

shipments of cryogenic liquids, irrespective of quantity being transported. [Under the HMR,] placarding is not required for shipments of 1,000 pounds or less for 2.1 and 2.2 materials. All shipments—irrespective of quantity—of 2.3 material require placarding.”

SPCMA also states that the “placarding” requirement at 75.602(a) actually appears to be a “marking” requirement addressed in Subpart D of 49 CFR Part 172. SPCMA states that § 75.602(a) requires “‘placarding’ on all vehicles transporting any quantity of cryogenic liquids, and that ‘placarding’ includes ‘placards’ and ‘markings.’” SPCMA concludes that the requirements at § 75.602(a) are in addition to and different from Federal requirements, in that placarding is required under the LACoC “at times when and at places where there is no Federal requirement.” SPCMA asserts that § 75.602(a) requirements pertain to a covered subject area and are not substantively the same as the Federal requirements. SPCMA, therefore, requests that the requirements be preempted. SPCMA also alleges that the § 75.602(a) requirements “fail” the dual compliance test.

The County of Los Angeles Fire Department opposes preemption of § 75.602(a), stating that the placarding requirements under the LACoC apply to the on-site handling of hazardous materials and not the transportation of hazardous materials in commerce.

(3) Analysis. The record does not reflect that the labeling, nameplating and placarding requirements under §§ 75.108, 75.205, and 75.602(a), respectively, are applied to hazardous materials that are in transportation in commerce and, consequently, regulated under Federal hazmat law and the HMR. These regulations appear to apply to hazardous materials stored and transported at facilities for consumption in manufacturing processes. As stated throughout this determination, Federal hazmat law and the HMR do not apply to: (1) hazardous materials that are stored at a consignee’s facility; or (2) the transportation of hazardous materials exclusively on private property. Therefore, to the extent that the requirements in §§ 75.108, 75.205 and 75.602(a) pertain to hazardous materials that are stored at a consignee’s facility or that are being transported exclusively within that facility, they do not conflict with Federal hazmat law and are not preempted.

d. Motor Vehicles. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.602(b) requires that vehicles transporting cryogenic fluid be equipped with not less than one approved-type fire extinguisher, with a minimum rating of 2–A:20–B:C.

§ 75.602(c) requires that vehicles transporting cryogenic fluid be equipped with adequate chock blocks.

(2) SPCMA’s Arguments and Summary of Comments. SPCMA notes that 49 CFR 177.804 requires motor carriers and other persons subject to 49 CFR Part 177 to comply with Federal Motor Carrier Safety Regulations (FMCSR). SPCMA states that the FMCSR, at 49 CFR 393.95, requires a host of safety equipment on all power units, e.g., fire extinguishers, spare fuses, flares, red flags. SPCMA asserts that because “there is no requirement [under the LACoC] for emergency equipment other than fire extinguishers * * * the [LACoC] fire extinguisher requirement is inconsistent with the Federal requirements contained in * * * 49 CFR 393.95(a).” SPCMA concludes that the fire extinguisher requirement “fails both the ‘obstacle’ and ‘dual compliance’ tests” and should be preempted.

SPCMA does not address the requirement in § 75.602(c) that vehicles transporting cryogenic fluid be equipped with adequate chock blocks. No commenter specifically addressed § 75.602(b) or § 75.602(c).

(3) Analysis. SPCMA does not allege and the record does not reflect that the requirements under § 75.602(b) or § 75.602(c) are applied to motor vehicles that transport hazardous materials on other than private property. As stated earlier, Federal hazmat law and the HMR apply to transportation in commerce. Ground transportation is “in commerce” when it takes place on, across, or along a public way. Ground transportation of hazardous material that takes place entirely on private property is not transportation “in commerce,” and is not regulated by Federal hazmat law and the HMR.

Thus, Federal hazmat law does not preempt LACoC § 75.602(b) or § 75.602(c) to the extent that each applies to motor vehicles that are transporting hazardous materials exclusively on private property.

e. Packaging Design and Construction. (1) LACoC Requirements. SPCMA challenges the following provisions of LACoC Title 32:

§ 75.105(a) requires that containers, equipment and devices used for the storage, handling and transportation of “cryogenic fluids” be of a type, material and construction approved by the fire chief as suitable for that use. Approval is based on satisfactory evidence that

design, construction and testing are in accordance with nationally recognized standards. Title 32, § 2.304(b) lists various national standards and publications, and indicates that the most recent edition or supplement may be used; included in that list is Title 49, Code of Federal Regulations, Chapter 1, which contains the HMR.

§ 75.105(b) states that containers, equipment or devices that are not in compliance with recognized standards for design and construction may be approved by the chief on presentation of satisfactory evidence that they are designed and constructed for safe operation.

(2) SPCMA’s Arguments and Summary of Comments. SPCMA notes that the term “container” is defined at § 75.102(b) as “any cryogenic vessel used for transportation, handling or storage.” SPCMA believes the term “container” includes all containers used for both storage and on-site transportation of cryogenic liquids, including portable tanks, cargo tanks and rail cars. SPCMA further notes that the fire chief has discretionary approval authority under §§ 75.105 (a) and (b).

SPCMA specifically requests that three issues be addressed in RSPA’s preemption determination regarding §§ 75.105 (a) and (b):

- (1) Can the chief prohibit the use of containers for the transportation of cryogenic liquids, which he has not approved, and where there are no Federal specifications?
- (2) Can the chief approve containers for the transportation of cryogenic liquids [when those containers] are different from those specified in Title 49 of the CFR?
- (3) Can the chief approve containers for the transportation of cryogenic liquids which are not in compliance with Federal specifications where Federal specifications exist?

SPCMA states that the fire chief is authorized to approve containers prior to the on-site transportation of cryogenic liquids, including type, material, and construction, absent any Federal requirements. Furthermore, SPCMA alleges that requirements and specifications are likely to vary from district to district, depending on requirements and specifications established by the local fire chief. SPCMA also asserts that the fire chief is authorized to approve any container for on-site transportation without regard to whether the container is constructed in accordance with DOT specifications. Consequently, the fire chief can approve specifications and construction of containers that are in addition to, different from, or not approved by DOT. SPCMA concludes that the requirements under §§ 75.105 (a) and (b) should be