

This decision incorporates and reaffirms the determination set forth at 58 FR 48933 that the provisions now codified at 49 U.S.C. 5125(a) and (b) preempt:

A. California's requirement in VC 34060 and 13 CCR 1192 for an annual inspection of cargo tanks and portable tanks used for highway transportation of flammable and combustible liquids, as that requirement is applied and enforced, because any wait for the arrival of State inspectors from another location constitutes an "unnecessary" delay.

B. VC 34042(d) and 34061(c), which provide that the failure to make a cargo tank or portable tank available for inspection is a ground for denial, suspension or revocation of registration, and 13 CCR 1193, requiring that cargo tanks and portable tanks transporting flammable and combustible liquids pass an inspection to be certified.

C. The following requirements to mark cargo tanks and portable tanks transporting flammable and combustible liquids, because they are not substantively the same as requirements in the HMR: (1) 13 CCR 1195, that a metal identification plate be affixed to any tank for which such a plate is not required by the HMR; (2) 13 CCR 1194, that a "CT number" be marked on the tank or on a metal identification plate; and (3) VC 34044, 34101 and 13 CCR 1193, that a certification label be affixed to the tank and that a registration certificate be carried in a waterproof holder permanently attached to a portable tank, together with the provisions for removal of the certification label in VC 34062-63.

VI. Final Agency Action

In accordance with 49 CFR 107.211(d), this decision constitutes

RSPA's final agency action on Nalco's application for a determination of preemption as to the above-specified California requirements applicable to cargo tanks transporting flammable and combustible liquids. 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 the decision becomes final." 49 U.S.C. 5125(f).

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Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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