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Hazardous Material Transportation/California Meal/Rest Break Requirements: U.S. Pipeline and Hazardous Materials Safety Administration Grants Preemption Petition

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The United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) granted a Petition submitted by the National Tank Truck Carriers Association requesting that the State of California’s Meal and Rest Break requirements be preempted for all operators of motor vehicles transporting hazardous materials.

PHMSA concluded that the California requirements:

- Create an unnecessary delay in the transportation of hazardous materials
- Create compliance incompatibilities with respect to operators carrying explosive materials because of the agency’s conclusion it is not possible to simultaneously comply with the off-duty requirement of the California requirements and federal safety requirements

PHMSA further determined that the California requirements are preempted as to motor carriers who are required to file a security plan under 49 C.F.R. §172.800, and who have filed security plans requiring constant attendance of hazardous materials. This is based on the agency’s view that the California requirements are an obstacle to carrying out the requirements of 49 C.F.R. §172.800 with respect to such carriers.

49 U.S.C. § 5125 provides an express preemption that PHMSA is utilizing in addressing the California requirements. Subsection (a) of that statutory provision provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted – unless the non-federal requirement is authorized by another federal law or the United States Department of Transportation grants a waiver of preemption under section 5125(e) – if:

1. Complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Home land Security 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, a regulation prescribed under this

chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security.

Under 49 U.S.C. § 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or Indian tribe may apply to the Secretary of Transportation for a determination as to whether the requirement is preempted. PHMSA has been delegated the authority to make preemption determinations except for those concerning highway routing.

PHMSA states that the National Tank Truck Carriers Association argued that the California requirements should be granted because they:

- Create unnecessary delay for the transportation of hazardous materials
- Conflict with the hazardous materials regulations attendance requirements
- Create an obstacle to accomplishing the security objectives of the hazardous materials regulations

Public comments supporting preemption addressed topics such as:

- Unnecessary delay
- Constant attendance and security plans
- Uniformity
- Shortage of parking and safe havens

Commenters opposing preemption argued that California determined that its break requirements were necessary to protect the health, welfare and safety of drivers and others on the road, by ensuring that drivers are well-rested and attentive. One commenter also argued that there was sufficient exemption preemptions in the California requirements to make federal preemption unnecessary.

Another comment stated that California requirements are not an obstacle to the hazardous materials regulations because the potential for route deviation and/or delay is the same under either the California or federal HOS regulations.

A copy of the [Federal Register preemption decision](#) can be found here.