

DOT PREEMPTION DETERMINATIONS

December 31, 2017

PD and Docket Number Applicant	Subject	Ruling	Decision
PD-1(R) PHMSA-RSPA-2003-14602 National Solid Wastes Management Assn.	Massachusetts, Maryland, & Pennsylvania hazardous waste vehicle bonding requirements	State bonding requirements for vehicles transporting hazardous wastes are <u>not preempted</u> under the “obstacle” test.	57 FR 58848 (12/11/92) 58 FR 32418 (6/9/93) (Action on Petition for Reconsideration) Judicial review dismissed in <u>Massachusetts v. U.S. Dept. of Transp.</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).
PD-2(R) PHMSA-RSPA-2003-14609 Chemical Waste Transportation Institute	Illinois EPA hazardous waste manifest	State hazardous waste manifest requirements are <u>preempted</u> , under the “substantively the same” test.	58 FR 11176 (2/23/93)
PD-3(F) PHMSA-RSPA-2003-14612 Oregon Dept. Of Energy	Washington RAM highway routing restrictions	State restrictions on locations where trucks hauling RAM may enter the State are preempted, under “dual compliance” and “obstacle” tests.	58 FR 31580 (6/3/93)
PD-4(R) PHMSA-RSPA-2003-14619 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 preempted because not “substantively the same as” requirements in the HMR’ annual registration is <u>not preempted</u> .	58 FR 48933 (9/20/93) 60 FR 8800 (2/15/95) (Action on Petition for Reconsideration).

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PD-5(R) (PHMSA-RSPA-2003-14661 National Tank Truck Carriers, Inc.	Massachusetts 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 “obstacle” test.	58 FR 62707 (11/29/93).
PD-6(R) PHMSA-RSPA-2000-4952-216 to -224 & 7486-16 to 24) Chemical Waste Transportation Institute	Michigan statute and regulations re marking of motor vehicles carrying hazardous and liquid industrial wastes	State truck marking requirements different from HMR are <u>preempted</u> under “substantively the same as” test for trucks carrying hazardous materials and are <u>preempted</u> under the “obstacle” test for trucks not carrying hazardous materials.	59 FR 6186 (2/9/94).
PD-7(R) PHMSA-RSPA-2003-14666 Chemical Waste Transportation Institute & 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 exceed Federal training requirements, are <u>preempted</u> as applied to non-resident drivers and <u>not preempted</u> as applied to resident drivers.	59 FR 28913 (6/3/94). 60 FR 10419 (2/24/95) (Action on Petition for Reconsideration)

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<p>“Four-Pack” PHMSA-RSPA-2000-7486 & 1998-4952</p> <p>PD-9(R)HASA, Inc. HASA, Inc.</p> <p>PD-8, 10, 11(R) Swimming Pool Chemical Manufacturers Assn.</p>	<p>California & Los Angeles County requirements applicable to on-site storage and transportation of hazardous materials.</p>	<p>Federal hazardous material transportation law does not preempt California and Los Angeles County requirements on (1) the unloading of hazardous materials from rail tank cars by a consignee and (2) the consignee’s on-site storage of hazardous materials following delivery of the hazardous materials to their destination and departure of the carrier from the consignee’s premises or private track adjacent to the consignee’s premises.</p>	<p>60 FR 8783 (2/15/95)</p> <p>Action on petitions for reconsideration deferred pending:HM-223 rulemaking, "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage"; final rules published 10/30/03 (68 FR 61906) and 4/15/05 (70 FR 20018); petitions for review dismissed, 10/13/06; petitions for rehearing and rehearing en banc denied 2/15/07 (Nos. 03-1456 & 05-1191, D.C. Cir.).</p> <p>Prior petition for judicial review dismissed without prejudice, 5/7/02 (D.D.C., Civil Action No. 00-1312 (WBB)).</p> <p>80 FR 70874 (11/16/15) (Action on Petitions for Reconsideration).</p>

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PD-12(R) PHMSA-RSPA-1003-14670 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 finding on requirement for secondary containment at a transfer facility	60 FR 62527 (12/6/95). 62 FR 15970 (4/3/97) (Action on Petition for Reconsideration) Judicial review dismissed, <u>New York v. U.S. Dept. of Transportation</u> , 37 F. Supp.2d 152 (N.D.N.Y. 1999).
PD-13(R) PHMSA-RSPA-1997-2581 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.	63 FR 45283 (8/25/98) 65 FR 60238 (10/10/00) (Action on Petition for Reconsideration). 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).
PD-14(R) PHMSA-RSPA-2003-14614 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.	63 FR 67506 (12/7/98). 64 FR 33949 (6/24/99) (Action on Petition for Reconsideration).
PD-15(R) PHMSA-RSPA-1997-2968 William E. Comley, Inc. & TWC Corporation	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 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.	64 FR 14965 (3/29/99) 64 FR 44265 (8/13/99) (Action on Petition for Reconsideration): . Complaint for judicial review dismissed, <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).

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PD-18(R) PHMSA-RSPA-1998-3577 Association of Waste Hazardous Materials Transporters	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>Requirements <u>preempted</u>: (1) certain hazardous materials definitions and 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>Requirements <u>not preempted</u>: (1) 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>	65 FR 81950 (12/27/00). 67 FR 35193 (5/17/02) (Action on Petition for Reconsideration).
PDA-19(R) PHMSA-RSPA-1998-3599 National Tank Truck Carriers, Inc.	New York regulations on test reports and marking of gasoline transport vehicles	Requirement for marking vehicle to indicate that a vapor tightness test has been performed which differs from the HMR, is <u>preempted</u> .	74 FR 4291 (1/23/09) 75 FR 52591 (8/26/10) (Notice reopening period for comments on petition for reconsideration)

PD and Docket Number Applicant	Subject	Ruling	Decision
PD-20(RF) PHMSA-RSPA-1998-3579 Association of Waste Hazardous Materials Transporters	Cleveland, Ohio permit and other requirements for transportation of explosives and other hazardous materials within the City	Requirements <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.	66 FR 29867(6/1/01)
PD-21(R) PHMSA-RSPA-1998-3665 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> because it is not substantively the same as HMR requirement.	64 FR 54474 (10/6/99) Complaint for judicial review, <u>Tennessee v. U.S. Dept. of Transportation</u> : 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 th Cir. 2003); cert. denied, 11/3/03 (124 S. Ct. 464); judgment in favor of DOT and AWHMT (6/28/04).

PD and Docket Number Applicant	Subject	Ruling	Decision
PD-22(R) PHMSA-RSPA-2000-7092 American Trucking Associations	New Mexico statutory and regulatory provisions applicable to transporters of liquefied petroleum gas.	Requirements <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.	67 FR 59396 (9/20/02). 68 FR 55080 (9/22/03) (Action on Petition for Reconsideration)
PD-23(RF) PHMSA-RSPA-2000-7021 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> .	66 FR 37260 (7/17/01) 67 FR 2948 (1/22/02) (Action on Petition for Reconsideration)
PD-24(R) PHMSA-RSPA-2000-7126 Institute of Makers of Explosives	New Jersey prohibition against transporting blasting caps on the same motor vehicle with more than 5,000 lbs. of other commercial explosives.	Prohibition is <u>preempted</u> when applied to transportation on a public road or during activities that are incidental to the movement of property and involve a safety aspect of transportation on a public road.	66 FR 30985 (6/8/01).

PD and Docket Number Applicant	Subject	Ruling	Decision
PD-25(R) PHMSA-RSPA-2000-7740 The Kiesel Company	Missouri prohibition of recontainerization of hazardous waste at transfer facility	Prohibition against recontainerization <u>is preempted</u> because it is not substantively the same as packing requirements in the HMR.	66 FR 37089 (7/16/01)
PD-26(R) PHMSA-RSPA-2000-8026 Boston & Maine Corporation	Massachusetts definition (designations) of hazardous materials	Definitions in State environmental “clean up” laws do not deal directly with transportation and are <u>not preempted</u> .	74 FR 4287 (1/23/09)
PD-27(R) PHMSA-RSPA-2000-7906 ATOFINA Chemicals, Inc.	Louisiana requirements for hazardous materials incident notification	Immediate telephone notification requirement is <u>not preempted</u> ; written reporting requirement is <u>preempted</u> .	69 FR 68677 (11/30/04)
PD-28(R) PHMSA-RSPA-2001-10293 Town of Smithtown, New York	Town of Smithtown 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 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.	67 FR 15276 (3/29/02)

PD and Docket Number Applicant	Subject	Ruling	Decision
PDA-29(R) PHMSA-RSPA-2002-13481 Medical Waste Institute	Massachusetts regulations on storage and disposal of infectious or physically dangerous medical or biological waste.	Different requirements for packaging medical waste for transportation in commerce, labeling requirements, and contents and retention of manifest are <u>preempted</u> . Requirements that generator prepare and sign a shipping paper are <u>not preempted</u> to the extent that they are applied and enforced in the same manner as the HMR.	69 FR 34715 (6/22/04)
PD-30(R) PHMSA-RSPA-2003-16456 Societ� Air France	Houston, Texas Fire Code requirements on in-transit storage at airport.	Federal law <u>preempts</u> permit requirement based on submission of a hazardous materials management plan and hazardous materials inventory statement and separation requirements.	71 FR 9413 (2/23/06)
PD-31(F) FMCSA-2005-20930 American Trucking Associations, Inc.	District of Columbia requirements for highway routing of certain hazardous materials	Ordinance prohibiting transportation of certain quantities of explosives (Divisions 1.1 & 1.2), flammable gases, poisonous gases and other poisonous materials in Hazard Zones A & B within a 2.2-mile radius of the U.S. Capitol Building ("Capitol Exclusion Zone") is <u>preempted</u> for failure to comply with FMCSA standards for highway routing designations.	71 FR 18137 (4/10/06)

PD and Docket Number Applicant	Subject	Ruling	Decision
PD-32(R) PHMSA-2007-28444 Electronic Industries Alliance	Maine Department of Environmental Protection requirements on transportation of cathode ray tubes	Requirements on transportation of cathode ray tubes (CRTs) and glass removed from CRTs are <u>not preempted</u> because they do not apply or pertain to materials regulated under Federal hazmat law or the HMR and do not otherwise create an obstacle to Federal hazmat law or the HMR.	74 FR 46644 (9/10/09).
PD-33(F) FMCSA-2004-0204 American Trucking Associations, Inc. & Massachusetts Department of Highways	City of Boston requirements for highway routing of certain hazardous materials	Designation and restriction of routes for transportation of hazardous materials are <u>preempted</u> because modification of the designated route and enforcement of de facto ban system did not comply with FMCSA regulations in 49 CFR part 397.	74 FR 59021 (11/16/09)
PD-34(R) PHMSA-2009-0017 AMTROL, Inc.	Common law tort claims concerning design and marking of DOT Specification 39 compressed gas cylinders.	Common law tort claims concerning design and marking or labeling of DOT specification 39 compressed gas cylinders are preempted because they would create requirements which are not substantively the same as requirements in the HMR.	77 FR 39567 (7/3/12)

PD and Docket Number Applicant	Subject	Ruling	Decision
PD-35(R) PHMSA-2011-0294 Healthcare Waste Institute	New Jersey regulations on transportation of regulated medical waste.	Requirements for packaging, marking, labeling, segregation, and use of specific tracking form which are not substantively the same as the HMR are preempted. Other requirements to retain shipping papers, file and retain exception reports, deliver the entire quantity of RMW, and certify receipt of the listed RMW are <u>not preempted</u> .	78 FR 75672 (12/12/13).
PDA-36(R) PHMSA-2014-0002 American Trucking Associations, Inc.	Pittsburgh, Pennsylvania permit requirements for transportation of hazardous material.	The application for a determination of preemption is dismissed, and the docket is closed, because the City of Pittsburgh, Pennsylvania's permit and permit fee requirements are not being applied or enforced.	81 FR 45219 (7/12/16).

PD and Docket Number Applicant	Subject	Ruling	Decision
PDA-37(R) PHMSA-2014-0003 American Trucking Associations, Inc.	New York City permit requirements for transportation of certain hazardous materials.	The inspection and permit requirements are preempted by the federal hazmat law, with respect to trucks based outside the inspecting jurisdiction, because scheduling and conducting a vehicle inspection may cause unnecessary delays in the transportation of hazardous materials from locations outside the City of New York. The permit fee is also preempted because the City of New York has not shown that the fee it imposes with respect to its permit and inspection requirements is “fair” or “used for a purpose related to transporting hazardous material,” as required by the federal hazmat law.	82 FR 31390 (7/6/17).

DOT PREEMPTION DETERMINATION APPLICATIONS DISMISSED OR WITHDRAWN

Applicant	Subject Summary	Ruling	Decision
PDA-3(RF) 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.	59 FR 4962 (2/2/94).
PDA-14(R) 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.	61 FR 11677 (3/21/96).

PENDING DOT PREEMPTION DETERMINATION APPLICATIONS

December 31, 2017

PD and Docket Number	Subject Summary	Ruling	Status
Applicant PDA-38(R) PHMSA-2016-0097 National Tank Truck Carriers, Inc.	California Meal and Rest Break requirements.	N/A	81 FR 60777 (9/2/16). Initial comment period closed on 10/17/16; rebuttal comment period closed on 12/1/16.
PDA-39(R) PHMSA-2016-0163 NORA, An Association of Responsible Recyclers	Oregon Hazardous Waste Management regulation.	N/A	82 FR 8257 (1/24/17). Initial comment period closed on 3/10/17; rebuttal comment period closed on 4/24/17.