

requires a minimum of five minutes resistance to the application of commonly available tools.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the X5 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii)).

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption from the MY 2000 X5 vehicle line from the parts-marking requirements of 49 CFR part 541.

If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW 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. Section 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 anti-theft 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 that § 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: June 21, 1999.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 99-16125 Filed 6-23-99; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. PDA-15(R)]

#### Preemption Determination No. PD-14(R); Houston, TX, Fire Code Requirements on the Storage, Transportation, and Handling of Hazardous Materials

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

**ACTION:** Decision on petition for reconsideration of administrative determination of preemption.

*Petitioner:* City of Houston, Texas.

*State Laws Affected:* Houston, Texas, Ordinance No. 96-1249 adopting the 1994 Uniform Fire Code with certain modifications.

*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:** RSPA denies the petition for reconsideration submitted by the City of Houston (City), in which the City asked RSPA to defer any determination whether Federal hazardous material transportation law preempts provisions of the Houston Fire Code relating to the transportation of hazardous materials. RSPA clarifies that its December 7, 1998 determination applies only to the transportation of hazardous materials in commerce by motor vehicles. In that determination, RSPA found that the following requirements in the Houston Fire Code are not preempted because they do not apply when the transportation of hazardous materials is governed by DOT's regulations: (1) Permits for vehicles that transport

hazardous materials in commerce, including the definition of "hazardous materials" as part of these permit requirements; (2) the design, construction, or operation of tank vehicles used for transporting flammable or combustible liquids; (3) physical bonding during loading of a tank vehicle with a flammable or combustible liquid; (4) unattended parking of a tank vehicle containing a flammable or combustible liquid; and (5) the service rating of the fire extinguisher required to be carried on a tank vehicle used to transport a flammable or combustible liquid.

#### FOR FURTHER INFORMATION CONTACT:

Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590-0001, telephone 202-366-4400.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In February 1996, the Association of Waste Hazardous Materials Transporters (AWHMT) applied for an administrative determination that Federal hazardous material transportation law preempts certain provisions of the Fire Code of the City of Houston, Texas, as applied to tank vehicles that pick up or deliver hazardous materials within the City of Houston (City).

At that time, the Houston Fire Code consisted of the 1991 edition of the Uniform Fire Code as modified in a "Conversion Document." The requirements challenged by AWHMT involved: (1) Inspections and fees required to obtain an annual permit for a cargo tank motor vehicle to pick up or deliver hazardous materials (including flammable and combustible liquids) within the City; (2) the definition of "hazardous materials" as used in these permit requirements; and (3) design, construction, and operating requirements for tank vehicles used to transport flammable and combustible liquids, including the number and service rating of fire extinguishers required on the vehicle, unattended parking of the vehicle, "FLAMMABLE" and "NO SMOKING" markings on the vehicle, and static protection (or "bonding") during loading of the vehicle. AWHMT separately provided copies of citations that the City had issued to operators of cargo tank motor vehicles for loading or unloading corrosive materials within the City without a permit, despite an exception in Sec. 80.101(a) of the 1991 edition of the Uniform Fire Code for:

Off-site hazardous materials transportation in accordance with DOT requirements.

In Sec. 79.101(a), there was also a similar exception for:

The transportation of flammable and combustible liquids when in accordance with DOT regulations on file and approved by DOT.

In November 1996, the City adopted the 1994 edition of the Uniform Fire Code together with certain "City of Houston Amendments." At this time, the "FLAMMABLE" and "NO SMOKING" marking requirement was eliminated, and the City reduced from two to one the number of fire extinguishers required on a tank vehicle used to transport a flammable or combustible liquid. In all other respects, the provisions in the Houston Fire Code challenged by AWHMT were not substantively changed. The exceptions for the transportation of hazardous materials "in accordance with" DOT's regulations were retained in the Uniform Fire Code. See Secs. 7901.1.1 and 8001.1.1, Uniform Fire Code (1994 edition).

RSPA specifically invited detailed comments on "the scope and meaning" of these exceptions in the Uniform Fire Code. See the Public Notices published in the **Federal Register** on March 20, 1996, 61 FR 11463, 11465, and April 9, 1997, 62 FR 17281, 17282. In its May 1997 comments, the City stated that it recognizes these exceptions, and permits "are no longer required for vehicles transporting hazardous material or flammable or combustible material if the vehicle meets DOT requirements"; that "the inspection and fee provisions \* \* \* also do not apply to such vehicles"; and that tank vehicle design and construction requirements in the Uniform Fire Code were applied only "to tank vehicles that are used exclusively on-site and to off-site vehicles not meeting DOT specifications." The City argued that other "challenged provisions still in effect are not preempted," and it also requested "[i]n the alternative \* \* \* that a decision on AWHMT's application be postponed until completion" of RSPA's rulemaking proceeding in Docket No. HM-223, "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage." See RSPA's Advance Notice of Proposed Rulemaking, 61 FR 39522 (July 29, 1996), and Supplemental Advance Notice of Proposed Rulemaking, 64 FR 22718 (Apr. 27, 1999).

In PD-14(R), published in the **Federal Register** on December 7, 1998, RSPA indicated it agreed with the City's

interpretation of the exceptions in Secs. 7901.1.1 and 8001.1.1, but that RSPA read those exceptions to "apply to the entire contents of Articles 79 and 80—not just the permit requirements." 63 FR 67506, 67510. RSPA stated that it "must assume that the City applies the exceptions in Secs. 7901.1.1 and 8001.1.1 in a consistent manner," to all the requirements in Articles 79 and 80. *Id.* Accordingly, RSPA found that that Federal hazardous material transportation law does not preempt requirements in the following sections of the Houston Fire Code because these requirements do not apply to the transportation of hazardous materials that is subject to the HMR:

- Secs. 105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., concerning permits (including the inspections and fees required to obtain a permit);
- Secs. 209 and 8001.1.2, concerning the definition of "hazardous materials" (as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1);
- Sec. 7904.6.1, concerning requirements for the design and construction of tank vehicles used to transport a flammable or combustible liquid;
- Sec. 7904.6.3.4, concerning physical bonding during the loading of a tank vehicle with a flammable or combustible liquid, to prevent the accumulation of static charges;
- Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or "at any other place that would, in the opinion of the chief, present an extreme life hazard"; and
- Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2-A, 20-B:C on board a tank vehicle used for flammable or combustible liquids.

63 FR at 67511.

In PD-14(R), RSPA declined to consider a separate requirement in the Houston Fire Code that rail tank cars containing flammable or combustible liquids "shall be unloaded as soon as possible after arrival at point of delivery" and within 24 hours of being connected for transfer operations unless otherwise approved by the fire chief. Sec. 7904.5.4.3. RSPA noted that this requirement in the Uniform Fire Code, as adopted by Los Angeles County, had been found to be preempted in PD-9(R), Los Angeles County Requirements Applicable to the Transportation and Handling of Hazardous Materials on Private Property, 60 FR 8774, 8783, 8788 (Feb. 15, 1995). However, AWHMT had not challenged this requirement, as adopted in the Houston Fire Code, until May 1997, fifteen months after its application which, as all parties understood, "challenged requirements in the Houston Fire Code only as

applied to motor carriers that pick up or deliver hazardous materials within the City." 63 FR at 67508.

RSPA also declined to defer its decision in PD-14(R) until completion of the rulemaking in HM-223. RSPA noted that other preemption proceedings (PDs 8(R)-11(R)) involve requirements of the Uniform Fire Code (as adopted by Los Angeles County) as applied to the "on-site" handling and transportation of hazardous materials." 63 FR at 67507. Unlike the issues in those decisions that have been placed "on hold" pending the consideration of the scope of the HMR in HM-223,

no party here disputes that the HMR apply to carriers who pick up or deliver hazardous materials within the City for "off-site" transportation. The main issue in this case is whether the Houston Fire Code applies to those carriers and their vehicles—not whether the HMR apply.

*Id.* RSPA added that:

AWHMT, the City, and other parties who submitted comments in this proceeding are encouraged to participate fully in HM-223 because of the relationship between the applicability of the HMR and the Uniform Fire Code to transportation-related activities involving hazardous materials.

*Id.*

In Part I.C. of its decision, RSPA discussed the applicability of Federal hazardous material transportation law to the transportation of hazardous materials in commerce and the standards for making determinations of preemption. 63 FR at 67508-67509. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a State (or other non-Federal) requirement is preempted if:

- It is not possible to comply with both the State requirement and a requirement in the Federal hazardous material transportation law or regulations;
- The State requirement, as applied or enforced, is an "obstacle" to the accomplishing and carrying out of the Federal hazardous material transportation law or regulations; or
- The State requirement concerns a "covered subject" and is not "substantively the same as" a provision in the Federal hazardous material transportation law or regulations. Among the five covered subjects are (1) "the designation, description, and classification of hazardous material," and (2) the "packing, repacking, handling, labeling, marking, and placarding of hazardous material."

See 49 U.S.C. 5125 (a) & (b). These preemption provisions stem from congressional findings that State and local laws which vary from Federal hazardous material transportation requirements can create "the potential for unreasonable hazards in other

jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting \* \* \* regulatory requirements," and that safety is advanced by "consistency in laws and regulations governing the transportation of hazardous materials." Pub. L. 101-615 §§ 2(3) & 2(4), 104 Stat. 3244.

In PD-14(R), RSPA also explained its procedures for issuing preemption determinations and the rights to file a petition for reconsideration and/or judicial review. 63 FR at 67509, 67511.

Within the 20-day time period provided in 49 CFR 107.211(a), the City filed a petition for reconsideration of PD-14(R). The City certified that it had mailed a copy of its petition to AWHMT and all others who had submitted comments. AWHMT submitted comments on the City's petition for reconsideration.

## II. Petition for Reconsideration

In its petition, the City again acknowledges that the Uniform Fire Code contains "exceptions for areas governed by DOT regulations," but states that "[c]ontrary to DOT's statement at [63 FR] 67506, however, the City's exceptions for DOT-regulated activities apply only to *transportation*." (emphasis in original) The City appears to argue that the requirements challenged by AWHMT that fall within "transportation" are only those "relating to tank vehicle design, construction, and operation and to fire extinguishers." The City asks RSPA to defer considering the other requirements challenged by AWHMT because they are "within the scope of the pending rulemaking [in] Docket No. HM-223" and "not within the intended scope of [the Uniform Fire Code] exception for DOT-regulated transportation activity":

- Permits for the storage, handling \* \* \* dispensing, mixing, blending or using hazardous materials.
- Physical bonding during loading of the vehicle.
- Unattended parking of the vehicle.

According to the City, "[d]eferral is all the more appropriate in light of the recent extension of the HMR during the course of this proceeding to all intrastate transportation of hazardous materials in commerce." The City asserts that

DOT's refusal to defer consideration of Fire Code requirements imposed on carriers at in-transit facilities completely ignores DOT's confirmation that HM-223 is expressly intended to address activities at "transfer and other mid-transportation facilities" which, under any logical construction, would include activities at "in-transit facilities." \* \* \* The City's position is that the

activities regulated by the Fire Code are not incidental to transportation. Lacking a rule [in HM-223], DOT should defer its decision altogether.

On February 3, 1999, an official of the Houston Fire Department telephoned RSPA's Office of the Chief Counsel to ask about the status of RSPA's determination in PD-14(R) and the rulemaking in HM-223. Based on that conversation, RSPA understands that the concerns raised in the City's petition for reconsideration relate to the facilities at which hazardous materials are stored, rather than the vehicles that transport hazardous materials and pick up or deliver hazardous materials within the City. According to this official, the interest of the Fire Department is that the same fire protection standards apply to both (1) the buildings and other facilities where hazardous materials are stored for short times in the course of transportation and (2) the facilities where hazardous materials are stored and used outside of transportation.

## III. Discussion

The Uniform Fire Code (1994 edition) states that it is primarily directed at "the hazards of fire and explosion arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life and property in the *use and occupancy of buildings and premises*." Sec. 101.2 ("Scope") (emphasis added); see 63 FR at 67507. The specific exceptions in Secs. 7901.1.1 and 8001.1.1 for transportation "in accordance with" DOT's regulations seem to be clear that the Uniform Fire Code is not intended to apply to vehicles when they are transporting hazardous materials subject to the HMR. When the Uniform Fire Code is properly applied in this manner, there is no inconsistency with Federal hazardous material transportation law or the HMR.

AWHMT submitted its application after the City applied permit requirements in the 1991 edition of the Uniform Fire Code (as adopted and amended by the City) to motor carriers that (according to AWHMT) were transporting hazardous materials in accordance with and subject to the HMR. Specifically, the City issued citations to the operators of motor vehicles that loaded or unloaded corrosive materials within the City when the vehicles had not been inspected and issued a permit. See the discussion in PD-14(R), 63 FR at 67510, and in RSPA's Notices, 61 FR 11463 (Mar. 20, 1996), and 62 FR 17281 (Apr. 9, 1997). Following the City's adoption of the 1994 edition of the Uniform Fire

Code, however, as discussed in PD-14(R), 63 FR at 67510,

the City specifically acknowledged that the "express exceptions for DOT-regulated activities" in Secs. 7901.1.1 and 8001.1.1 mean that "the Fire Code should not be read as applicable to over-the-road (off-site) transportation \* \* \*" The City elaborated that "permits will not be required for DOT-regulated activities"; the "hazardous materials classifications [in the Houston Fire Code] \* \* \* are not applicable to activities regulated by the DOT"; and that provisions in the Fire Code setting design and construction requirements for tank vehicles apply only to "off-road (or on-site) transportation of flammable or combustible liquids not regulated by DOT."

Based on these representations that the City is now interpreting its Fire Code in a manner that is fully consistent with Federal hazardous material transportation law and the HMR, RSPA concluded that Federal hazardous material transportation law does not preempt the requirements in the Houston Fire Code challenged in AWHMT's application. RSPA understood that the City was no longer requiring permits (or inspections) for vehicles that pick up or deliver hazardous materials within the City, which were subject to the HMR. As discussed in Part I, above, RSPA also read the exceptions in Secs. 7901.1.1 and 8001.1.1 to "apply to the entire contents of Articles 79 and 80 [of the Uniform Fire Code]—not just to the permit requirements." *Id.*

The City's petition for reconsideration seems to disagree with this last conclusion. Its statements that requirements challenged by AWHMT, as applied to vehicle operators, concern activities that are not subject to the HMR but are "within the scope of the pending rulemaking Docket No. HM-223," are somewhat confusing. The concept that the exceptions in Secs. 7901.1.1 and 8001.1.1 apply to only some of the requirements in Articles 79 and 80 of the Uniform Fire Code mirrors similar contradictory statements in the City's May 1997 comments that requirements in Article 79 of the Uniform Fire Code concerning physical bonding, unattended parking, and fire extinguishers "are not affected by the [e]xceptions" in Secs. 7901.1.1 and 8001.1.1. See 63 FR at 67510. RSPA found this statement to be "in direct conflict with the plain language of these exemptions." *Id.*

More importantly, the City has not shown that its asserted uncertainty about the applicability of the HMR to certain transportation-related activities should cause RSPA to defer its determination on AWHMT's

application. The activities covered by specific requirements challenged by AWHMT seem to clearly fit within the scope of "transportation" subject to the HMR.

Based on AWHMT's application and the comments submitted, RSPA understood that, during 1995-96, the City required a carrier to obtain a vehicle permit (following inspection of the cargo tank motor vehicle) in order for the carrier to deliver hazardous materials within the City—as contrasted to a consignee's unloading of a bulk container over an extended period of time after delivery of the container by the carrier. RSPA stated in PDs 8(R)-11(R) that unloading by the carrier would generally be a part of the delivery to the consignee and incidental to the movement of those materials in commerce, "even when that unloading takes place exclusively at a consignee's facility." 60 FR at 8777.

Similarly, the loading of a tank vehicle with a flammable or combustible liquid, for which static protection (or "bonding") is required by 49 CFR 177.837(c), would ordinarily be considered loading "incidental to the movement" of property off-site (or in commerce) and within the scope of "transportation" subject to the HMR, see 49 U.S.C. 5102(12), rather than Sec. 7904.6.1 of the Uniform Fire Code. DOT's parking regulations in 49 CFR 397.7 seem to apply to any tank vehicle in the locations specified in Sec. 7904.6.5.2.1 of the Uniform Fire Code ("residential streets, or within 500 (152.4 m) of a residential area, apartment, or hotel complex, educational facility, hospital or care facility").

In this proceeding, AWHMT did not challenge the City's requirements that apply to a facility that stores hazardous materials, as opposed to the vehicles that move those materials. The City has not raised any specific issues relating to the storage of hazardous materials. Finally, in PD-14(R) RSPA did not consider requirements in the City's Fire Code as they apply to facilities that store hazardous materials.

As a general matter, the transportation of hazardous materials in commerce subject to the Federal hazardous materials transportation law and the HMR includes the storage of those materials "incidental to [their] movement." 49 U.S.C. 5102(12). Accordingly, RSPA has stated that the HMR clearly apply to "transportation-related storage." IR-19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24409 (June 30, 1987), decision on appeal, 53 FR 11600

(Apr. 7, 1988). And RSPA reiterated in PDs 8(R)-11(R) that the HMR apply to "[s]torage that is incidental to transportation," which includes "storage by a carrier that may occur between the time a hazardous material is offered for transportation and the time it reaches its intended destination and is accepted by the consignee." 60 FR at 8778. See also PD-12(R), New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation, 60 FR 52527, 62541 (Dec. 6, 1995), decision on petition for reconsideration, 62 FR 15970, 15972 (April 3, 1997) ("transportation-related activities" subject to the HMR include the interim storage of hazardous materials at a transfer facility). In contrast, "RSPA does not regulate consignee storage, including the types of containers used to store hazardous materials that are no longer in transportation in commerce." PD-9(R), 60 FR at 8788.

RSPA has long encouraged States and localities to adopt and enforce requirements on the transportation of hazardous materials that are consistent with the HMR. See, e.g., PD-12(R), 60 FR at 62530. This applies to storage that is incidental to the movement of hazardous materials in commerce, as well as the actual movement of those materials. The enforceability of non-Federal requirements on "incidental" storage depends on the consistency of those requirements with the HMR and, of course, the applicability of the requirements themselves in terms of exceptions such as Secs. 7901.1.1 and 8001.1.1 of the Uniform Fire Code.

As stated in PD-14(R), 63 FR at 67510, "a State or local permit requirement is not *per se* preempted; rather, 'a permit itself is inextricably tied to what is required to get it.'" This principle applies to the storage of hazardous materials in transportation as well as to the actual movement of these materials. IR-28, San Jose Restrictions on Storage of Hazardous Materials, 55 FR 8884, 8890 (Mar. 8, 1990), appeal dismissed as moot, 57 FR 41165 (Sept. 9, 1992).

With respect to permits for a facility where hazardous materials are stored in transportation, however, State requirements are preempted when they are "so open-ended and discretionary that they authorize the [State] to approve storage prohibited by the HMR or prohibit storage authorized by the HMR." IR-19, 52 FR at 24410. The Court of Appeals for the Ninth Circuit agreed in *Southern Pac. Transp. Co. v. Public Serv. Comm'n*, 909 F.2d 352, 358 (9th Cir. 1980), that such State

requirements create "a separate regulatory regime for these activities [including storage in transportation], fostering confusion and frustrating Congress' goal of developing a uniform national scheme of regulation."

Similarly, in IR-28, RSPA found that "unfettered discretion \* \* \* with respect to approval or disapproval of storage of hazardous materials incidental to the transportation thereof is inconsistent with the HMTA and the HMR." 55 FR at 8890. RSPA also noted that

detailed information required to be provided concerning the identity and quantity of hazardous materials (and other materials) which a transportation carrier might store at its facility during a given year is impossible to compile and provide in advance because a common carrier is at the mercy of its customers, including the general public, who may without advance notice offer to the carrier virtually any quantity of any of the thousands of hazardous materials listed in, or covered by, the HMR.

*Id.* at 8891.

To decide this case, however, RSPA need not precisely delineate the incidental storage that is encompassed within the scope of "transportation" (as defined in Federal hazardous material transportation law) from that which is not. In its May 1997 comments, the City asked RSPA to find that the provisions challenged by AWHMT "are not preempted." That is the determination made by RSPA in PD-14(R), and it is unclear that the City is "aggrieved" by RSPA's determination in PD-14(R). See 49 CFR 107.211(a). To the extent that the exceptions in Secs. 7901.1.1 and 8001.1.1 mean that provisions in the Uniform Fire Code do not apply to transportation of hazardous materials in commerce, including incidental storage, that result derives from the plain language of the Uniform Fire Code and not from any inconsistency with the HMR. That matter is separate and distinct from issues relating to whether the storage of a hazardous material is "incidental to [its] movement," which will be considered in RSPA's rulemaking in Docket No. HM-223. ANPRM, 61 FR at 38524.

For all the reasons set forth above and in PD-14(R), 63 FR at 67507, there is no basis for RSPA to defer its determination in PD-14(R). Because of the concerns expressed in the City's petition for reconsideration, however, RSPA is clarifying that this determination applies only to the transportation of hazardous materials in commerce by a motor vehicle.

**IV. Ruling**

RSPA denies the City's petition for reconsideration and affirms its December 7, 1998 determination that Federal hazardous material transportation law does not preempt requirements in the following sections of the Houston Fire Code because these requirements do not apply to the transportation of hazardous materials subject to the HMR:

- Secs. 105.4, 105.8.f.3, 105.h.1, 106.1, 7901.3.1, and 8001.3.1., to the extent that these sections require a permit for a vehicle to transport hazardous materials in commerce within the City, including activities (such as loading, unloading, handling, and dispensing) that are encompassed within the scope of transportation, and including the requirements for inspection of the vehicle and payment of a fee in order to obtain a permit;
- Secs. 209 and 8001.1.2, concerning the definition of "hazardous materials" as relevant to the permit requirements in Secs. 105.8.f.3 and 8001.3.1;
- Sec. 7904.6.1, concerning requirements for the design and construction of tank vehicles used to transport a flammable or combustible liquid;
- Sec. 7904.6.3.4, concerning physical bonding during the loading of a tank vehicle with a flammable or combustible liquid, to prevent the accumulation of static charges;

- Sec. 7904.6.5.2.1, prohibiting unattended parking of tank vehicles used for flammable or combustible liquids at specific locations or "at any other place that would, in the opinion of the chief, present an extreme life hazard"; and
- Sec. 7904.6.7, requiring a fire extinguisher with a minimum rating of 2-A, 20-B:C on board a tank vehicle used for flammable or combustible liquids.

**V. Final Agency Action**

In accordance with 49 CFR 107.211(d), this decision constitutes RSPA's final agency action on AWHMT's application for a determination of preemption as to certain requirements in the Houston Fire Code concerning the transportation of hazardous materials, including storage and handling that are a part of transportation.

Issued in Washington, DC on June 17, 1999.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 99-16026 Filed 6-23-99; 8:45 am]

BILLING CODE 4910-60-P

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**UNITED STATES INSTITUTE OF PEACE**
**Announcement of the Spring Unsolicited Grant Competition Grant Program**

AGENCY: United States Institute of Peace.

**ACTION:** Notice.

**SUMMARY:** The Agency Announces its Upcoming Fall Unsolicited Grant Deadline, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

**DEADLINE:** October 1, 1999.

**DATES:** Application Material Available Upon Request. Receipt Date for Return of Application: October 1, 1999. Notification of Awards: February 2000.

**ADDRESSES:** For Application Package: United States Institute of Peace, Grant Program • Unsolicited Grants, 1200 17th Street, NW, • Suite 200, Washington, DC 20036-3011, (202) 429-3842 (phone), (202) 429-6063 (fax), (202) 457-1719 (TTY), Email: grant\_program@usip.org.

Applications also available on-line at our web site: [www.usip.org](http://www.usip.org).

**FOR FURTHER INFORMATION CONTACT:** The Grant Program; Phone (202) 429-3842.

Dated: June 19, 1999.

**Bernice J. Carney,**

*Director, Office of Administration.*

[FR Doc. 99-16066 Filed 6-23-99; 8:45 am]

BILLING CODE 6820-AR-M