NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 23, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–7606 Filed 3–26–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–97–2968 (PDA–17(R))]

Preemption Determination No. PD–15(R); Public Utilities Commission of Ohio, Requirements for Cargo Tanks

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

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANTS: William E. Comley, Inc. (WECCO) and TWC Transportation Corporation (TWC).

LOCAL LAWS AFFECTED: Ohio Admin. Code § 4901:2–05–02.

APPLICABLE FEDERAL REQUIREMENTS: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

MODES AFFECTED: Highway.

SUMMARY: Written requirements of the State of Ohio applicable to the transportation of hazardous materials are consistent with the HMR. There is insufficient evidence that the Public Utilities Commission of Ohio (PUCO) has applied or enforced requirements governing the transportation of hypochlorite solutions in any different manner than provided in the HMR.

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. Background

WECCO and 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 PUCO, with respect to cargo tank motor vehicles used to transport hypochlorite solutions. According to WECCO and TWC, PUCO has brought enforcement cases against these companies based on their use of a non-DOT specification cargo tank motor vehicle to transport hypochlorite solutions containing more than 5% but less than 16% available chlorine. On October 10, 1997, RSPA published a notice in the **Federal Register** inviting interested parties to submit comments on whether PUCO has required the use of a DOT specification cargo tank motor vehicle for transportation of hypochlorite solutions containing more than 5% but less than 16% available chlorine, after January 1, 1991. 62 FR 53049.

In that notice, RSPA also discussed the separate assertions by WECCO and TWC 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 (1) designed and constructed in accordance with the ASME Code and (2) certified in some manner other than as specified in the HMR. That notice referred to the absence of any statement by WECCO and TWC that their trucks actually meet DOT's MC 312 specification; rather they indicated that they applied specification plates to their trucks to satisfy PUCO's alleged requirement for the use of a specification cargo tank motor vehicle to transport sodium hypochlorite with less than 16% available chlorine. As RSPA stated there:

> 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 related to PUCO's assessment of penalties for misrepresenting cargo tank motor vehicles as meeting the MC 312 specification are not part of this proceeding.

62 FR at 53050.

In response to the October 10, 1997 public notice, PUCO and the National Tank Truck Carriers, Inc. submitted comments in opposition to the application. No comments were submitted by WECCO or TWC. No party submitted rebuttal comments, although PUCO submitted a further letter asking for a prompt dismissal of the application.

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 Section 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 Public Law 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 the 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 CFR 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, not 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. Discussion

The State of Ohio has adopted (as State law) the requirements in the HMR applicable to highway transportation of hazardous materials, including hypochlorite solutions. Ohio Admin. Code 4901:2–05–02. Since January 1, 1991, the HMR have provided that 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 transport of liquids'' and that 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.))

Accordingly, the written requirements of the State of Ohio are fully consistent with the HMR. The issue presented by the application and supporting documents submitted by WECCO and TWC is whether PUCO is applying and enforcing requirements for the transportation of hypochlorite solutions in a manner different than provided in the HMR and as adopted by Ohio. The documents submitted by WECCO and TWC, including opinions and orders of PUCO, indicate the following:

1. On June 3 and September 26, 1991, PUCO inspected WECCO's truck No. 88 and cited WECCO 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 stated that, ''in order to be an authorized package for the transportation of sodium hypochlorite under HMR 49 C.F.R. 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 willfully misrepresenting cargo tank certification. Of the total fine, $5,000 was suspended for six months.

4. On June 22, 1993, PUCO inspected truck No. 88, which had been transferred by WECCO to TWC, and cited TWC 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 are indicated as ''Hypochlorite Solution, PG III.''

5. On July 3, 1993, PUCO inspected TWC's truck No. 66 and cited TWC 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 that 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.

In its comments, PUCO states that ''this case presents no preemption controversy.'' It summarizes its enforcement proceedings against WECCO and TWC and states that these companies failed to appeal the PUCO orders as provided by Ohio statutes. PUCO further denies that it has ever required any carrier of hypochlorite solutions, between 5% and 16% available chlorine, to use a DOT specification cargo tank motor vehicle. According to an affidavit from the Chief of the Hazardous Materials Division of PUCO's Transportation Department, a search of data covering all commercial vehicle inspections since January 1, 1991 failed to reveal any other instance where PUCO had cited a carrier for transporting Packing Group III hypochlorite solutions in an unauthorized cargo tank motor vehicle. Rather, PUCO stresses that the cargo tanks used by WECCO and TWC ''contained a number of design flaws that rendered them unsuitable for hazardous materials carriage.''

PUCO asserts that the principal issue in these enforcement proceedings was whether WECCO and TWC had misrepresented their cargo tank motor vehicles as meeting the MC 312 specification. It states that, in the proceedings that led to the December 17, 1992 Opinion and Order, WECCO presented no evidence as to the level of available chlorine in the sodium hypochlorite being transported. PUCO indicates that its October 25, 1995 Opinion and Order found that TWC's tanks were unauthorized because ''Leakage was again discovered at several points along the tank's pressure and discharge system, and a strong chlorine odor was observed by the Commission's field safety inspector.''

Both PUCO and NTTC argue that WECCO and TWC have improperly invoked RSPA's preemption determination process, and that the applicants' sole remedy is to appeal the PUCO enforcement orders as provided by Ohio law rather than to seek a determination from DOT.

Under all the information available in this case, it is unclear whether PUCO's December 17, 1992 and October 25, 1995 Opinions and Orders actually find that WECCO and TWC violated Ohio requirements by transporting sodium hypochlorite with less than 16% available chlorine in a non-DOT specification vehicle. Nonetheless, 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 solutions with less than 16% available chlorine. If PUCO misinterpreted or misapplied the HMR's requirements (as adopted in Ohio law) in the specific enforcement proceedings involving WECCO and TWC, those parties could have appealed the orders in those proceedings in accordance with Ohio law. This is not a ground for a finding of preemption, especially where (as here) the State's written requirement is identical to the HMR. In PD–14(R), Houston, Texas Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials, 63 FR 67506, 67510 n.4 (Dec. 7, 1998), petition for reconsideration pending, RSPA recently reiterated that,

> As a general matter, 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 (e.g., misinterpretation of regulations) do not render such provisions inconsistent'' with Federal hazardous material transportation law. IR–31, Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25584 (June 21, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992), quoted in PD–4(R), California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids, 58 FR 48940 (Sept. 20, 1993), decision on reconsideration, 60 FR 8800 (Feb. 15, 1995).

IV. Ruling

Written requirements of the State of Ohio applicable to the transportation of hazardous materials are consistent with the HMR. There is insufficient evidence that PUCO has applied or enforced requirements governing the transportation of hypochlorite solutions in any different manner than provided in the HMR.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), ''[a]ny person aggrieved'' by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision ''in an appropriate district court of the United States * * * not later than 60 days after the decision becomes final.'' 49 U.S.C. 5125(f).

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, D.C. on March 23, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–7654 Filed 3–26–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0078.

Form Number: ATF F 1533 (5000.18).

Type of Review: Extension.

Title: Consent of Surety.

Description: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The consent of surety is filed with ATF and a copy is retained by the ATF as long as it remains current and in force.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion, Other (with application and permit change).

Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1512–0100.

Form Number: ATF F 5000.29 and ATF F 5000.30.

Type of Review: Extension.

Title: Environmental Information (ATF F 5000.29); and Supplemental Information on Water Quality Considerations Under 33 U.S.C. 1341(a).

Description: ATF F 5000.29 and 5000.30 implement regulations of the Clean Water Act and the National Environmental Policy Act (NEPA). The NEPA authorizes ATF through ATF F 1740.1 to require license or permit application to state the location of existing or proposed activities concerned with land, air pollution, water and activities to ATF.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,400 hours.

OMB Number: 1512–0418.

Form Number: ATF F 5000.12.

Type of Review: Extension.

Title: Application for Enrollment to Practice Before the Bureau of Alcohol, Tobacco and Firearms.

Description: Application to practice before the Bureau of Alcohol, Tobacco and Firearms is necessary so that the Bureau may evaluate the qualification of applicants in order to assure only competent, reputable persons are authorized to represent claimants.

Respondent: Business or other for-profit.

Estimated Number of Respondents: 8.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (initial application and renewal every 5 years).

Estimated Total Reporting Burden: 2 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–7602 Filed 3–26–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0819.

Regulation Project Number: 26 CFR 601.201.

Type of Review: Extension.

Title: Instructions for Requesting Rulings and Determination Letters.

Description: The National Office issues ruling letters and District Directors issue determination letters to taxpayers interpreting and applying the laws to a specific set of facts. The National Office also issues other types of letters. The procedural regulations set forth the instructions for requesting rulings and determinations.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 271,914.