the east, a distance of approximately 31 km (19 miles).

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Donald Lerch, Assistant District Engineer, Pennsylvania Department of Transportation, District 5–0, 1713 Lehigh Street, Allentown, PA 18103, Telephone (610) 798–4131.

SUPPLEMENTARY INFORMATION: Additional traffic analyses have indicated that the proposed project consists of distinct sections based on traffic patterns, origins and destinations, safety and capacity needs. Environmental Assessments of Categorical Exclusion Evaluations will be prepared for each section, as appropriate, based on project scoping.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

James A. Cheatham,

FHWA Division Administator, Harrisburg, PA.

[FR Doc. 02–1544 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

[Docket No. RSPA–00–7021 (PD–23(RF))]

Research and Special Programs Administration Federal Motor Carrier Safety Administration; Morrisville, PA Requirements for Transportation of ''Dangerous Waste''

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

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

PETITIONER: Borough of Morrisville, Pennsylvania.

LOCAL LAWS AFFECTED: Morrisville, Pennsylvania Ordinance No. 902.

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

MODES AFFECTED: Highway.

SUMMARY: The Borough's petition for reconsideration is denied, and RSPA and FMCSA reaffirm their determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. The definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance.

2. The designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02.

3. The requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Joseph Solomey, Office of the Chief Counsel, Federal Motor Carrier Safety Administration (Tel. No. 202–366–1374), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. Preemption Determination

Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively ''Med/Waste''), applied for a determination that Federal hazardous material transportation law preempts provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania (''Borough''): (1) defining ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' and using the term ''dangerous waste''; (2) limiting trucks transporting dangerous waste within the Borough to Route 1; and (3) requiring trucks carrying dangerous waste to carry and have available for inspection the uniform manifest required for hazardous wastes. RSPA and FMCSA published the text of Med/Waste's application and a responding letter from the Borough in the **Federal Register** and invited interested parties to submit comments. 65 FR 20258 (April 14, 2000). Comments were received from Med/Waste, Sanitec, the Medical Waste Institute (''Institute''), Biosystems, and American Waste Industries, Inc. The Borough did not submit further comments.

On July 17, 2001, RSPA and FMCSA published in the **Federal Register** their determination on Med/Waste's application in PD–23(RF), 66 FR 37260. RSPA and FMCSA found that Federal hazardous material transportation law preempts:

(1) the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 of Ordinance No. 902 because these terms are used to create a scheme for designating and classifying hazardous material that is not substantively the same as in the HMR; and the term ''dangerous waste'' because it is used and defined throughout the ordinance in a manner that is substantively different from the use of the word ''dangerous'' in the HMR;

(2) the limitation that trucks transporting dangerous waste may only travel on Route 1 within the Borough, in Section 02 of Ordinance No. 902, because the Borough failed to comply with FMCSA's standards in 49 CFR part 397 when it adopted a routing limitation; and

(3) the requirement in Section 05(a) of Ordinance No. 902 that a uniform hazardous waste manifest must be carried on any truck transporting dangerous waste within the Borough because that requirement is not substantively the same as requirements in the HMR for the ''preparation, execution, and use of shipping documents,'' which do not require the use of any specific form for shipments of regulated medical waste (or other materials that are not hazardous wastes).

In Part I.B. of their July 17, 2001 determination, RSPA and FMCSA discussed Federal regulation of the transportation of medical waste as a hazardous material since 1972 and the fact that ''regulated medical wastes must be distinguished from (and are not within the category of) 'hazardous wastes.' '' 66 FR at 37261. These agencies noted that the HMR specifically state that ''A hazardous waste is not subject to regulation as a regulated medical waste,'' 49 CFR 173.134(b)(2); and that the Pennsylvania Department of Transportation has adopted as State law the HMR in 49 CFR parts 171–173 and 178–180 and FMCSA's Federal Motor Carrier Safety Regulations in 49 CFR parts 388 and 397.

In Part II of their determination, RSPA and FMCSA discussed the standards for making determinations of preemption under the Federal hazardous material transportation law. 66 FR at 37261–62. As explained there, unless DOT grants a waiver or there is specific authority in another Federal law, a local (or other

non-Federal) requirement is preempted if:

—It is not possible to comply with both the local requirement and a requirement in the Federal hazardous material transportation law or regulations;
—The local requirement, as applied or enforced, is an ''obstacle'' to accomplishing and carrying out the Federal hazardous material transportation law or regulations;
—The local requirement concerns any of five specific subjects and is not ''substantively the same as'' a provision in the Federal hazardous material transportation law or regulations, including ''the designation, description, and classification of hazardous materials,'' and the ''preparation, execution, and use of shipping documents''; or
—The locality establishes on or after November 14, 1994, a designation, limitation, or requirement related to highway routing of hazardous materials that fails to comply with FMCSA's standards in 49 CFR part 397.

These preemption provisions stem from congressional findings that State, local, or Indian tribe requirements that vary from Federal hazardous material transportation law and regulations can create ''the potential for unreasonable hazards in other jurisdictions and confound[] 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 Sections 2(3) & 2(4), 104 Stat. 3244 (Nov. 16, 1990).

RSPA and FMCSA also explained that their ''[p]reemption determinations do not address issues arising under the Commerce Clause, the Fifth Amendment or other provisions 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.'' 66 FR at 37262. RSPA and FMCSA specifically rejected the Borough's argument that the Resource Conservation and Recovery Act authorizes a State or locality to establish ''more stringent'' requirements applicable to the transportation of hazardous materials (including medical waste) than the HMR. 66 FR at 37262–63.

Within the 20-day time period provided in 49 CFR 107.211(a) and 397.223(a), the Borough filed a petition for reconsideration of PD–23(RF) and certified that it had mailed a copy of its petition to Med/Waste and all others who had submitted comments in this proceeding. Responses to the Borough's petition for reconsideration were submitted by Med/Waste, the Institute, and Sanitec.

B. Petition for Reconsideration

In its petition, the Borough never takes direct issue with the findings in PD–23(RF) that definitions in Ordinance No. 902 and the manifest requirement are substantively different than provisions in the HMR. Nor does the Borough dispute the finding that its routing limitation does not comply with FMCSA's standards in 49 CFR part 397. Rather, the Borough asserted that RSPA and FMCSA:

1. failed to determine ''whether compliance with both federal law and the Borough Ordinance is impossible as required by the two-part preemption test set forth in *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 158 (1978)'' with respect to both the definitions in Section 01 of Ordinance No. 902 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

2. failed to find ''why the terms of Ordinance 902, though different from the HMR, are more stringent than the federal regulations,'' with respect to both the definitions in Section 01 and the requirement in Section 05(a) to carry the uniform hazardous waste manifest.

3. improperly equated the word ''dangerous'' in Ordinance No. 902 with ''dangerous when wet'' in the HMR and improperly concluded that ''dangerous'' in Ordinance No. 902 is a ''synonym for ''hazardous.'''

4. ''failed to consider that there are alternate routes, outside of the Borough of Morrisville,'' that would allow Med/Waste to reach its facility on Pennsylvania Avenue, and also failed to ''substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to highways and roads other than interstate highways.''

II. Discussion

A. The Statutory Criteria for Preemption

The Borough appears to misread and misunderstand the criteria for preemption in 49 U.S.C. 5125(a) and (b)(1) of the Federal hazardous material transportation law. It misstates the law when it asserts, as a ground for reconsideration, that RSPA failed to determine ''whether compliance with both federal law and the Borough ordinance is impossible.'' Similarly, its claim that RSPA failed to find ''why the terms of Ordinance No. 902 * * * are more stringent than Federal regulations'' seems to be based on an incorrect assumption that only ''more stringent'' requirements are preempted by 49 U.S.C. 5125.

1. ''Conflict'' Preemption and the ''Obstacle'' Test

In the *Ray* case, the Supreme Court used the word ''or'' to make it perfectly clear that the ''dual compliance'' and ''obstacle'' criteria are alternate tests of ''conflict'' preemption.[1] A non-Federal standard may be preempted under either of these alternate criteria:

> A state statute is void to the extent that it conflicts with a valid federal statute. A conflict will be found ''where compliance with both federal and state regulations is a physical impossibility'' * * * or where the state ''law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.''

435 U.S. at 158, 98 S. Ct. at 994 (citations omitted). The five specific subject areas where non-Federal requirements must be ''substantively the same as'' the Federal requirements are simply areas where any substantive difference creates an ''obstacle.'' As Congress found when it amended the Hazardous Materials Transportation Act (HMTA) in 1990 (*see* Pub. L. 101–615, 104 Stat. 3244), these subject areas

> are critical both to the safe transportation of hazardous materials and to the free flow of commerce. Thus, requiring near-uniformity by both Federal and non-Federal entities is crucial.

H. Report 101–444, Part 1, Committee on Energy and Commerce, 101st Cong., 2d Sess., p. 33 (Apr. 3, 1990).

In this respect, the 1990 amendments to the HMTA reflected prior inconsistency rulings by RSPA that consistency is necessary in these subject areas. For example, in IR–5, City of New York Administrative Code Governing Definitions of Certain Hazardous Materials, 47 FR 51991, 51994 (Nov. 18, 1982), RSPA discussed its statutory responsibility to ''designate'' materials as hazardous and found that

> differing hazard class definitions present an obstacle to the accomplishment of the general Congressional purpose of promoting uniformity in hazardous materials transportation [and] * * * to the more

[1] The preemption provisions in 49 U.S.C. 5125 are a form of ''conflict'' preemption, which differs from ''field'' preemption. Field preemption exists when Federal regulation is ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' *Ray,* 435 U.S. at 157, 94 S. Ct. at 994, quoting from *Rice* v. *Santa Fe Elevator Corp.,* 331 U.S. 218, 230, 67 S. Ct. 1146, 1152 (1947). Thus, when there is field preemption, Congress has ''completely foreclosed state legislation in a particular area.'' *Ray,* 435 U.S. at 158, 94 S. Ct. at 994.

specific purpose of achieving the maximum level of compliance with the HMR. * * * [I]f it were to be determined that differing hazard class definitions are an appropriate field for local regulation, * * * the potential for regulatory chaos is obvious.

Consistent with RSPA's decision in IR–5, Congress stated that conflicting designations, descriptions, or classifications of hazardous materials ''by non-Federal entities would undermine the consistency needed to promote uniform requirements for all hazardous materials [and] * * * serve no useful purpose.'' H. Report 101–444, Part 1, p. 34.

Congress also stated that ''consistency in all aspects of [shipping] documents will promote more precise and easier identification of any hazardous material, improve systems for handling hazardous materials, and enhance capabilities for dealing with emergencies associated with the transportation of hazardous materials.'' *Id.* This conclusion followed RSPA's finding in IR–5 that ''the shipping paper requirements of the HMR are exclusive and that any additional shipping paper requirements are inconsistent under the HMTA'' because the need to obtain or provide additional information ''would obviously result in widespread confusion which could lead to noncompliance with applicable Federal regulations.'' 47 FR at 51994.

In this case, there was no need for RSPA to address whether it is impossible to comply with both the HMR and provisions in Ordinance No. 902 defining various terms and requiring a uniform hazardous waste manifest.[2] The classification of hazardous materials in Ordinance No. 902 and its requirement to carry the uniform hazardous waste manifest are not substantively the same as the HMR. Therefore, these provisions are preempted under 49 U.S.C. 5125(b)(1)(A) and (C), respectively.

2. The Nature of the Ordinance as More ''Stringent''

In their July 17, 2001 determination, RSPA and FMCSA discussed and rejected the Borough's argument ''that RCRA allows state, regional, and local authorities 'to control the collection and disposal of solid waste as one of their primary functions.' '' 66 FR at 37262. RSPA and FMCSA explained that medical wastes are not within the category of hazardous wastes regulated under RCRA and that the provision in 42 U.S.C. 6929 allowing ''more stringent'' provisions in a State-authorized program does not authorize transportation requirements otherwise preempted by 49 U.S.C. 5125. *Id.* at 37262–63.

In its petition for reconsideration, the Borough advances an argument that a non-Federal transportation requirement must be ''more stringent'' in order to be preempted. However, that is not one of the criteria in 49 U.S.C. 5125. Under that section, a requirement of a State, political, subdivision of a State, or Indian tribe is preempted when:

—It does not meet the dual compliance or obstacle criterion in subsection (a);
—It concerns any of five subject matter areas listed in subsection (b)(1) and is not substantively the same as a provision in the Federal hazardous material transportation law or the HMR; or
—It is a highway routing designation, limitation, or requirement established after November 1994 and does not comply with FMCSA's standards issued under 49 U.S.C. 5112(b), as provided in 49 U.S.C. 5125(c)(1).

It is not necessary to find that the Ordinance's provisions are ''more stringent'' than the HMR. However, the plain language of the Ordinance would support such a finding. As discussed in the July 17, 2001 determination, Ordinance No. 902 applies to substances that ''are not regulated under the HMR,'' 66 FR at 37263. The manifest requirement in Section 05(a) is also an additional requirement, above and beyond the requirements for shipping papers in the HMR. In this manner, Ordinance No. 902 clearly contains more stringent requirements than the HMR's provisions on regulated medical waste. The Borough's argument on this issue is both irrelevant and incorrect.

B. The Use of the Word ''Dangerous'' in the Ordinance

The Borough is wrong when it asserts, in its petition for reconsideration, that RSPA equated the word ''dangerous'' in Ordinance No. 902 with ''dangerous when wet'' in the HMR or concluded that ''dangerous'' in the Ordinance is a synonym for ''hazardous'' in the HMR. Rather, it is precisely the opposite. RSPA specifically found that ''the term 'dangerous waste' in Ordinance No. 902 is not substantively the same as any definition, description or classification of hazardous material in the HMR.'' 66 FR at 37263.

As explained in the July 17, 2001 determination, ''in the overall context of the HMR, 'dangerous' is a synonym for the word 'hazardous,' '' and the ''HMR use the term 'hazardous materials' in the same manner as the term 'dangerous goods' is used in international regulations.'' *Id.* However, the word ''dangerous'' is used differently in Ordinance No. 902, and ''the term 'dangerous waste' does not correspond to the category of 'hazardous waste' in the HMR.'' *Id.* Thus, the Borough's petition has it backward. It was not RSPA who equated ''dangerous'' in the Ordinance to ''hazardous'' in the HMR; it is the Borough that *failed* to make that equation in its Ordinance and, therefore, created a definition and classification of hazardous materials that are preempted because they are not substantively the same as the HMR's use of the word dangerous to define and classify hazardous materials.

C. The Applicable Federal Highway Routing Standards

Although the Borough now claims in its petition for reconsideration that Med/Waste had ''reasonable access'' to its facility over ''alternate routes, outside of the Borough of Morrisville,'' it provides no evidence to support this claim. In addition, the Borough does not show that it actually considered either (a) the existence of these alternate routes and the effect of requiring carriers to use those alternate routes or (b) any of the other conditions in 49 CFR for the establishment of a highway routing limitation after November 1994, including:

—A finding that this limitation ''enhances public safety'' within the Borough and in neighboring jurisdictions through which vehicles carrying ''dangerous waste'' must travel if those vehicles are limited to Route 1 within the Borough (49 CFR 397.71(b)(1));
—The required notice to the public, consideration of a public hearing, and the opportunity of the public to submit comments on the original proposal to limit vehicles carrying ''dangerous waste'' within the Borough to Route 1 (49 CFR 397.71(b)(2));
—Notice to and consultation with ''officials of affected political subdivisions, States and Indian tribes,'' and any other parties that are affected by the routing limitation, and completion of the routing designation process within 18 months of the notice to the public or notice to the other affected jurisdictions (49 CFR 397.71(b)(3), (6));
—Assurance of ''through highway routing * * * between adjacent areas'' (49 CFR 397.71(b)(4));

[2] Similarly, in IR–5, RSPA made no finding whether the local provisions failed the ''dual compliance'' test but found that differing hazard class definitions and additional shipping paper requirements are preempted because they ''are an obstacle to the accomplishment of the HMTA and its regulations.'' 47 FR at 51994.

—A finding that there will not be an unreasonable burden on commerce and consideration whether there was agreement by any other affected State (49 CFR 397.71(b)(5)); and
—Consideration of other specific factors besides the existence of alternate routes and the burden on commerce, including population density, emergency response capabilities, continuity of routes, potential delays in transportation, and congestion and accident history (49 CFR 397.71(b)(9)).

Because it is clear that the Borough failed to meet these conditions and did not comply with FMCSA's standards in 49 CFR part 397, its limitation of vehicles carrying dangerous waste to Route 1 is preempted. Moreover, reconsideration of this determination is not warranted on the Borough's claim that DOT somehow failed to ''substantiate how the provisions of 49 USC 5112 and 49 USC 31114 apply to provisions and roads other than interstate highways.''

The authority of Congress to regulate interstate and intrastate commerce is not limited to traffic on interstate highways, nor is the authority of DOT in 49 U.S.C. 5112(b) to ''prescribe by regulation standards for States and Indian tribes to use'' in establishing a highway routing limitation limited to the transportation of hazardous materials on interstate highways. Similarly, 49 U.S.C. 31114 limits the restrictions that a State may place on a carrier's ''access'' between interstate highways and terminals or other facilities, all of which are presumably not located on an interstate highway itself. Accordingly, this ground for reconsideration of the July 17, 2001 determination has no more basis than any of the other positions taken by the Borough in its petition.

D. Expansion of the Preemption Determination

In its comment on the Borough's petition for reconsideration, Med/Waste asked RSPA and FMCSA ''to consider complete preemption of the entire Ordinance 902.'' RSPA and FMCSA decline to expand or extend the scope of their July 17, 2001 determination for the same reason that they previously declined to determine whether specific provisions not originally challenged in Med/Waste's application are preempted—because the notice inviting public comment on that application ''did not clearly indicate that RSPA and FMCSA would consider these other requirements.'' 66 FR at 37265. Nonetheless, it would seem that the Borough would be precluded from enforcing any provision in Ordinance No. 902 that applies to ''infectious waste,'' ''hospital waste,'' or ''dangerous waste,'' because the definitions of these terms are preempted and the use of the term ''dangerous waste'' throughout the Ordinance is also preempted.

III. Ruling

For the reasons set forth above, the Borough's petition for reconsideration is denied. RSPA and FMCSA incorporate and reaffirm the determination that Federal hazardous material transportation law preempts the following provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania:

1. the definitions of ''infectious waste,'' ''hospital waste,'' and ''dangerous waste'' in Section 01 and the use of the term ''dangerous waste'' throughout the ordinance;

2. the designation of Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough that may be used by trucks transporting dangerous waste, in Section 02; and

3. the requirement that each truck transporting dangerous waste carry and have available ''the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act,'' in Section 05(a).

IV. Final Agency

In accordance with 49 CFR 107.211(d) and 397.223(d), this decision constitutes the final agency action by RSPA and FMCSA on Med/Waste's application for a determination of preemption as to provisions in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania. Any party to this proceeding may bring a civil action in an appropriate district court of the United States for judicial review of this decision not later than 60 days after publication of this decision in the **Federal Register**.

Issued in Washington, D.C. on January 15, 2002.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Joseph M. Clapp,

Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 02–1443 Filed 1–18–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–11211]

Notice of Receipt of Petition for Decision That Nonconforming 2002 Harley Davidson VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002 Harley Davidson VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 Harley Davidson VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 21, 2002.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission 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.