

Table No. 75.103-A classifies specified cryogenic fluids as either "flammable," "nonflammable," "Corrosive/Highly Toxic" or "Oxidizer."

(2) SPCMA's Arguments and Summary of Comments. SPCMA states that the definition of cryogenic fluid at LACoC § 9.105 differs from the definition of cryogenic liquid contained at 49 CFR 173.115(g). Specifically, § 9.105 defines "cryogenic fluid" as "a fluid that has a normal boiling point below 150 degrees Fahrenheit." Section 173.115(g) defines "cryogenic liquid" as "a refrigerated liquefied gas having a boiling point colder than -90 degrees Celsius (-130 degrees Fahrenheit) at 101.3 kPa (14.7 psi) absolute." SPCMA alleges that "it is impossible to comply with both the definition in the LACoC and the definition in Title 49, because the LACoC definition includes additional 'hazardous materials' which are not classified for shipment as 'cryogenic liquids' in the 'Hazardous Materials Table' at 49 CFR 172.101." SPCMA, therefore, concludes that § 9.105 should be preempted because it applies to a covered subject area—the designation of materials as hazardous—and compliance with both the Federal and local requirement is impossible.

With respect to the classification of hazardous materials, SPCMA states that § 75.103 and Table 75.103-A provide a classification system for cryogenic fluids that is in addition to and different from the HMR. SPCMA gives several examples of how the LACoC classification system and the HMR classification system differ. SPCMA concludes that Federal hazmat law preempts § 75.103 and Table 75.103-A because those provisions apply to hazardous materials classification, a covered subject, and are not substantively the same as the Federal requirement.

The County of Los Angeles Fire Department opposes preemption of § 75.103 and Table 75.103-A. It states that "Title 32 [of the LACoC] regulates the handling and not the transport[ation] (per 49 CFR 107.3) of hazardous substances at a fixed facility. The chemical classification under [Federal hazmat law and the HMR] applies to transportation and does not apply to 'handling' of cryogenic liquids within a fixed facility."

(3) Analysis. The designation of materials as hazardous and the classification of hazardous materials, for purposes of transportation in commerce, are exclusive to the Federal Government. See 49 U.S.C. 5125(b)(1)(A). Federal hazmat law provides that State, local and Indian tribe requirements pertaining to

hazardous materials designation and classification for purposes of transportation in commerce are preempted if they are not substantively the same as the Federal requirements or are not otherwise authorized by Federal law. *Id.* The Federal Government's exclusive role in hazardous materials designation and classification is limited, however, to materials that are in transportation in commerce. Federal hazmat law provides that "[t]he Secretary of Transportation shall designate material * * * or a group or class of material as hazardous when the Secretary decides that *transporting the material in commerce* in a particular amount and form may pose an unreasonable risk to health and safety or property." 49 U.S.C. 5103 (emphasis added).

There is no evidence in the record that Los Angeles County, through LACoC § 9.105, is attempting to designate additional materials as hazardous for purposes related to transportation in commerce.

Furthermore, there is no evidence in the record that the LACoC's classification system for cryogenic fluids is applied to materials that are in transportation in commerce. In order for Federal hazmat law to preempt the LACoC requirements, the LACoC requirements would have to apply to the transportation of hazardous materials *in commerce*, or loading, unloading or storage incidental thereto.

The LACoC's designation of certain materials as "cryogenic fluids" and its classification of those materials, in conjunction with the amount of the cryogenic fluid at issue, appear from the record and from RSPA's review of LACoC Article 75 to be used to determine, among other things: (1) whether a permit is required under Article 4 of Title 32, Table 4.108-A; and (2) the required minimum separation between cryogenic fluids in storage on the one hand, and buildings, public spaces, and other hazardous materials, on the other. See Table 75.303-A. RSPA has determined that Federal hazmat law does not preempt the LACoC permit requirements because the underlying substantive requirements are otherwise authorized by Federal law. Furthermore, consignee storage of hazardous materials is not regulated under Federal hazmat law.

Thus, Federal hazmat law does not preempt § 9.105, § 75.103(a), or Table No. 75.103-A.

c. Hazard Communication. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.108 requires that warning labels and signs be posted on containers and

equipment at locations prescribed by the fire chief.

§ 75.205 states that containers must be identified by the attachment of a nameplate in an accessible place marked as authorized by nationally recognized standards (as set forth at § 2.304(b)) or DOT regulations.

§ 75.602(a) indicates that vehicles transporting cryogenic fluids and subject to Title 32 must be "placarded at the front, rear and on each side identifying the product." Placards must have letters not less than two inches high using approximately a 5/8 inch stroke. Abbreviations are not permitted. Vehicles also must bear other placards required by DOT.

(2) SPCMA's Arguments and Summary of Comments. SPCMA states that § 75.108 requires fixed facilities to post warning labels and signs on containers and equipment and at locations prescribed by the fire chief. SPCMA asserts that the phrase "warning labels and signs" includes labeling, marking and placarding of cryogenic liquid containers. SPCMA further asserts that the LACoC does not specify the particular requirements for labeling, marking and placarding and that, therefore, SPCMA cannot compare the LACoC requirements with Federal hazmat law and HMR requirements in order to ascertain whether they are substantively the same. SPCMA also alleges that different fire chiefs in different jurisdictions "are likely to have different requirements." SPCMA concludes that the requirements under § 75.108 are preempted because they apply to a covered subject—labeling, marking and placarding of hazardous materials—and are an obstacle to accomplishing and carrying out Federal hazmat law and the HMR.

SPCMA states that § 75.205 requires that nameplates be attached to containers "as authorized by nationally recognized standards or DOT regulations." SPCMA asserts that "nationally recognized standards" may or may not be substantively the same as requirements under the HMR. SPCMA states that § 75.205 is preempted because it applies to containers used for the transportation of cryogenic liquids—a covered subject area.

SPCMA states that the vehicle placarding requirements under § 75.602 are in addition to, and different from, Federal requirements. Furthermore, SPCMA asserts that § 75.602(a) confuses the requirements for "marking" and "placarding." SPCMA states that "[p]lacarding" is required in the LACoC where neither 'placarding' nor 'marking' is required by Federal regulation. In the LACoC, placarding is required for all