

Docket PDA-9(R). This letter also was received outside the rebuttal comment period in Docket PDA-9(R).

On October 14, 1993, RSPA published a Public Notice in the **Federal Register** (58 FR 53239) reopening the comment period in each of the four matters to allow all interested parties an opportunity to respond to Congressman Miller's and the California State legislators' letters. RSPA reopened the comment period in all four PDAs because they relate to the same California statutory and local regulatory requirements. RSPA also requested further information regarding how the California and Los Angeles County requirements at issue actually are applied and enforced. Furthermore, RSPA asked HASA and SPCMA to amend their applications to the extent necessary to make them consistent with the 1993 amendments to LACoC Title 32, which were adopted by Los Angeles County shortly after HASA's and SPCMA's applications were filed with RSPA.

C. California's Statutory and Regulatory Requirements

CHSC Chapter 6.95 (§§ 25500 *et seq.*) was enacted by the California Legislature in 1985. Section 25500, entitled "Legislative Findings and Declaration," sets forth the legislative purpose of Chapter 6.95. Specifically, it states

In order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials. The establishment of minimum statewide standards for these plans is a statewide concern. Basic information on the location, type, quantity, and the health risks of hazardous materials handled, used, stored, or disposed of in the state, which could be accidentally released into the environment, is not now available to firefighters, health officials, planners, public safety officers, health care providers, regulatory agencies, and other interested persons. The information provided by business and area plans is necessary in order to prevent or mitigate the damage to the health and safety of persons and the environment from the release or threatened release of hazardous materials into the workplace and environment.

Chapter 6.95, Article 1 requires, among other things, that any business that handles hazardous materials (above specified threshold amounts) establish and implement a business plan for emergency response to a release or threatened release of a hazardous material (§ 25503.5). The required elements of a business plan include: (1) an annual inventory of the chemicals

handled; (2) an emergency response plan and procedures; (3) an evacuation plan and procedures; and (4) training for all new employees and annual training (§ 25504).

Chapter 6.95, Article 2 states that handlers of "acutely hazardous materials" (AHM) (defined as any chemical designated as such in 40 CFR Part 355, Appendix A of the Environmental Protection Agency's (EPA's) regulations—which includes chlorine) must register with local authorities and, if required by local authorities, prepare and submit a risk management and prevention program (RMPP). An RMPP must include: (1) a history of each accident involving AHM for the preceding three-year period; (2) a report specifying the nature, age and condition of the equipment used to handle AHM at the facility; (3) design, operating and maintenance controls that minimize the risk of an accident involving AHM; (4) detection, monitoring or automatic control systems to minimize accident risk; and (5) a list of additional steps that the business will take to reduce the risk of an accident, based on an assessment of the processes, operations, and procedures of the business (§ 25534).

The requirements in Chapter 6.95, Articles 1 and 2, closely follow Federal environmental protection regulations under Title III of the Superfund Amendments and Reauthorization Act (SARA Title III), 42 U.S.C. 11001, *et seq.* (also known as the Emergency Planning and Community Right to Know Act of 1986 (EPCRA)), and § 112(r) of the Clean Air Act Amendments of 1990 (CAA Amendments), 42 U.S.C. 7412(r). *See, e.g.,* 42 U.S.C. 7412(r)(1) (duty for facilities to undertake appropriate hazard assessment, design, and release response activities); 42 U.S.C. 7412(r)(7)(B) (requiring accident prevention and response planning, including reporting of accidental release history); 42 U.S.C. 11022 (SARA Title III chemical inventory and location information); 42 U.S.C. 11041(b) (authorizing local SARA Title III supplementary inventory forms).

The requirements in Chapter 6.95, Articles 1 and 2, are applied and enforced at the local level. Chapter 6.95 § 25502 states that "every county shall implement [Chapter 6.95] as to the handling of hazardous materials in the county." Nevertheless, the legislature clearly indicated in § 25500 that Chapter 6.95 does not "occupy the whole area of regulating the inventorying of hazardous materials and the preparation of hazardous materials response plans * * * and the legislature does not intend to preempt any local actions,

ordinances, or regulations which impose additional or more stringent requirements on businesses which handle hazardous materials."

In response to the mandate in § 25502, Los Angeles County implemented the requirements of Chapter 6.95 by promulgating the regulations contained in LACoC Titles 2 and 32. On May 20, 1993, the Los Angeles County Board of Supervisors passed Los Angeles County Ordinance No. 93-0044, which amended Title 32 by incorporating the 1991 edition of the Uniform Fire Code (UFC) (with amendments, additions and deletions).

D. Preemption Under Federal Hazmat Law

The Hazardous Materials Transportation Act (HMTA), former 49 App. U.S.C. 1801 *et seq.* (1993), was enacted in 1975 to give DOT 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." *Id.* at § 1801. 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, President Clinton signed Public Law (P.L.) 103-272, which codified the provisions of the HMTA without substantive change. P.L. 103-272, 108 Stat. 745 (1994). The purpose of P.L. 103-272 was to "clean-up" related Federal transportation laws, "restating" them in a format and language intended to be easier to understand without changing substantive content. Consequently, P.L. 103-272 revised, enacted, and codified provisions of the former HMTA, which now are found at 49 U.S.C. 5101-5127.

When it last substantively amended Federal hazmat law in 1990, Congress stated that uniform regulations promote safety in the transportation of hazardous materials. It 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