

by the HCS, except pursuant to a federally-approved state plan. California is a federally-approved state.

CWTI also notes that Congress, during passage of the 1990 amendments to the HMTA, recognized the authority of OSHA to regulate the storage of hazardous materials at consignee locations. Specifically, CWTI asserts that Congress directed OSHA, under authority of the OSH Act, to issue regulations requiring the retention of HMR markings, placards, and labels, and any other information as may be required by the HMR, on a package, container, motor vehicle, rail freight car, aircraft, or vessel until the hazardous materials have been removed. See P.L. 101-615, § 29, 104 Stat. 3277.

The County of Los Angeles Fire Department opposes preemption of the LACoC classification requirement, stating that the classification system required under § 80.201 is based on the OSHA classification system at Title 29 CFR.

(3) Analysis. The classification of hazardous materials for purposes of transportation in commerce is exclusive to the Federal Government. See 49 U.S.C. 5125(b)(1)(A). Federal hazmat law preempts State, local and Indian tribe requirements that are not substantively the same as the Federal classification requirements, or not otherwise authorized by Federal law. *Id.*

The Department of Transportation has an exclusive role in defining hazard classes for materials that are offered or transported in commerce. The HMR classification system is used to determine the type of packaging that must be used to transport hazardous materials in commerce, and the applicable placarding, labeling and marking requirements necessary for that transportation. The HMR classification of hazardous materials does not apply to materials that are not in transportation in commerce. The movement of hazardous materials by a consignee exclusively on private property, for purposes related to a manufacturing process, is not transportation in commerce under Federal hazmat law.

Section 80.101(a) exception 1 states that off-site hazardous materials transportation in accordance with DOT requirements is excepted from the requirements of LACoC Article 80 (which includes the classification system under § 80.201, § 80.202, § 80.203 and Appendix VI-A). HASA does not dispute that the LACoC classification system applies only to HASA's on-site transportation of hazardous materials. Consequently, Federal hazmat law does not preempt the LACoC classification requirements,

as they pertain to the on-site transportation of hazardous materials exclusively within a chemical manufacturing facility, because the LACoC requirements do not apply to hazardous materials that are in transportation in commerce.

*d. Storage.* (1) LACoC Requirement. HASA challenges the following provision of LACoC Title 32:

§ 80.301(a)(2) prohibits the use of tank vehicles and railroad tank cars as storage tanks.

(2) HASA's Arguments and Summary of Comments.

Section 80.301(a)(2) states that tank vehicles and railroad tank cars shall not be used as storage tanks. HASA argues that neither Federal hazmat law nor the HMR "prohibit storage—incidental to transportation or otherwise—of hazardous materials in either tank vehicles or in tank cars." HASA states that 49 CFR 174.204(a)(2) specifically permits storage of specified gases on both private and carrier track. HASA notes that § 174.204(a)(2) states, in part, "such cars may be stored on private track \* \* \* or on carrier tracks designated by the carrier for such storage." HASA believes that the LACoC's prohibition of storage in tank vehicles and railroad tank cars is an obstacle to accomplishing and carrying out Federal hazmat law and the HMR, and should be preempted.

No commenter addressed this issue specifically.

(3) Analysis. HASA states that it receives railroad tank cars containing liquefied chlorine from manufacturers engaged in interstate commerce. HASA unloads the tank cars on a private siding adjacent to its facility. HASA asserts that § 80.301(a)(2) prohibits it from storing hazardous material, for use in its manufacturing process, in the tank cars in which the material arrives at HASA's facility. There is no indication in the record that HASA stores hazardous materials in cargo tank motor vehicles, and there is no information in the record regarding how this requirement is applied and enforced when hazardous materials are stored in cargo tank motor vehicles.

Federal hazmat law and the HMR apply to hazardous materials that are in transportation in commerce, and loading, unloading and storage that is incidental to that transportation. Federal hazmat law and the HMR do not apply to storage activities not incidental to transportation, such as storage activities at consignees' facilities. See IR-28, 55 FR 8884 (Mar. 8, 1990). As a result, hazardous materials that are stored at a manufacturing facility awaiting consumption in the manufacturing

process are not stored incidental to transportation in commerce, and are beyond the reach of Federal hazmat law. Federal hazmat law, therefore, does not prevent Los Angeles County from prohibiting the use of tank cars for storage purposes, where that storage is not incidental to transportation in commerce.

Section § 174.204(a)(2) of the HMR, which HASA relies on to support the proposition that the HMR authorize a consignee to store hazardous materials in tank cars, is inapplicable to the situation at issue. Section 174.204 sets forth duties and responsibilities with respect to the delivery and unloading of gases that are in transportation in commerce.

Thus, Federal hazmat law does not preempt § 80.301(a)(2).

*e. Unloading.* (1) LACoC Requirements. HASA challenges the following provisions of LACoC Title 32:

§ 80.301(a)(2) requires that containers, cylinders and tanks containing hazardous materials be unloaded in accordance with the requirements for flammable and combustible liquids at § 79.809.

§ 79.809(b) states that flammable and combustible liquids may be transferred from a tank car only into an approved atmospheric tank or approved portable tank.

§ 79.809(c) states that, unless otherwise approved by the fire chief, a tank car may not remain on a siding at point of delivery for more than 24 hours while connected for transfer operations.

§ 79.809(f) states that the operator or other competent person must be in attendance at all times while a tank car is discharging cargo.

§ 80.402(c)(8)(A) states that when tank cars regulated by DOT are used outdoors, gas cabinets or a locally exhausted enclosure must be provided. Installation and design must be in accordance with the requirements of Title 32.

§ 80.402(b)(3)(G)(i) states that when portable or stationary tanks are "utilized in use or dispensing," they must be within a ventilated separate gas storage room or placed within an exhausted enclosure.

(2) HASA's Arguments and Summary of Comments. Section 79.809 addresses unloading operations for flammable and combustible liquids. Section 80.301(a)(2) makes the unloading requirements in § 79.809 applicable to the unloading of railroad tank cars containing hazardous materials regulated under Title 32. HASA states that "many of the requirements in § 79.809 are not only inappropriate but unsafe for unloading compressed and