

(10) A copy of the management reports prepared using the standardized format for the national CODES report.

f. CODES Linked Database. The grantee shall deliver to NHTSA after linkage, at the date specified in the Action Plan, the CODES linked databases. NHTSA will use the data to help facilitate the development of data linkage capabilities at the state/area-wide level and to encourage use of the linked data for decision-making.

The deliverables will include:

(1) The database in an electronic media and format acceptable to NHTSA, including all persons, regardless of injury severity (none, fatal, non-fatal), involved in a reported motor vehicle crash for any two calendar years of available data since 1997, and including medical and financial outcome information for those who are linked.

(2) A copy of the file structure for the linked data file.

(3) Documentation of the definitions and file structure for each of the data elements contained in the linked data files.

(4) An analysis of the quality of the linked data and a description of any data bias, which may exist, based on an analysis of the false positive and false negative linked records.

3. During the effective performance period of Cooperative Agreements awarded as a result of this announcement, the agreement as applicable to the grantee shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

H. Keith Brewer,

Acting Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 01-14493 Filed 6-7-01; 8:45 am]

BILLING CODE 4910-12-U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-00-7126 (PD-24(R))]

New Jersey Restrictions on Transportation of Blasting Caps With Other Commercial Explosives

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of administrative determination of preemption by RSPA's associate administrator for hazardous materials safety.

Applicant: Institute of Makers of Explosives (IME).

Local Laws Affected: New Jersey Statutes Annotated (N.J.S.A.) 21:1A-137(F); New Jersey Administrative Code (N.J.A.C.) 12:190-6.5(d).

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171-180.

Mode Affected: Highway.

SUMMARY: Federal hazardous material transportation law preempts N.J.S.A. 21:1A-137F and N.J.A.C. 12:190-6.5(d) when those provisions are interpreted and applied to prohibit the transportation of blasting caps (including electric blasting caps) on the same motor vehicle with more than 5,000 pounds of explosives, while on a public road or during activities on private property that are incidental to the movement of property and involve a safety aspect of transportation on a public road.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

In this determination, RSPA considers whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts New Jersey statutory and regulatory restrictions against the transportation of blasting caps on the same motor vehicle with more than 5,000 pounds of other commercial explosives.

In a notice published in the **Federal Register** on April 7, 2000, 65 FR 18422, RSPA invited interested persons to comment on an application by IME for a determination that New Jersey's statutory and regulatory restrictions are preempted on two grounds. IME stated that these restrictions (1) concern the "handling" of a hazardous material in transportation and are not substantively the same as requirements in the HMR, and (2) are an obstacle to the accomplishing and carrying out the Federal hazardous material transportation law and the HMR. In the notice, RSPA observed that IME's application did not indicate "whether New Jersey's restrictions cause shipments of blasting caps and other explosives to be routed around the State of New Jersey, rather than on highways through the State," and RSPA requested an explanation of "the manner in which the New Jersey requirements are applied and enforced." 65 FR at 18423, 18424-

25. The full text of IME's application was set forth in Appendix A to the notice.

In response to the April 7, 2000 notice, comments were submitted by the Hazardous Materials Advisory Council (HMAC) and the International Society of Explosives Engineers (ISEE) in support of IME's application, and further comments were submitted by IME. No comments were received from the State of New Jersey or any of its agencies, and no person has opposed IME's application.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to IME's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

(1) Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93-633, 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must conform "in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

Subsection (c)(1) of 49 U.S.C. 5125 provides that, beginning two years after DOT prescribes regulations on standards to be applied by States and Indian tribes in establishing requirements on highway routing of hazardous materials,

A State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).

Pursuant to 49 U.S.C. 5112(b), the Federal Motor Carrier Safety Administration (FMCSA) has issued standards that a State or Indian tribe must follow in establishing highway routing requirements for nonradioactive materials, in 49 CFR part 397, subpart C, which apply to any designations that are established or modified after November 14, 1994. 49 CFR 397.69(a).

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress 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 hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101-615 section 2, 104 Stat. 3244.

A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. chapter 51. Pub. L. 103-272, 108 Stat. 745.) To also achieve safety through consistent Federal and State requirements, Congress has authorized DOT to make grants to States "for the development or implementation of programs for the enforcement of regulations, standards, and orders" that are "compatible" with the highway-related portions of the HMR. 49 U.S.C. 31102(a). In this fiscal year, \$155 million is available for grants to States under the Federal Motor Carrier Safety Assistance Program. See 49 CFR parts 350 & 355 and the preamble to FMCSA's March 21, 2000 final rule, 65 FR 15092, 15095-96.

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing (which have been delegated to FMCSA). 49 CFR 1.53(b)

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA publishes its determination in the **Federal Register**. See 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211(a). Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether

a requirement is authorized by another Federal law, or whether a fee is "fair" within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism." 64 FR 43255 (August 10, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

III. Discussion

Blasting caps and electric blasting caps are classified in the HMR as "detonators, non electric, *for blasting*" and "detonators, electric, *for blasting*," respectively, in Division 1.1B, 1.4B, or 1.4S (depending on their explosive properties). See 49 CFR 172.101 (Hazardous Materials Table) and 173.52 (classification codes for explosives).¹ The HMR include specific provisions for packaging detonators for transportation, including the exceptions set forth in 49 CFR 173.63(f), (g). The HMR also provide that detonators and explosives may be transported on the same motor vehicle when certain conditions are met with regard to the manner in which the detonators are packaged and the containers on the vehicle in which packages are carried. 49 CFR 177.835(g) (set out in full in Appendix A).

New Jersey has adopted the HMR as State law, in regulations of its Department of Transportation at N.J.A.C. 16:49-1.3(i), but the State separately prohibits the transportation of blasting caps on the same motor vehicle with more than 5,000 pounds of commercial explosives. The Explosives Act, as codified in N.J.S.A. 21:1A-128 *et seq.*, contains provisions governing the

¹ The words "for blasting" italicized in the Hazardous Materials Table are not part of the proper shipping name, 49 CFR 172.101(c), but are used in the Table to distinguish blasting caps from other detonators for ammunition and detonating relays. See 49 CFR 173.59 (description of the term "detonators"). As used in this determination, the term "blasting caps" includes "detonators for blasting, both electric and non-electric" *Id.*

“Transportation of explosives” at N.J.S.A. 21:1A–137, including the following restriction:

F. Blasting caps or electric blasting caps, or both, may be transported in the same vehicle with other commercial explosives only when the net weight of the other commercial explosives does not exceed 5,000 pounds.

The Explosives Act provides that the Commissioner of the Department of Labor shall enforce that Act, prosecute violations, and “state the items which are in violation of the provisions of the act or the precautions which he deems reasonably necessary to be taken.” N.J.S.A. 21:1A–130. The Explosives Act also provides in N.J.S.A. 21:1A–141 that it does not apply

to explosives which are in transit upon vessels, railroad cars or vehicles or while being held for delivery, when such transportation and delivery are under jurisdiction of and in conformity with regulations adopted by the Interstate Commerce Commission, the United States Coast Guard or the Civil Aeronautics Board,
* * * 2

According to IME, in 1998, the New Jersey Department of Labor (NJDL) adopted and began enforcing regulations governing “off-highway” transportation of explosives in N.J.A.C. 12:190–6.5, including:

(d) Blasting caps or electric blasting caps, or both, may be transported in the same vehicle with other commercial explosives only when the net weight of the other commercial explosives does not exceed 5,000 pounds.

IME stated that a person using both blasting caps and more than 5,000 pounds of other commercial explosives at a site within New Jersey must use separate vehicles to transport the blasting caps and the other commercial explosives, from the origin of the transportation to the job site. It stated that this requires the use of additional trucks and, “the more trucks on the road, irrespective of the cargo, the higher likelihood of an accident.” With its application, IME provided affidavits from three companies stating that they transport blasting caps and explosives in separate vehicles to comply with New Jersey’s requirements.

In one of these affidavits, the president of Maurer & Scott, Inc. stated that this practice “leads to more explosives vehicles on the road, trucks not loaded to capacity, inefficient transportation, excess handling of hazardous materials, and greater exposure to the public” as well as

“more vehicles * * * at the minesite which creates an increased safety hazard.” Attached to the affidavit from Maurer & Scott were copies of that company’s applications for an exception to the restriction against transporting blasting caps in the same vehicle with more than 5,000 pounds of explosives, and letters from NJDL denying an exception.

IME stated that the only alternative would be to transfer either the blasting caps or the other commercial explosives to a separate vehicle at some point before leaving the public highway at the job site. However, IME indicated that this would violate a prohibition in the HMR against the transfer of Division 1.1, 1.2, or 1.3 explosive materials between vehicles “on any public highway, street, or road, except in case of emergency.” 49 CFR 177.835(j).³ IME stated that transferring the blasting caps or explosives to another vehicle would involve “the added risk from the unnecessary handling during loading or re-loading to conform explosive/detonator shipments to New Jersey’s restrictions.”

IME, HMAC, and ISEE all stated that New Jersey’s statutory and regulatory prohibitions against transporting blasting caps on the same motor vehicle with more than 5,000 pounds of commercial explosives are preempted because they are not substantively the same as requirements in the HMR on the “handling * * * of hazardous material.” 49 U.S.C. 5125(b)(1)(B). Alternatively, IME stated that these restrictions are “a detriment to safety” and are preempted as an “obstacle to accomplishing and carrying out” the HMR, 49 U.S.C. 5125(a)(2).

IME acknowledged “the authority of the State to regulate the movement of explosives that is outside the scope of” Federal hazardous material transportation law and the HMR, but stated that NJDL does not interpret its regulation to apply only to “vehicles transporting explosives between locations on one site where a public way is never entered or crossed.” According to IME, that agency’s position is that vehicles carrying both blasting caps and more than 5,000 pounds of explosives would be in violation of

³ According to IME, NJDL seems to take the position that the restriction in the Explosives Act “applies to any transportation in the State,” but it is uncertain whether that prohibition is self-executing or whether NJDL must issue regulations under the authority conferred in N.J.S.A. 21:1A–130 before the restriction applies to an explosives carrier. If the restriction in the Explosives Act is self-executing, it would also not allow blasting caps and explosives to be transported into New Jersey and then separated onto different vehicles before leaving the highway to enter the job site.

N.J.A.C. 12:190–6.5(d) “the moment they left a public road.”

HMAC stated that the “critical” issue in this proceeding is whether N.J.A.C. 12:190–6.5(d) applies to transportation “in commerce.” It commented that, because “the New Jersey off-highway regulation is not limited to transportation occurring entirely on private property,” it affects motor vehicles transporting Class 1 materials “over the public roads of the State to consignee sites where these materials are unloaded/loaded prior to further commercial movement of the vehicle on those public ways.”

In its further comments, IME stated that NJDL appears to define “off-highway” in a manner that applies the prohibition in N.J.A.C. 12:190–6.5(d) to “sites where the vehicle is being loaded or unloaded, [and] also off-highway locations where a driver may stop for food, fuel, rest or comfort.” Unfortunately, no representative of the State of New Jersey submitted comments to explain how the exception for “explosives which are in transit” in N.J.S.A. 21:1A–141 is interpreted and applied to the transportation of detonators and explosives on the same vehicle in accordance with 49 CFR 177.835(g).

The HMR “govern safety aspects of the transportation of hazardous material [DOT] considers appropriate.” 49 U.S.C. 5103(b)(1)(B). They apply to the “offering of hazardous materials for transportation and transportation of hazardous materials in interstate, intrastate, and foreign commerce by * * * motor vehicle.” 49 CFR 171.1(a)(1). The HMR set forth specific provisions on the manner in which hazardous materials are packaged for transportation and loaded on a motor vehicle, including the conditions in 49 CFR 177.835(g) under which detonators and explosives may be carried on the same motor vehicle. The HMR also contain provisions on the manner in which hazardous materials are unloaded from a motor vehicle. These requirements for loading hazardous materials on a vehicle, and which materials may be carried on the same vehicle, are clearly within the HMR’s provisions on the “handling” of hazardous materials.

Whenever the loading or unloading of hazardous materials is “incidental to the movement” of those materials on a public roadway, that loading or unloading is a “safety aspect” and part of the transportation of the hazardous materials “in commerce,” subject to the requirements of the HMR, regardless of whether the loading or unloading takes

² The residual safety-related authority of the Interstate Commerce Commission and the Civil Aeronautics Board, both of which no longer exist, is now exercised by agencies within DOT.

place on private property. See 49 U.S.C. 5102(12) (defining "transportation").

In this case, the affidavits submitted with IME's application state, without contradiction from NJDL, that New Jersey's prohibitions against carrying blasting caps on the same motor vehicle with more than 5,000 pounds of explosives affect and restrict the transportation of those hazardous materials on the public roadways. Those affidavits and the comments in this proceeding also support a conclusion, without contradiction from NJDL, that greater safety results when blasting caps and explosives are transported on the same vehicle in accordance with the conditions in 49 CFR 177.835(g), than when blasting caps and explosives must be transported on separate vehicles or transferred between vehicles at some point before leaving a public road to enter the delivery location.

To the extent that New Jersey's restrictions are interpreted and applied only to on-site storage, either before transportation begins or after transportation ends, they are not preempted by Federal hazardous materials transportation law. However, these restrictions are preempted when they are interpreted and applied to prohibit the transportation of detonators on the same motor vehicle with more than 5,000 pounds of explosives, while on a public road or during activities on private property that are incidental to the movement of property and involve a safety aspect of transportation on a public road. In the latter situations, New Jersey's restrictions in N.J.S.A. 21:1A-137F and N.J.A.C. 12:190-6.5(d) are preempted by 49 U.S.C. 5125(a)(2) and 5125(b)(1)(B), because these prohibitions are an obstacle to carrying out and accomplishing the safe transportation of hazardous materials as permitted by 49 CFR 177.835(g) and they are not substantively the same as the requirements in 49 CFR 177.835(g) on the handling of hazardous materials.

Because New Jersey's restrictions in N.J.S.A. 21:1A-137F and N.J.A.C. 12:190-6.5(d) are preempted by 49 U.S.C. 5125(a)(2) and 5125(b)(1)(B), it is unnecessary to address the separate issue, raised in RSPA's April 7, 2000 notice, whether these restrictions are preempted by 49 U.S.C. 5125(c)(1) as a highway routing limitation that fails to comply with FMCSA's standards in 49 CFR part 397.

IV. Ruling

Federal hazardous material transportation law preempts N.J.S.A. 21:1A-137F and N.J.A.C. 12:190-6.5(d) when those provisions are interpreted and applied to prohibit the

transportation of blasting caps (including electric blasting caps) on the same motor vehicle with more than 5,000 pounds of explosives, while on a public road or during activities on private property that are incidental to the movement of property and involve a safety aspect of transportation on a public road.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), any person aggrieved by this decision may file a petition for reconsideration within 20 days of publication of this decision in the **Federal Register**. Any party to this proceeding may seek review of RSPA's decision "in an appropriate district court of the United States * * * not later than 60 days after the decision becomes final." 49 U.S.C. 5125(f). New Jersey is considered a party to this proceeding concerning a State law and a regulation issued by an agency of the State, despite the fact that NJDL did not submit comments.

This decision will become RSPA's final decision 20 days after publication in the **Federal Register** if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 U.S.C. 5125(f).

If a petition for reconsideration of this decision is filed within 20 days of publication in the **Federal Register**, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on June 4, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Appendix A

49 CFR 177.835 Class I (explosive materials)

* * * * *

(g) No detonator assembly or booster with detonator may be transported on the same motor vehicle with any Division 1.1, 1.2 or 1.3 material (except other detonator assemblies, boosters with detonators or detonators), detonating cord Division 1.4 material or Division 1.5 material. No detonator may be transported on the same motor vehicle with any Division 1.1, 1.2 or 1.3 material (except other detonators, detonator assemblies or boosters with detonators), detonating cord Division 1.4 material or Division 1.5 material unless—

- (1) It is packed in a specification MC 201 (§ 178.318 of this subchapter) container; or
- (2) The package conforms with requirements prescribed in § 173.63 of this

subchapter, and its use is restricted to instances when—

(i) There is no Division 1.1, 1.2, 1.3 or 1.5 material loaded on the same motor vehicle; and

(ii) A separation of 61 cm (24 inches) is maintained between each package of detonators and each package of detonating cord; or

(3) It is packed and loaded in accordance with a method approved by the Department. One method approved by the Department requires that—

(i) The detonators are in packagings as prescribed in § 173.63 of this subchapter which in turn are loaded into suitable containers or separate compartments; and

(ii) That both the detonators and the container or compartment meet the requirements of the Institute of Makers of Explosives' Safety Library Publication No. 22 (incorporated by reference, see § 171.7 of this subchapter).

[FR Doc. 01-14496 Filed 6-7-01; 8:45 am]

BILLING CODE 4910-60-U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 1, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 9, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1374.

Form Number: IRS Form 8834.

Type of Review: Extension.

Title: Qualified Electric Vehicle Credit.

Description: Form 8834 is used to compute an allowable credit for qualified electric vehicles placed in service after June 30, 1993. Section 1913(b) under Pub. L. 102-1018 created new section 30.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping—7 hrs., 10 min.