into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1987–1995 BMW K75S motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1987–1995 BMW K75S motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motorenwerke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1987–1995 BMW K75S motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1987–1995 BMW K75S motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1987–1995 BMW K75S motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner also states that vehicle identification number plates meeting the requirements of 49 CFR Part 565 will be affixed to non-U.S. certified 1987–1995 BMW K75S motorcycles.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 7, 1997.

Marilynne Jacobs,

Director Office of Vehicle Safety Compliance.

[FR Doc. 97–27007 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2968 (PDA–17(R))]

Application by William E. Comley, Inc. and TWC Transportation Corporation for a Preemption Determination as to Public Utilities Commission of Ohio Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by William E. Comley, Inc. and TWC Transportation Corporation for an administrative determination whether Federal hazardous materials transportation law preempts requirements enforced by the Public Utilities Commission of Ohio concerning the transportation of hypochlorite solutions in non-DOT specification cargo tank motor vehicles.

DATES: Comments received on or before November 24, 1997, and rebuttal comments received on or before December 9, 1997, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments may be submitted to the Dockets Office at the above address. Three copies of each written comment should be submitted. Comments may also be submitted by E-mail to ''rspa.counsel@rspa.dot.gov.'' Each comment should refer to the Docket Number set forth above.

A copy of each comment must also be sent to (1) Mr. William E. Comley, Sr., Chairman, WECCO/TWC, 28 Kenton Lands Road, P.O. Box 18580, Erlanger, KY 41018, and (2) Mr. William L. Wright, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, OH 43215–3793. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Messrs. Comley and Wright at the addresses specified in the **Federal Register**.'')

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

William E. Comley, Inc. (WECCO) and TWC Transportation Corporation (TWC) have applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts certain requirements of the State of Ohio, enforced by the Public Utilities Commission of Ohio (PUCO),

with respect to cargo tank motor vehicles used to transport hypochlorite solutions. This application arises out of enforcement proceedings brought by PUCO against WECCO and TWC for transporting hypochlorite solutions in non-DOT specification cargo tank motor vehicles. These companies have provided documents, including opinions and orders of PUCO, that indicate the following:

1. WECCO's truck No. 88 was inspected by PUCO on June 3 and September 26, 1991, and WECCO was cited both times for several violations including transporting hypochlorite solution in an unauthorized package.

2. At the time of PUCO's 1991 inspections, truck No. 88 did not have any specification plate. Sometime thereafter, WECCO attached specification plates to its three cargo tanks, including truck No. 88.

3. In its December 17, 1992 Opinion and Order relating to the 1991 citations, PUCO found that, ''in order to be an authorized package for the transportation of sodium hypochlorite under HMR 49 CFR 173.277(a)(9), respondent's tank must be classified as an MC 310, MC 311, MC 312 or DOT 412 cargo tank.'' PUCO also found that truck No. 88 ''has several design flaws which prevent it from qualifying under the HMR as a specification MC 312 cargo tank.'' PUCO assessed a fine of $11,470 against WECCO, which included $10,750 for violations of 49 CFR 173.277, transporting hazardous material in an unauthorized package and willful misrepresentation of cargo tank certification. Of the total fine, $5,000 was suspended for six months.

4. Truck No. 88, which had been transferred by WECCO to TWC, was inspected by PUCO on June 22, 1993, and TWC was cited for eight violations including leaking closures, transporting hypochlorite solution in an unauthorized package, and misrepresenting that the package met the MC 312 specification. On PUCO's hazardous materials report form, the contents of the cargo tank is indicated as ''Hypochlorite Solution, PG III.''

5. TWC's truck No. 66 was inspected by PUCO on July 3, 1993, and TWC was cited for seven violations including leaking closures, transporting hypochlorite solution in an unauthorized package, and misrepresenting that the package met the MC 312 specification. On WECCO's shipping paper attached to PUCO's hazardous materials report form, the hypochlorite solution is classed within ''PG III.''

6. In its October 25, 1995 Opinion and Order relating to the 1993 citations, PUCO found that ''numerous defects for both cargo tanks (Nos. 88 and 66) * * * preclude either from meeting the specifications of an MC 312 cargo tank.'' PUCO also stated that whether or not TWC ''need[ed] an MC 312 certified cargo tank to haul sodium hypochlorite solution of the concentration involved in these cases * * * is not an issue before us and respondent has not been charged with any such violation.'' PUCO assessed a total civil forfeiture of $14,290.50 against TWC for violations which included transporting hypochlorite solution in unauthorized packages and in tanks misrepresented as meeting MC 312 specifications, in violation of 49 CFR 173.33(a) and 49 CFR 171.2(c), respectively.

Based on telephone conversations with WECCO and PUCO, RSPA understands that no part of the fines or civil forfeitures assessed against WECCO and TWC has been paid, and PUCO is currently seeking to collect these penalties.

The State of Ohio has adopted (as State law) the requirements in the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) applicable to highway transportation of hazardous materials, including hypochlorite solutions. Under the HMR, since January 1, 1991, hypochlorite solutions containing more than 5% but less than 16% available chlorine may be transported in ''non-DOT specification cargo tank motor vehicles suitable for transportation of liquids'' and which also meet the general requirements for bulk packagings set forth in 49 CFR 173.24 and 173.24b. 49 CFR 173.241(b); *see also* 172.101 (Hazardous Materials Table). (At present, hypochlorite solutions up to 5% available chlorine are not subject to the HMR. During a transition period that continued until October 1, 1996, the HMR also authorized the transportation of hypochlorite solutions containing up to 7% available chlorine by weight transported in nonspecification cargo tanks that were ''free from leaks and [with] all discharge openings * * * securely closed during transportation.'' 49 CFR 173.510 (1990 ed.))

According to WECCO and TWC, in the course of these enforcement proceedings, PUCO has required the use of a DOT specification cargo tank motor vehicle, bearing a specification plate, for transportation of hypochlorite solutions containing more than 5% but less than 16% available chlorine. These companies also assert that PUCO has required cargo tank motor vehicles built under the MC 312 specification, that are unloaded at a pressure less than 15 psig, to be designed and constructed in accordance with the ASME code and also required the certification of MC 312 cargo tank motor vehicles in some manner other than as specified in the HMR.

In comments addressed to this application, PUCO has stated that its policy is to enforce the requirements in the HMR ''aggressively yet fairly.'' It stated that the focus of its enforcement proceedings against WECCO and TWC was the misrepresentation of these two cargo tank motor vehicles as meeting the MC 312 specification, when PUCO ''specifically found that the cargo tanks in question did not meet MC 312 specifications.'' PUCO also stated that it allows the use of non-specification cargo tank motor vehicles for the transportation of hypochlorite solutions with less than 16% available chlorine, but that WECCO and TWC have never provided any evidence on the concentration of the sodium hypochlorite solution being transported in their trucks.

Although WECCO and TWC assert that their cargo tanks were constructed to ASME requirements, and had wall, head, and lining thicknesses that exceeded requirements for specification MC 312 cargo tank motor vehicles, their application does not contain an assertion that these trucks actually meet DOT's MC 312 specification. Rather, the applicants state that specification plates are not required for these vehicles to transport sodium hypochlorite with less than 16% available chlorine, but that specification plates were applied to their trucks only to satisfy PUCO's insistence that a specification cargo tank motor vehicle was required for the transportation of this material. RSPA notes that the misrepresentation of any packaging as qualified for the transportation of a hazardous material is a serious violation of both 49 U.S.C. 5104(a) and the HMR, whether or not that packaging is actually used for the transportation of hazardous materials. However, because there is no evidence that PUCO has enforced design, construction, and operational requirements for MC 312 specification cargo tanks against these companies in any manner different from that specified in the HMR, issues relating to PUCO's assessment of penalties for misrepresenting cargo tank motor vehicles as meeting the MC 312 specification are not part of this proceeding.

The application submitted by WECCO and TWC is being considered solely with respect to issues that concern whether PUCO has required the use of a specification cargo tank motor vehicle

for the transportation of sodium hypochlorite with less than 16% available chlorine, after January 1, 1991. Neither the applicants nor PUCO has provided RSPA with copies of shipping papers or other documents to indicate the concentration of the sodium hypochlorite in the 1991 shipments. However, as stated above, the PUCO hazardous materials report forms for the June and July 1993 inspections (as provided by WECCO and TWC) indicate that the hypochlorite solutions were classed as Packing Group III materials. Packing Group III applies to hypochlorite solutions with more than 5% but less than 16% available chlorine. 49 CFR 172.101.

The following materials have been placed in the public docket of this proceeding:

Mr. Comley's April 24, 1997 application for a preemption determination and attachments.

RSPA's May 7, 1997 letter dismissing Mr. Comley's application.

Mr. Comley's May 12, 1997 reapplication for a preemption determination, with attachments.

RSPA's May 23, 1997 letter requesting additional information.

Mr. Comley's May 29, 1997 letter and attachments.

PUCO's July 8, 1997 letter and attachments.

Copies of these materials will be provided at no cost upon request to RSPA's Dockets Unit, located in Room 8421, 400 Seventh Street, SW, Washington, DC 20590–0001; telephone 202–366–4453.

II. Federal Preemption

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority ''to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.'' Pub. L. 93–633 § 102, 88 Stat. 2156, amended by Pub. L. 103–272 and codified as revised in 49 U.S.C. 5101. The HMTA ''replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations.'' *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1980). On July 5, 1994, the HMTA was among the many Federal laws relating to transportation that were revised, codified and enacted ''without substantive change'' by Pub. L. 103–272, 108 Stat. 745. The Federal hazardous material transportation law is now found in 49 U.S.C. Chapter 51.

A statutory provision for Federal preemption was central to the HMTA. In 1974, the Senate Commerce Committee ''endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'' S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). More recently, a Federal Court of Appeals found that uniformity was the ''linchpin'' in the design of the HMTA, including the 1990 amendments which expanded the preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). In 1990, Congress specifically found that:

> (3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,
>
> (4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,
>
> (5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2, 104 Stat. 3244.

Following the 1990 amendments and the subsequent 1994 codification of the Federal hazardous material transportation law, in the absence of a waiver of preemption by DOT under 49 U.S.C. 5125(e), ''a requirement of a State, political subdivision of a State, or Indian tribe'' is explicitly preempted (unless it is authorized by another Federal law) if

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

49 U.S.C. 5125(a). These two paragraphs set forth the ''dual compliance'' and ''obstacle'' criteria which RSPA had applied in issuing inconsistency rulings before 1990. While advisory in nature, these inconsistency rulings were ''an alternative to litigation for a determination of the relationship of Federal and State or local requirements'' and also a possible ''basis for an application * * * [for] a waiver of preemption.'' Inconsistency Ruling (IR) No. 2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc. 44 FR 75566, 76657 (Dec. 20, 1979). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

In the 1990 amendments, Congress also confirmed that there is no room for differences from Federal requirements in certain key matters involving the transportation of hazardous material. As now codified, a non-Federal requirement ''about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter,'' is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

> (A) the designation, description, and classification of hazardous material.
>
> (B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.
>
> (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

49 U.S.C. 5125(b)(1). RSPA has defined ''substantively the same'' to mean ''conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted.'' 49 CFR 107.202(d).

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which have been delegated to FHWA. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. *Id*. Following the receipt and consideration of written comments, RSPA publishes its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 C.F.R. 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

RSPA's authority to issue preemption determinations does not provide a means for review or appeal of State enforcement proceedings, nor does RSPA consider any of the State's procedural requirements applied in an enforcement proceedings. The filing of an application for a preemption determination does not operate to stay a State enforcement proceeding.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled ''Federalism'' (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Public Comment

Comments should be limited to whether Federal hazardous material transportation law preempts a requirement allegedly applied and enforced by PUCO, after January 1, 1991, for the use of a DOT specification cargo tank motor vehicle for the transportation of hypochlorite solutions containing more than 5% and less than 16% available chlorine. WECCO and TWC have not provided any evidence to indicate that PUCO enforces different requirements for the design, construction, and certification of MC 312 specification cargo tank motor vehicles. In addition, allegations in the application relating to PUCO's procedures for holding hearings and assessing penalties are not subject to this proceeding.

Persons submitting comments should:

(1) Set forth in detail the manner in which PUCO applies and enforces requirements for transportation of hypochlorite solution with more than 5% but less than 16% available chlorine; and

(2) Specifically address whether PUCO has enforced a requirement concerning the packing of a hazardous material that is ''not substantively the same as'' the requirements in the HMR.

Comments may also address the ''dual compliance'' and ''obstacle'' criteria described in Part II, above.

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

Issued in Washington, DC, on October 3, 1997.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 97–26918 Filed 10–9–97; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. PS–142; Notice 9]

Pipeline Safety: Remaining Candidates for the Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has completed screening of twelve candidate companies for the Pipeline Risk Management Demonstration Program. OPS named and described the first three companies screened (Northwest Pipeline Corporation, Shell Pipe Line Corporation, Tennessee Gas Pipeline/East Tennessee Natural Gas) in a previous notice. The nine additional companies screened subsequent to that notice are: Chevron Pipe Line Company; CNG Transmission Corporation; Columbia Gas Transmission Corporation/Columbia Gulf Transmission Company; Duke Energy; Florida Gas Transmission Company; Lakehead Pipeline Company; Mobil Pipe Line Company; Natural Gas Pipeline Company of America; and Phillips Pipe Line Company. OPS believes these companies' demonstration project proposals satisfy all eligibility criteria, based on a Letter of Intent (LOI) submitted by each company to OPS, a subsequent OPS screening, and an examination of each company's safety and environmental compliance record. Although this notice does not contain specific details of all project proposals, OPS believes the information provided in these companies' LOIs was sufficient to justify proceeding to the consultation process. Additional information, including further details of specific project proposals, will be provided in future **Federal Register** notices and other means of communication. This notice is based on information obtained very early in the process. It informs the public of which companies are interested in participating, the technologies to be explored, and the geographic areas demonstration projects may traverse. OPS invites public comment on any aspect of these companies' proposals.

Comments: OPS requests that comments to this notice be submitted on or before December 9, 1997 so that OPS can give the comments full consideration before deciding whether to approve a company's proposal. However, comments on any aspect of the Demonstration Program, including the individual projects, will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number (PS–142). Persons should submit the original document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eben Wyman, (202) 366–0918 regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material.

SUPPLEMENTARY INFORMATION: Appendix A of the Requests for Applications for the Pipeline Risk Management