requirements are <u>preempted</u> , under the HMTA's "substantively the same" test.	PD-2 (R)  Closed	Public Notices: 7/21/92 (57 FR 32360), 9/25/92 (57 FR 44402).  Decision: 2/23/93 (58 FR 11176).
PDA-6(R) (14619)  7/27/92  Nalco Chemical Company	California statute and regulations re flammable and combustible liquids transportation  State annual inspection requirement which causes delay is <u>preempted</u> under the "obstacle" test; marking requirements are <u>preempted</u> because "not substantively the same" as requirements in the HMR; annual registration is <u>not preempted</u> .	PD-4 (R)  Closed	Public Notice: 8/21/92 (57 FR 38081).  Decision: 9/20/93 (58 FR 48933).  Action on Petition for Reconsideration: 2/15/95 (60 FR 8800).
PDA-7(R) (4952 & 7486)  12/31/92  HASA, Inc.	Los Angeles County regulations re permit fee, loading, unloading and storage requirements for tank cars containing chlorine.  County provisions prohibiting a tank car from remaining on a siding at point of delivery, connected, for more than 24 hours and requiring attendance during tank car unloading <u>preempted</u> as not "substantively the same" as HMR. County fee on hazmat unloading <u>preempted</u> because not used for transportation-related	PD-9(R)  Open	Public Notices: 1/26/93 (58 FR 6170), 10/14/93 (58 FR 53239).  Decision: 2/15/95 (60 FR 8783), combined with PD-8, 10 & 11 (R) [PDA 9-11].  Action on Petitions to Reconsider deferred pending rulemaking on Applicability of the Hazardous Materials Regulations (Docket HM-223); final rule in HM-223 issued 10/30/03 (68 FR 61906), delay of effective date, 5/28/04 (69 FR 30588); 14 appeals of

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	purposes. County prohibition on on-site storage in tank cars, requirement to unload tank car only to atmospheric or portable tank <u>not preempted</u> as not within reach of HMR. County permit requirement to report information <u>not preempted</u> because authorized by another Federal law.		final rule received, and petition for review filed (No. 03-1456, D.C. Cir.). One petition for reconsideration (of six) withdrawn and complaint for judicial review dismissed without prejudice, 5/7/02 (Civil Action No. 00-1312 (WBB)).
PD-8(R) (4952 ## 216-224 & 7486 ## 16-24)  1/5/93  Chemical Waste Transportation Institute	Michigan statute and regulations re marking of hazardous and liquid industrial waste-carrying motor vehicles  State truck marking requirements different from HMR are <u>preempted</u> under "substantively the same" test for trucks carrying hazardous materials and are <u>preempted</u> under "obstacle" test for trucks not carrying hazardous materials.	PD-6(R)  Closed	Public Notice: 1/26/93 (58 FR 6176).  Decision: 2/9/94 (59 FR 6186).
PD-9(R) (4952 & 7486)  1/26/93  Swimming Pool Chemical Manufacturers Assn. (SPCMA)	California statute re storage and handling of hazardous materials  State law imposing information reporting requirements (hazmat inventories, business plans, risk management plans) on handlers of hazmat <u>not preempted</u> because authorized by another Federal law.	PD-8(R)  Open	Public Notices: 2/12/93 (58 FR 8494), 10/14/93 (58 FR 53239).  Decision: 2/15/95 (60 FR 8778), combined with PD-9-11(R) [PDA-7, 10, 11].  Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].
PD-10(R) (4952 & 7486)  1/26/93  Swimming Pool Chemical	Los Angeles County regulations re transportation of cryogenic liquids  County requirements for labeling, name- plating, and placarding hazmat stored on-site; for safety	PD-10(R)  Open	Public Notices: 2/12/93 (58 FR 8480), 10/14/93 (58 FR 53239).  Decision: 2/15/95 (60 FR 8790), combined with PD8, 9 & 11(R) [PDA-8, 9 & 11].

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Manufacturers Assn. (SPCMA)	equipment for motor vehicles moving hazmat within a facility; and for on-site storage, transportation and handling of cryogenic fluids <u>not preempted</u> as not within reach of HMR.		Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].
PD-11(R) (4952 & 7486)  1/26/93  Swimming Pool Chemical Manufacturers Assn. (SPCMA)	Los Angeles County regulations re loading, and unloading and storage of compressed gases  County permit provisions implementing State information reporting requirements <u>not preempted</u> because authorized by another Federal law.	PD-11(R)  Open	Public Notices: 2/12/93 (58 FR 8488), 10/14/93 (58 FR 53239).  Decision: 2/15/95 (60 FR 8793), combined with PD-8-10(R) [PDA 7, 9 & 10].  Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].
PDA-12(R) (14666)  4/16/93  Chemical Waste Transportation Institute and the National Tank Truck Carriers, Inc.	Maryland regulations re hazardous materials drivers' training and certification requirements  Training and certification requirements for motor vehicle operators loading or unloading oil or hazardous substances, which exceeded Federal training requirements are <u>preempted</u> as applied to non-resident drivers and <u>not preempted</u> as applied to resident drivers.	PD-7(R)  Closed	Public Notice: 5/19/93 (58 FR 29322).  Decision: 6/3/94 (59 FR 28913).  Action on Petition for Reconsideration: 2/24/95 (60 FR 10419).
PDA-13(R) (14670)  9/27/93  Chemical Waste Transportation Institute	New York regulations re transfer and interim storage of hazardous waste  State regulations prohibiting repackaging hazardous waste and requiring additional information on the manifest are <u>preempted</u> . No determination whether requirement for secondary containment at transfer facilities is preempted.	PD-12(R)  Closed	Public Notices: 10/15/93 (58 FR 53614); 12/13/93 (58 FR 65226); 1/31/94 (59 FR 4312).  Decision: 12/6/95 (60 FR 62527).  Action on Petition for Reconsideration: 4/3/97 (6 FR 15970), Judicial review dismissed, <u>New York v. U.S. Dept. of Transportation</u> , 37 F. Supp.2d 152 (N.D.N.Y. 1999).

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PDA-14(R) 12/10/95  National Tank Truck Carriers, Inc.	City of El Paso, TX Municipal Code provisions requiring hazmat tank truck permits based on inspections held during limited time periods  Application withdrawn and docket closed because City of El Paso passed ordinance that deleted hazmat truck permit requirement.	N/A  Closed	Public Notice: 1/19/96 (61 FR 1432).  Public Notice Closing Docket: 3/21/96 (61 FR 11677).
PDA-15(R) (14614) 3/4/96  Association of Waste Hazardous Materials Transporters	City of Houston, TX, Fire Code re tank truck requirements, inspections, fees and definition of hazardous material  Fire Code requirements are <u>not</u> preempted because they do not apply to transportation subject to the HMR.	PD-14(R)  Closed	Public Notices: 3/20/96 (61 FR 11463), 4/9/97 (62 FR 17281).  Decision: 12/7/98 (63 FR 67506).  Action on Petition for Reconsideration: 6/24/99 (64 FR 33949).
PDA-16(R) (2581) 4/8/97  New York Propane Gas Association	Nassau County, NY requirements for permits and certificates of fitness for delivery of LPG, including fees and inspections.  Permit requirement is <u>preempted</u> with respect to trucks based outside of Nassau County, because annual inspection causes unnecessary delay in transportation of HM. Certificate of fitness requirement is <u>preempted</u> as applied to motor vehicle driver as additional training requirement.	PD-13(R)  Closed	Public Notice: 6/10/97 (62 FR 31661).  Decision: 8/25/98 (63 FR 45283).  Action on Petition for Reconsideration, 10/10/00 (65 FR 60238). Judicial review dismissed, <u>The Office of the Fire Marshal of the County of Nassau v. U.S. Dept. of Transportation</u> , Civil Action No. 00-7200 (E.D. N.Y. Mar. 18, 2002).
PDA-17(R) (2968) 5/12/97  William E. Comley, Inc.	Public Utilities Commission of Ohio requirement for transportation of PG III hypochlorite solution in DOT-spec cargo tank  Written requirements of the State of Ohio are consistent with the HMR, and there is no	PD-15(R)  Closed	Public Notice: 10/10/97 (62 FR 53049).  Decision: 3/29/99 (64 FR 14965).  Action on Petition for Reconsideration: 8/13/99 (64 FR 44265). Complaint for judicial review dismissed,

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& TWC Corporation	evidence that PUCO applies or enforces a general requirement for the use of a DOT specification cargo tank motor vehicle to transport hypochlorite with less than 16% available chlorine.		<u>William E. Comley, Inc. v. U.S. Dept. of Transportation</u> , Civil No. C-1-99-880 (S.D. Ohio, June 6, 2000); appeal dismissed, No. 00-3860 (6th Cir. July 12, 2000).
PDA-18(R) (3577)  3/4/98  Association of Waste Hazardous Materials Transporters	<p>Broward County, FL hazardous materials transportation requirements pertaining to the definition of hazardous material, release reporting, standards for packaging, fees, monthly reporting and vehicle inspection.</p> <p>The following requirements are <u>preempted</u>:</p> <p>(1) certain hazardous materials definitions and all requirements that rely on those definitions, (2) written notification of a hazardous materials release, (3) shipping paper retention for certain hazardous materials transporters, (4) licensing fees for hazardous waste transporters, and (5) monthly transportation activity reporting.</p> <p>The following requirements are <u>not preempted</u>:</p> <p>(1) requirements for oral notification of a hazardous materials release, (2) packaging standards for hazardous waste transport vehicles, (3) shipping paper retention for hazardous waste transporters, (4) periodic vehicle inspection and (5) vehicle marking.</p>	PD-18(R)  Closed	<p>Public Notices: 8/6/98 (63 FR 42098), 11/2/99 (64 FR 59231).</p> <p>Decision: 12/27/00 (65 FR 81950).</p> <p>Action on Petition for Reconsideration: 5/17/02 (67 FR 35193).</p>

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PDA-19(R) (3599)  3/9/98  National Tank Truck Carriers, Inc.	New York regulations on test reports and marking of gasoline transport vehicles  N/A	Open	Public Notice: 6/2/98 (63 FR 30032); comment period expired: 8/31/98.  Drafting of decision delayed by extensive discussions with EPA, complexity of the issues involved, litigation, and other preemption matters.  Decision expected by 2/15/04.
PDA-20 RF (3579)  3/2/98  Association of Waste Hazardous Materials Transporters	Cleveland, Ohio permit and other requirements for transportation of explosives and other hazardous materials within the City  The following requirements are <u>preempted</u> as an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR: (1) day-of-week and time-of-day restrictions in Downtown Area, with respect to radiopharmaceuticals only; (2) advance notification, routing, and escort for pickup or delivery of explosives; and (3) separation distance between vehicles transporting explosives or other hazardous materials	PD-20(RF)  Closed	Public Notices: 9/17/98 (63 FR 49804); 6/30/99 (64 FR 35239).  Decision: 6/1/01 (66 FR 29867).
PDA-21(R) (3665)  3/23/98  Association of Waste Hazardous Materials Transporters	Tennessee annual remedial action fee and written incident reporting requirements  Annual remedial action fee is <u>preempted</u> because it is not fair and not used for purposes related to transportation of hazardous material. Written incident reporting requirement is <u>preempted</u>	PD-21(R)  Closed	Public Notices: 4/9/98 (63 FR 17479), 4/16/98 (63 FR 18964). Decision: 10/6/99 (64 FR 54474). Complaint for judicial review, <u>Tennessee v. U.S. Dept. of Transportation</u> , filed Dec. 3, 1999; order denying claim of state sovereignty, C.A.No. C-3-99-1126 (M.D. Tenn. Feb. 27, 2001); affirmed and remanded, 326 F.3d 729 (6 <sup>th</sup> Cir. 2003); cert. denied,

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	because it is not substantively the same as HMR requirement.		11/3/03 (124 S. Ct. 464); judgment in favor of DOT and AWHMT (6/28/04).
PDA-22(R) (7092)  1/18/00  American Trucking Associations	New Mexico statutory and regulatory provisions applicable to transporters of liquefied petroleum gas.  The following requirements are <u>preempted</u> : (1) annual cargo tank inspection requirements as applied to vehicles based outside the state because the requirements cause unnecessary delay in hazardous materials transportation; (2) employee examination and identification card requirements as applied to non-domiciled LP-gas personnel because the HMR prohibit States from applying additional training requirements to drivers domiciled outside the state; (3) LP gas transporter license fee because the fee is neither fair nor used for hazardous materials transportation purposes.	PD-22(R)  Closed	Public Notice: 3/31/00 (65 FR 17335).  Decision: 9/20/02 (67 FR 59396).  Action on Petition for Reconsideration: 9/22/03 (68 FR 55080)
PDA-23(RF) (7021)  12/30/99  Med/Waste, Inc. & Sanford Motors, Inc.	Morrisville, PA requirements for transporting "dangerous waste," including routing restrictions and manifest requirement.  Definitions of "infectious waste," "hospital waste," and "dangerous waste"; routing limitation; and requirement for manifest are <u>preempted</u> .	PD-23(RF)  Closed	Public Notice: 4/14/00 (65 FR 20258).  Decision: 7/17/01 (66 FR 37260).  Action on petition for reconsideration: 1/22/02 (67 FR 2948).
PDA-24(R) (7126)	New Jersey prohibition against transporting blasting caps on the same motor vehicle with	PD-24(R)	Public Notice: 4/7/00 (65 FR 18422).

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2/28/00  Institute of Makers of Explosives	more than 5,000 lbs. of other commercial explosives  Prohibition against transporting blasting caps on the same motor vehicle with more than 5,000 lbs. of other commercial explosives is <u>preempted</u> when applied to transportation on a public road or during activities that are incidental to the movement of property and involved a safety aspect of transportation on a public road.	Closed	Decision: 6/8/01 (66 FR 30985).
PDA-25(R) (7740)  6/28/00  The Kiesel Company	Missouri prohibition of recontainerization of hazardous waste at transfer facility  Prohibition against recontainerization is <u>preempted</u> because it is not substantively the same as packing requirements in the HMR.	PD-25(R)  Closed	Public Notices: 8/14/00 (65 FR 49633); 12/11/00 (65 FR 77417).  Decision: 7/16/01 (66 FR 37089).
PDA-26(R) (8026)  8/16/00  Boston & Maine Corporation	Massachusetts definition (designations) of hazardous materials	Open	Public Notices: 11/16/00 (65 FR 69365); 12/19/00 (65 FR 79458); 2/02/01 (66 FR 8845), 5/30/01 (66 FR 29376); comment period expired: 6/12/01.  Decision expected by 1/15/05.
PDA-27(R) (7906)  8/30/00  ATOFINA Chemicals, Inc.	Louisiana requirements for hazardous materials incident notification	Open	Public Notice: 10/17/00 (65 FR 61370); comment period expired: 1/16/01.  Decision expected by 11/15/04.
PDA-28(R) (10293)	Town requirements for permits and certificates	PD-28(R)	Public Notice: 8/9/01 (66 FR 41931).

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5/31/01  Town of Smithtown, New York	of fitness for delivery of LPG, including fees and inspections.  Permit requirement is <u>preempted</u> with respect to trucks based outside of the Town of Smithtown, because annual inspection causes unnecessary delay in transportation of HM. Certificate of fitness requirement is <u>preempted</u> as applied to motor vehicle driver as additional training requirement.	Closed	Decision: 3/29/02 (67 FR 15276)
PDA-29(R) (13481)  8/30/02  Medical Waste Institute	Massachusetts regulations on storage and disposal of infectious or physically dangerous medical or biological waste.	PD-22(R)  Closed	Public Notice: 12/12/02 (67 FR 76444).  Decision: 6/22/04 (69 FR 34715)
PDA-30(R) (16456)  10/15/03  Société Air France	Houston, Texas Fire Code requirements on in-transit storage at airport, including requirements to submit a hazardous materials management plan and hazardous materials inventory statement to obtain a permit and to store certain hazardous materials in storage cabinets.	Open	Public Notice: 11/13/03 (68 FR 64413); comment period expired 2/11/04.  Decision expected by 2/15/05