

DOT PREEMPTION DETERMINATIONS

May 15, 2020

| PD and Docket Number Applicant | Subject | Ruling | Decision |
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| 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). |

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| 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). |

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| 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). |

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| 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). |

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| 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 Soci t  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). |

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| 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). |

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| 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). |

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| PD-37(R) PHMSA-2014-0003 American Trucking Associations, Inc. | New York City permit requirements for transportation of certain hazardous materials. | <p>PHMSA affirms its determination that the HMTA preempts FDNY's permit and inspection requirements with respect to vehicles based outside the inspecting jurisdiction, and its determination that the HMTA does not preempt these requirements with respect to vehicles that are based within the inspecting jurisdiction. PHMSA's determination is based on its conclusion that FDNY's permit and inspection requirements create an obstacle to accomplishing and carrying out the HMR's prohibition against unnecessary delays in the transportation of hazardous material on vehicles based outside the inspecting jurisdiction.</p> <p>PHMSA reverses its determination that FDNY is not using the revenue it collects from its permit fee for authorized purposes. However, PHMSA affirms its determination that the permit fee is not "fair," as required by 49 U.S.C. 5125(f)(1), and therefore affirms its determination that the permit fee is preempted.</p> | 82 FR 31390 (7/6/17). 85 FR 29505 (5/15/20) (Action on Petition for Reconsideration). |

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| PD-38(R) PHMSA-2016-0097 National Tank Truck Carriers, Inc. | California Meal and Rest Break requirements. | <p>On September 21, 2018, in response to a petition from the National Tank Truck Carriers (NTTC), PHMSA published a determination that California's meal and rest break rules (MRB Rules) are preempted, under 49 U.S.C. 5125, as applied to drivers of motor vehicles transporting hazardous materials. The California Labor Commissioner's petition for reconsideration of that decision is denied on the grounds of mootness. After PHMSA issued its preemption determination, and after the request for reconsideration was filed, the Federal Motor Carrier Safety Administration (FMCSA) determined that the MRB Rules are preempted, under 49 U.S.C. 31141, as applied to property-carrying commercial motor vehicles drivers covered by FMCSA's hours of service regulations. FMCSA's decision covers a broader group of drivers than PHMSA's decision, including NTTC's members. Accordingly, granting the California Labor Commissioner's petition for reconsideration will not change the fact that the MRB Rules cannot be enforced against NTTC's members.</p> | 83 FR 47961 (9/21/18). 85 FR 10216 (2/21/20) (Action on Petition for Reconsideration). |

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| PD-40(R) PHMSA-2019-0149 The State of North Dakota and the State of Montana. | The State of Washington Crude Oil by Rail—Vapor Pressure and pre-notification requirements. | <p>PHMSA finds that the HMTA <u>preempts</u> Washington State’s vapor pressure limit for crude oil loaded or unloaded from rail tank cars, for three reasons. First, the vapor pressure requirement constitutes a scheme for classifying a hazardous material that is not substantively the same as the HMR. Second, the vapor pressure requirement imposes requirements on the handling of a hazardous material that are not substantively the same as the requirements of the HMR. Third, PHMSA has determined that the vapor pressure requirement is an obstacle to accomplishing and carrying out the HMTA.</p> <p>In addition, PHMSA finds that the administrative record regarding Washington State’s Advance Notice of Transfer requirement is insufficient to make a determination whether the requirement is preempted under the HMTA.</p> | 85 FR 29511 (5/15/20). |

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| 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). |
| 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). |

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| PDA-39(R) PHMSA-2016-0163 NORA, An Association of Responsible Recyclers | Oregon Hazardous Waste Management regulation. | Application rejected because the HMTA’s preemption provisions—including the provision granting the Department the authority to make administrative preemption determinations—expressly do not apply to a “mental state . . . utilized by a State . . . to enforce a requirement applicable to the transportation of hazardous material,” PHMSA lacks authority to act on the application. | 84 FR 50882 (9/26/19). |