extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise capability program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

Tulsa Airport Authority Tulsa International Airport Terminal, 7777 E. Apache, Room A–217; Tulsa, Oklahoma 74158.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, June 16, 1999.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 99–16661 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sullivan County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Sullivan County, New York.

FOR FURTHER INFORMATION CONTACT:

John Brizzell, Regional Director, 44 Hawley Street, Binghamton, NY 13901, Telephone: (607) 721–8116; or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518)431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve NYS Route 17 in Sullivan County, New York. The proposed improvement would involve the construction of a new controlled access freeway in the Town of Liberty near the hamlet of Parksville for a distance of about 4.6 kilometers. The project objective is to reduce accident potential by constructing a controlled access freeway, built to interstate standards, with a full interchange serving the community of Parksville.

Alternatives under consideration include: 1. Do Nothing and 2. Controlled access freeway, built to interstate standards, with a full interchange serving the community of Parksville. Three different alignments, 2A, 2B and 2D, are being considered for further study under the controlled access freeway alternative. Alternative 2A constructs a new freeway on an alignment south of the existing NYS Route 17. Alternative 2B constructs a new freeway generally following the alignment of existing NYS Route 17. Alternative 2D constructs a new freeway on a split alignment, i.e. westbound freeway lanes on existing NYS Route 17 alignment and eastbound freeway lanes on new alignment to the south. For each of the controlled access freeway alternatives there are five options for the full interchange serving the community of Parksville. Option 1, Split interchange: A ''half-diamond'' ramp would be at each end of the project. The east end of the project would have a westbound ramp and an eastbound on ramp. The west end of the project would have a eastbound off ramp and a westbound on ramp. Option 2, Direct-connector ramps at each end of the project: This option allows the same vehicle movements as option 1 but without impeded traffic flows. Option 3, Full interchange (full-diamond) at east end of project: This option permits all four vehicle movements at one location in the east end of the project. Option 4, Full interchange (full-diamond) at west end of project: This option permits all four vehicle movements at one location in the west end of the project. Option 5, Full interchange (full-diamond) near the midpoint of the project: This option permits all four vehicle movements at the location near the midpoint of the project. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Public informational meetings were held on June 26, 1998, September 3, 1998 and December 16, 1998 in the Town of Liberty. After the September meeting a steering committee was formed to address and resolve community issues that could influence development of the project. The committee, which consists of 27 members, met on November 16, 1998 and December 16, 1998. Additional public informational and steering committee meetings are planned and will continue as needed. In addition, a public hearing will be held. Public notice will be given of the time and place of meetings and hearings. The draft EIS will be available for public and agency review and comment. No formal NEPA scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.295, Highway May 21, 1999 Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: June 21, 1999.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 99–16614 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Federal Highway Administration

[Docket No. RSPA–98–3579 (PDA–20(RF))]

Application by Association of Waste Hazardous Materials Transporters for a Preemption Determination as to Cleveland, Ohio Requirements for Transportation of Hazardous Materials

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

ACTION: Public notice reopening comment period.

SUMMARY: RSPA and FHWA are reopening the comment period on the application by the Association of Waste Hazardous Materials Transporters (AWHMT) for an administrative determination whether Federal hazardous materials transportation law preempts certain requirements of the City of Cleveland, Ohio, concerning the transportation of explosives and other hazardous materials within the City. AWHMT has asked RSPA and FHWA to defer consideration of several of the requirements challenged in AWHMT's original application because the City is

considering amending those requirements. In addition, AWHMT wishes RSPA and FHWA to consider requirements not challenged in its original application concerning the minimum distances that must be maintained between vehicles transporting explosives or other hazardous materials. Interested parties may comment on all the City's requirements for which AWHMT seeks a preemption determination, including the City's separation distance requirements.

DATES: Further comments received on or before August 16, 1999, and rebuttal comments received on or before September 28, 1999, will be considered before an administrative ruling is issued jointly by RSPA's Associate Administrator for Hazardous Materials Safety and FHWA's Administrator. Rebuttal comments may discuss only those issues raised by comments received during the reopened initial comment period and may not discuss new issues.

ADDRESSES: AWHMT's original application, its request to modify and amend that application, and all comments and other documents submitted in this proceeding may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All documents filed in this proceeding are also available on-line through the home page of DOT's Docket Management System at <http://dms.dot.gov>.

Comments should be submitted to the Dockets Office at the above address. Three copies of each written comment should be submitted. You may also submit comments electronically. To do so, long on to the Dockets Management System at <http://dms.dot.gov>. Click on ''Help & Information'' to obtain instructions for filing a comment electronically.

Each comment should refer to the Docket Number set forth above. A copy of each comment must also be sent to (1) Mr. Michael Carney, Chairman, Association of Waste Hazardous Materials Transporters, 2200 Mill Road, Alexandria, VA 22314, and (2) Mr. Cornell P. Carter, Director of Law, City of Cleveland, City Hall—Room 106, 601 Lakeside Avenue, Cleveland, OH 44114–1077. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: ''I certify that copies of this comment have been sent to Messrs. Carney and Carter at the addresses specified in the **Federal Register.**'')

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued by DOT, are available through the home page of RSPA's Office of the Chief Counsel, at <http://rspa-atty.dot.gov>. A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Judith A. Rutledge, Office of the Chief Counsel, Federal Highway Administration (Tel. No. 202–366–0864), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

AWHMT has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts certain requirements of the City of Cleveland (City) applicable to the transportation of explosives and other hazardous materials in and through the City. In its application, AWHMT challenged requirements of the City concerning the transportation of:

—Hazardous materials in an amount for which a placard is required by the HMR, in Chapter 394 of the City's Consolidated Ordinances (City Code) for a permit, permit fees, proof of insurance, and routing and time restrictions.

—Explosives in any amount, in Chapter 387 of the City Code for a permit, permit fees, proof of insurance, routing and prenotification of shipments, vehicle inspections, the number of fire extinguishers, and the City's unmodified requirement for a police escort to accompany shipments of more than 250 lbs. of explosives.

The text of AWHMT's application was published in the **Federal Register** on September 17, 1998, and interested parties were invited to submit comments. 63 FR 49804. After RSPA and FHWA initially denied requests by the Public Utilities Commission of Ohio (PUCO) and the City for a 60-day extension of the time to submit comments, comments were submitted by the City, AWHMT, PUCO and the following additional parties: Association of American Railroads, Hazardous Materials Advisory Council, Institute of Makers of Explosives, National Paint & Coatings Association, Ohio Environmental Service Industries, and Roadway Express.

Following receipt of these comments, RSPA and FHWA realized that the two periods for submitting comments had been inadvertently shortened, from 45 days to 30 days, in the notice published in the **Federal Register**. (In the text of the notice submitted to the **Federal Register**, RSPA and FHWA had specified 45 days for the initial and rebuttal comment periods.) Based on that error and the City's statements of its attempts to resolve many of the issues informally with AWHMT, RSPA and FHWA held a telephone conference with representatives of AWHMT and the City on December 14, 1998. In a December 28, 1998 letter, RSPA confirmed that, over the next two months, AWHMT and the City would explore informal resolution of the issues raised in AWHMT's application and advise RSPA and FHWA of the results of these efforts.

II. Request To Modify Application

In further correspondence and a conference telephone call on April 8, 1999, AWHMT and the City advised RSPA and FHWA that the City's Law Department was proposing changes to the City Code that would resolve many of the issues raised in AWHMT's application. In its April 15, 1999 letter (set forth in Appendix A), AWHMT asked to modify and amend its application. It asked RSPA and FHWA to consider at this time only the requirements on which AWHMT had not been able to reach an understanding with the City, including requirements not challenged in its original application concerning the minimum distances that must be maintained between vehicles transporting explosives or other hazardous materials. AWHMT also asked RSPA and FHWA to defer consideration of sections in the City Code that the City is proposing to amend. AWHMT's request and the City's response in an April 30, 1999 letter to RSPA and FHWA (set forth in Appendix B) are summarized below.

A. Requirements To Be Addressed by RSPA and FHWA

In its letter, AWHMT requested that RSPA and FHWA determine whether Federal hazardous materials transportation law preempts the following requirements:

—City Code § 394.06(b) prohibiting the transportation of hazardous materials in the ''downtown area'' of the City between 7 a.m. and 6 p.m. except Saturdays and Sundays, unless the Fire Chief grants an exception pursuant to § 394.08(e) on a showing

that ''delivery or pickup of the hazardous material * * * can be practicably made only during [the prohibited] time period'' and transportation of this material is in ''the public interest'';

—City Code § 387.07(d) and the provision in the Application for the Transportation of Explosives (Application) requiring the carrier to specify the route to be taken within the City and providing that the Director of Public Safety (or his representative) shall designate the route to be taken within the City;

—the Application's provision that the carrier must notify the Fire Department ''24 hours in advance of all deliveries'' of explosives within the City;

—the Application's provision that a police escort is required if more than 250 lbs. of explosives are transported within the City; and

—City Code §§ 387.08(b) and 394.07(b) requiring a vehicle transporting explosives or other hazardous materials to maintain a certain distance from any other vehicle transporting explosives or other hazardous materials, *i.e.*, 500 feet between vehicles transporting explosives and 300 feet between vehicles transporting other hazardous materials.

AWHMT acknowledged that it had not challenged §§ 387.08(b) and 394.07(b) in its original application and asked permission to amend its application to include these requirements. AWHMT contends that these separation distance requirements ''hinder the safe operation of vehicles, are impossible to comply with at the distances required, and are a misuse of federal placarding requirements.'' AWHMT stated that it would submit a new, separate application for a preemption determination with respect to the City's separation distance requirements if the City objected to consideration of these requirements in this proceeding.

In response, the City stated that it is willing to continue to discuss with AWHMT the first four requirements summarized above, but a resolution is not likely. The City objected to DOT's consideration of the separation distance requirements in City Code §§ 387.08(b) and 394.07(b) on the grounds that (1) AWHMT has not shown that it, or its members, are ''directly affected'' by these requirements, as specified in 49 U.S.C. 5125(d)(1); (2) AWHMT waived its right to challenge these requirements by failing to include them in its original application; and (3) all issues in AWHMT's amended application should be ''the subject of a notice in the **Federal Register**''and ''subject to comments by interested parties.''

Inasmuch as the discussions between AWHMT and the City have better focused the issues to be addressed in this proceeding, RSPA and FHWA believe it is appropriate to allow interested parties the opportunity to submit additional comments on all the requirements challenged in AWHMT's original application that are currently at issues between AWHMT and the City. Because it is appropriate to reopen the comment period with respect to all issues relating to four requirements challenged in AWHMT's original application, it is logical to allow interested parties to also submit comments in this proceeding on the City's separation distance requirements in City Code §§ 387.08(b) and 394.07(b)—rather than consider these requirements in a separate proceeding. The City's separation distance requirements appear to apply to the driver of any vehicle transporting explosives or other hazardous materials within the City of Cleveland, including drivers employed by the companies whose affidavits were submitted with AWHMT's original application. Each of these companies stated that their vehicles pick up, deliver, or otherwise transport hazardous materials within the City.

B. Requirements To Be Deferred

In their letters, AWHMT and the City agree that RSPA and FHWA should defer consideration of the following sections in the City Code which AWHMT had challenged in its original application, but which the City is proposing to amend:

—394.08, 387.02(g), 387.04, and 387.07 concerning annual permits;

—394.16 and 387.04(b) concerning fees for permits;

—394.08 and 387.09 concerning proof of insurance;

—387.08(a) concerning vehicle inspections; and

—387.08(a) concerning fire extinguishers.

The City stated that, pending action on the proposals to amend the City Code, the City's Division of Fire will continue to refrain from enforcing ''the hazardous materials and explosive transportation permit and fee requirements under Sections 394.08, 394.16, 387.04 and 387.07,'' but that it would not agree to

withhold enforcement of the other provisions of the City's Codified Ordinances that are listed on page two of [AWHMT's] April 15, 1999 correspondence, namely, permit and insurance requirements for the use and storage of explosives, vehicle inspections (except for annual inspections which the City does not conduct), and the maintenance of at least one fire extinguisher in good working condition.

RSPA and FHWA agree with AWHMT and the City that it is preferable to defer consideration of requirements that are being proposed to be revised, when those revisions (if adopted) may resolve the concerns raised in AWHMT's application. Accordingly, RSPA and FHWA are not inviting further comments on the requirements listed above, which will not be addressed further in this proceeding unless and until AWHMT or the City advises that they have been unable to resolve these parts of AWHMT's original application.

C. Effect of Revision of Routing Requirements

Finally, AWHMT asked FHWA for an opinion with respect to the requirements in City Code § 394.06(a) and (d) providing that hazardous materials may be transported on ''City streets [only by] the safest and most direct route and the shortest distance from an interstate highway to the point of origin or destination, *as determined by the Fire Chief or his designee.*'' AWHMT noted that this restriction was created prior to November 14, 1994 and, therefore, is not subject to the condition in 49 U.S.C. 5125(c)(1) that a highway routing designation or limitation must comply with FHWA's regulations in 49 CFR 397.71. RSPA and FHWA understand that the City will consider deleting from §§ 394.06(a) and (d) the language underlined above, but that, according to AWHMT, ''The City is not willing to make any change to its routing requirements if the change would subject the City to the requirements of 49 CFR 397.71.''

The City's letter did not address AWHMT's request FHWA's opinion as to whether the deletion of the phrase ''as determined by the Fire Chief or his designee'' from §§ 387.08(b) and 394.07(b) would constitute the establishment of a highway routing designation, limitation, or requirement after November 14, 1994. FHWA intends to respond to AWHMT's request separately from this preemption proceeding.

III. Reopening of Comment Period

For the reasons stated above, the period for public comments on AWHMT's application, as amended by its April 15, 1999 letter, is being reopened. Comments may be submitted through August 16, 1999 and may

discuss all issues relating to the City's requirements referred to in Part II.A., above, currently challenged by AWHMT, including issues raised in comments previously submitted. Rebuttal comments may be submitted through September 28, 1999 and may discuss only those issues raised in comments submitted during the reopened initial comment period; rebuttal comments may not raise new issues.

All comments should be limited to whether 49 U.S.C. 5125 preempts the City's requirements referred to in Part II.A., above. Comments should set forth in detail the manner in which these requirements are applied and enforced, and should specifically address the preemption criteria discussed in Part II of the September 17, 1998 public notice.

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.211–107.211 and 397.201–397.211.

Issued in Washington, DC, on June 17, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Appendix A

April 15, 1999.

Kenneth R. Wykle,
Administrator, Federal Highway Administration, HOA–1, 400 Seventh St., SW., Washington, DC 20590.
Mr. Alan I. Roberts,
Associate Administrator, DHM–1, Research and Special Programs Administration, 400 Seventh St., SW., Washington, DC 20590.

Re: PDA–20 (RF)

Dear Messrs. Wykle and Roberts: On behalf of the Association of Waste Hazardous Materials Transporters (AWHMT), I am writing to modify and amend the Association's request that certain requirements imposed by the City of Cleveland, OH (City) on motor carriers engaged in the transportation of hazardous materials be preempted.

The AWHMT represents companies that transport, by truck and rail, waste hazardous materials, including industrial, radioactive and hazardous wastes, in North America. The Association is a not-for-profit organization that promotes professionalism and performance standards that minimize risks to the environment, public health and safety; develops educational programs to expand public awareness about the industry; and contributes to the development of effective laws and regulations governing the industry.

Background

Under the auspices of RSPA's and FHWA's Office of General Counsel (OGC) and with agreement of the City's Department of Law (Department) and the AWHMT, discussions were initiated in the fall of 1998 to voluntarily resolve issues in dispute in the matter of PDA–20(RF) short of a determination of preemption. These discussions have been productive in a number of areas. They have also helped to clarify areas where the parties have agreed that no acceptable compromise is likely. While we do not want at this time to cut off discussions in areas where progress appears to be forthcoming, we are no longer willing to delay RSPA's consideration of issues we have mutually agreed will not be resolved short of a preemption determination. Consequently, we are requesting that certain provisions challenged in our petition be held in abeyance, that the remaining provisions be addressed forthwith, and that our petition be amended to address another critical issue that regrettably was not identified in our original petition.

Provisions To Be Held in Abeyance

The Department has offered to recommend to the Mayor and the City Council that the City voluntarily amend its Code to address several of the provisions challenged in our petition in a manner that is consistent with Federal hazardous materials transportation law (FHMTL). The Department has also agreed to withhold enforcement of these provisions pending final action to amend the Code. Despite the good faith efforts of the Department to reach a voluntary settlement of these matters, the Department cannot bind the Mayor or the City Council to any agreements reached. Consequently, at this time, we are requesting that the following provisions challenged in our application of preemption be held in abeyance:

- Code § 394.16 and § 387.04(b) concerning fees
- Code § 394.08 and § 387.09 concerning proof of insurance
- Code § 387.08(a) concerning vehicle inspections
- Code § 387.08(a) concerning fire extinguishers
- Code § 394.08, § 387.02(g), § 387.04 and § 387.07 concerning annual permits

Following final action by the City and review by AWHMT of its amended Code, we will notify the Department and your offices of our intent to withdraw our objection or to ask that DOT reinstitute its preemption review of any remaining challenged provisions.

Provisions To Be Resolved Through Preemption Determination

The AWHMT and the Department have been unable to reach a common understanding about the preemptive affect of FHMTL on the following provisions and requirements:

- Code § 394.06(b) concerning the time-of-day and day-of-week restrictions on the transportation by motor carrier of placarded hazardous materials within the ''downtown area'' of the City.
- Code § 387.07(d) and Application for the Transportation of Explosives concerning the requirement that no explosive, as defined by the City, be transported within the City without the carrier prefiling a route and unless the route is approved by the City.
- Application for the Transportation of Explosives concerning 24-hour prenotification of all explosives deliveries.
- Application for the Transportation of Explosives concerning police escort for every shipment of more than 250 pounds of any explosive(s) if transported on City streets.

We continue to believe that these provisions and requirements will impermissibly delay the transportation of hazardous materials and are thus inconsistent and preempted by FHMTL. We ask that DOT refer to all prior filings for our justification as to why these provisions should be determined to be preempted.

We are mindful of DOT's statutory obligation to issue determinations of preemption within six months. AWHMT's application was filed and accepted by DOT in March 1998, but not even published in the **Federal Register** for six months. While we agreed to temporarily halt review during the last four months, we are anxious that a speedy determination of preemption be reached insasmuch as the City has not and will not suspend enforcement of these challenged provisions.

Petition To Amend AWHMT's Application for a Determination of Preemption

We regret that in our March 2, 1998 filing we did not ask DOT to review Code § 394.07(b) and § 387.08(b) concerning separation distance requirements between vehicles transporting hazardous materials.[1] We request permission to amend our application for a determination of preemption in the matter of PDA–20(RF) to incorporate review of these requirements. We understand that the City may object to this request. If such objection is made, we intend to submit a new application for a determination of preemption.

Code § 394.07(B) provides that vehicles transporting placarded hazardous materials must maintain a separation distance for all other placarded vehicles of at least 300 feet, and Code 387.08(b) provides that if the vehicle is transporting explosives, the separation distance from any other vehicle transporting explosives must be 500 feet. This explosives separation requirements is not even conditioned on a requirement that the vehicle be placarded. Some exceptions are provided for the Code § 394.07(b) requirement, but none are provided under Code § 387.08(b). We believe these requirements hinder the safe operation of vehicles, are impossible to comply with at the distances required, and are a misuse of federal placarding requirements.

Placarded vehicles have little control over traffic conditions they encounter. There is no federal requirement that standardizes the placement of placards on vehicles. The

[1] City of Cleveland Code requirements are attached.

placards can be anywhere on the sides and ends of vehicles. There is no federal minimum distance visibility standard. However at 300 feet the visual signature of a placard, if it can be seen given intervening traffic, would be minuscule. The visibility problem is exacerbated at 500 feet where the distances is larger and the driver is supposed to be able to discern no only that a placard exists but that it is specific placard.[2] It goes without saying that the duty to identify vehicles containing explosive materials for which a placard is not required is impossible. The purpose of a placard is to communicate risk in the event of an incident. It is not intended for traffic control as envisioned by the City's Code. We believe this requirement will divide the attending of the very drivers the City should want to stay focused on the road. Instead, these drivers are going to be tasked to scan vehicles in all directions of travel,/3/ including around corners, within the City—an area already, by the city definition, congested—at all times of day, in all weather, to determine if placards exist. For these reasons, we do not believe these requirements can or should be complied with, or that they can be enforced in other than an arbitrary and capricious way.[4]

If these requirements are allowed to stand, they present a training nightmare. Assuring that all motor carriers of hazardous materials that entertain any possibility of engaging in transportation in Cleveland will have knowledge of these requirements, which is dubious, that motor carrier will have to modify its training programs to include information about the City's separation requirements. Then the motor carrier will have to hope that the driver remains aware of these requirements. Then the motor carrier will have to hope that the driver remains aware of these requirements during any forthcoming trip within the City, which given the uniqueness of the requirements is unlikely, especially for the occasional driver to the City. It almost begs for the carrier to provide a separate refresher training notice to the driver each time a shipment may go in the vicinity of the City. It cannot be the intent of Congress that the training requirements of drivers operating in interstate commerce be dictated by the whims of local jurisdictions.

The City has, during the course of our discussions, made clear it intents to enforce these requirements. However, it has not explained what special circumstances exist in the City to justify this extraordinary requirement, nor has it disclosed the scientific analysis that underpins the 300 feet/500 feet separation instead of for example some other distance requirement. The burden of asserting and demonstrating a supportable safety justification for these requirements should be placed squarely on the City.

The issue of separation distances has been considered in other preemption proceedings. Irrespective of DOT's interpretations in these prior proceedings, the type of separation requirement at issue here can be distinguished from these other proceedings.

- First, the City's requirements is not a following distance requirement. It contemplates a duty on drivers of vehicles transporting placarded hazardous materials in addition to maintain adequate following distance from the vehicles ahead, to be aware of the respective distances of other such hazmat vehicles within a circumference of hundreds of feet. Only once, in 1981, did DOT deal with a separation distance requirements similar to that contemplated by the City Code.[5]
- Second, the preemption provisions of the FHMTL have been amended twice by Congress since DOT last considered the issue of non-federal separation or following distance requirements. Both times, the preemption provisions of the FHMTL were strengthened. Not only did the Congress reaffirm its intent ''to preclude a multiplicity of * * * local regulations and the potential for varying * * * regulations in the areas of hazardous materials transportation'', but declared that ''greater uniformity'' was ''necessary and desirable'' in order to ''promote * * * safety'' in commerce.[6]
- Third, the FHMTL charges DOT, not localities, with duty to ''prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce.''[7] DOT has accomplished this objective through the hazardous materials regulations (HMR). Recently, FHWA recognized the fundamental importance of the HMR when it proposed to update the term ''compatible/compatibility'', as a condition to qualify states to receive motor carrier safety assistance, to reflect RSPA's new requirement that transporters of hazardous materials comply with the HMR during all intrastate operations.[8] With this mandate, RSPA has ''questioned 'the advisability of encouraging a driver to constantly direct his attention away from the proximity of his vehicle' and how * * * distance requirements promote [ ] safety.''[9] Given its mandate, it would be absurd for DOT to sanction a non-federal requirement it admits compromises safety.
- Fourth, § 397.3 cannot save the City's requirements. Section 397.3 existed before the above referenced amendments were made to the FHMTL during this decade. This section of regulation simply has not kept pace with congressional intent, and it cannot take precedence over federal law and the congressional mandate to achieve safety through greater uniformity.[10]

Section 397.3 is so dated that it does not even demand that the non-federal operating rules have a safety nexus. Since the purpose of the HMR is to ensure the safe transportation of hazardous material, or in the case of the federal motor carrier safety regulations (FMCSR), the safe operation of commercial motor vehicles, it is little wonder that any number of non-safety-based local requirements that could interfere or unreasonably burden hazardous materials transportation would not be at ''variance with specific regulations of [DOT]''.[11] However, in fact DOT has considered and has issued a hazardous materials vehicle separation requirement. Section 397.9 provides that vehicles transporting division 1.1, 1.2, or 1.3 materials must not be parked within 300 feet of certain structures or activities, and exceptions are provided. The Code § 387.08(b) requirement for a 500-foot separation distance for vehicles transporting explosives applies while the vehicle is moving and while the vehicle is parked. As noted above, no exceptions are provided for the City's rule. Using the logic employed by the Ninth Circuit in the matter of *Chlorine Institute, Inc.* v. *Califor. Hwy. Patrol* concerning state-imposed escort requirements, we assert that DOT's determination to regulate only the distance between parked vehicles transporting specified types of explosives shows that DOT has demonstrated its intent not to require such separation distances for vehicles transporting other hazardous materials. The court went on to preempt this state requirement as interfering with Federal uniformity in an unsafe and burdensome manner.[12] If a court is willing to apply this principle to a state requirement, there can be no doubt of its applicability to a local requirement. Any non-federal requirement that uniquely applies to the transportation of hazardous materials and applies differently or in addition to the FHMTL or HMR or applicable FMCSR must be subject to scrutiny under DOT's preemption standards and not be protected under the guise of local vehicle operating requirements.

- Fifth, absent some compelling local circumstance that we are unaware of, DOT would set an untenable precedent if it allow these requirements to stand after acknowledging that safety is compromised. Such a determination would allow for the possibility that the Nation's other 30,000 jurisdictions would impose unique separation distance requirements without restraint.

We recommend that DOT find the City's separation requirements be preempted under the ''dual compliance'' standard as they conflict with federal requirements as outlined in the attached affidavit or with 49

[2] See attached affidavit of Karla Moore, Tri-State Motor Transit, Co., Inc., page 2.

[3] Drivers could only hope to make this identification through rear view mirrors for vehicles to the rear. These mirrors are not intended or adjusted to identify vehicles 300 feet/500 feet to the rear.

[4] See affidavit of Karla Moore that explains for detail the consequences of such separation distance requirements.

[5] IR–3, 46 *FR* 18923 (March 26, 1981).

[6] S. Rept. 1192, 93rd Cong. 2d Sess., 1974, page 37; and P.L. 101–615, Section 2(5).

[7] 49 U.S.C. 5103(b).

[8] 64 *FR* 11414 (March 9, 1999). In receiving grant assistance under this program, states are required to certify that any local requirements affecting the transportation of hazardous materials by motor carrier are also consistent with the HMR.

[9] 55 *FR* 39744, citing IR–3, *FR* 18918 (March 26, 1981).

[10] Speed limits, detours and other traffic management requirements that apply to all trucks are not in dispute.

[11] *Ibid.*

[12] *Chlorine Institute, Inc.* v. *Calif. Hwy. Patrol*, Civ. S–92–396 (E.D. Cal., September 16, 1992), aff'd, 29 F.3d 495 (9th Cir. 1994).

CFR 397.9 as noted above.[13] If DOT concludes that these provisions do not rise to the level of a conflict, we request that DOT find these requirements preempted under its authority to preempt non-federal requirements that pose ''an obstacle to accomplishing and carrying out'' the law.[14]

Request for Technical Assistance

With no prejudice to all parties, we request an opinion from FHWA as to whether the City's routing designations and restrictions will be compromised if the City either strikes the phrase ''as determined by the Fire Chief, or his designee'' currently appearing in Code § 394.06(a) and (d) of if the City otherwise clarifies that this phrase does not require some type of route prenotification.[15] We understand that the City's intra-city route designations and restrictions were in place prior to November 14, 1994, and as such are grandfathered from the requirement to be consistent with the federal highway routing standards set forth at 49 CFR 397.71. The City is not willing to make any change to its routing requirements if the change would subject the City to the requirements of 49 CFR 397.71.

Conclusion

We are willing to hold in abeyance certain issues raised in our petition for a determination of preemption pending the outcome of efforts by the City to reform its Code in a manner consistent with the FHMTL. At the same time, we are asking for expeditious review of matters the City and we acknowledge will not be resolved by further discussion. Finally, we request that our petition for preemption be amended to include a review of requirements for vehicle separation distances.

Certification

I certify that a copy of this comment has been sent to Mr. Sylvester Summers at the address specified in the **Federal Register**.

Respectfully Submitted,

Cynthia Hilton,

Executive Director.

Attachments

1. Cleveland Code § 387.08(b).
2. Cleveland Code § 394.07(b).
3. Affidavit of Tri-State Motor Transit.

[Attachments not reproduced, available from RSPA]

Appendix B

April 30, 1999.

Kenneth R. Wykle,

Administrator, Federal Highway Administration, HOA–1, 400 Seventh St., SW, Washington, DC 20590.

Alan I. Roberts,

Associate Administrator, DHM–1, Research and Special Programs Administration, 400 Seventh St., SW, Washington, DC 20590.

Re: *City of Cleveland's Response to the Association of Waste Hazardous Materials Transporter's (AWHMT) Request to Amend Petition No. PDA–20 (RF) and to Hold Certain Provisions in Petition in Abeyance*

Dear Messrs. Wykle and Roberts: The City of Cleveland hereby submits this response to AWHMT's letter dated April 15, 1999, requesting permission to amend petition no. PDA–20(RF) and to hold certain provisions in abeyance pending the outcome of negotiations between the parties.

A. Background/Provisions To Be Resolved Through Preemption Determination

The City agrees with AWHMT's characterization of the discussions which have taken place between the parties, and the progress which has been made with regard to settling certain provisions of PDA–20(RF). The City intends to continue discussions with AWHMT regarding those issues which AWHMT has requested be held in abeyance.

Moreover, the City understands that AWHMT has requested that the Department of Transportation and the Federal Highway Administration move forward to decide the four (4) provisions of the City of Cleveland's Codified Ordinances and the current Explosives Permit application listed on page two of the April 15, 1999 letter, to wit, Section 394.06(b) time-of-day and day-of-week restrictions, Section 387.07(d) prenotification and approval of route for explosives transportation, and the explosives transportation application requirements for 24 hour prenotification and police escort. To the extent practical, the City is willing to continue to discuss these issues with AWHMT, but is doubtful resolution is likely.

B. Provisions To Be Held in Abeyance

For the record, the City would like to clarify a representation that AWHMT makes concerning the City's agreement to withhold enforcement of certain provisions of its Codified Ordinances which AWHMT has challenged but has asked RSPA hold in abeyance. In our discussions with AWHMT, the City has acknowledged that the Division of Fire, since the filing of PDA–20(RF), has refrained from enforcing the hazardous materials and explosives transportation permit and fee requirements under Sections 394.08, 394.16, 387.04 and 387.07, and the Division of Fire has indicated it will continue to withhold enforcement of these provisions even though it is not required by law to do so.

The City, however, did not represent to AWHMT that it would also withhold enforcement of the other provisions of the City's Codified Ordinances that are listed on page two of the April 15, 1999 correspondence, namely, permit and insurance requirements for the use and storage of explosives, vehicle inspections (except for annual inspections which the City does not conduct), and the maintenance of at least one fire extinguisher in good working condition. I have brought this to the attention of Cynthia Hilton and explained that I would clarify the City's position in this letter, and I believe she is in agreement with the above explanation.

C. Petition To Amend AWHMT's Application for Determination of Preemption

The City objects to AWHMT request for permission to amend its application for a determination of preemption to include a challenge to City of Cleveland Codified Ordinances 394.07(b) and 387.08(b), which require vehicles transporting hazardous materials to maintain a 300 or 500 foot separation distance from other vehicles containing hazardous materials. The basis for the City's objections are set forth below:

(1) *AWHMT Has Not Established That It Is Directly Affected by the City's Requirement.*

Federal law provides that a person ''directly affected'' by a requirement of a political subdivision, may apply for a preemption determination under 49 U.S.C. 5125 (49 USCA 5125(d)(1); 49 CFR 107.201(a)(1)). The City maintains that AWHMT has not established in its filing of April 15, 1999, that it is directly affected by the City's minimum distance requirement. Therefore, it does not have standing to request a preemption determination on the minimum distance requirement.

AWHMT has attached the affidavit of a representative of TriState Motor Transit Co. (hereinafter referred to as ''Affiant'') ostensibly to establish standing to amend PDA–20 (RF) to include the challenge to the City's minimum distance requirement. This affidavit includes numerous hypothetical situations which might occur in the worst case scenario if the City were to enforce the minimum distance provision in an unreasonable and arbitrary fashion. The affidavit, however, contains no *factual* evidence which supports a determination that the Affiant is directly affected. Affiant states, in fact, that TriState provides virtually no service to the City of Cleveland, and further admits that ''TSMT has never been cited for violating these separation requirements''. AWHMT attached no other evidence that its members have been directly affected by the City's minimum distance requirement. Therefore, AWHMT has failed to establish that it has standing to bring this request for a preemption determination, and its request should be denied.

(2) *AWHMT Has Waived Its Right To Include a Challenge to the City's Minimum Distance Requirement.*

AWHMT has waived its right to challenge the City's minimum distance requirement for the reason that it neglected to include this issue in its original petition. Support for this proposition can be found at 49 CFR 107.23 which establishes the requirements for an application for a preemption determination. The regulations implicitly contemplate that preemption applications must be comprehensive and complete when filed (see 107.203(b) (2) and (3). The regulations make no provision for amending or revising the preemption petition after it is filed. From a policy perspective, amending a petition to allow amendments while a proceeding is pending discourages a political subdivision from engaging in negotiations since the issues in controversy are constantly subject to change. For these reasons, AWHMT's request to amend the petition should be denied.

(3) *The Entire Amended Petition Should Be Subject to the Publication and Commentary*

[13] 49 U.S.C. 5125(a)(1)

[14] 49 U.S.C. 5125(a)(2).

[15] This issue is separate and apart from the prenotification of explosive routes currently required by Code § 387.387.07(d).

Requirements of 40 CFR 107.203(d) and 107.205.

Without waiving its objection to AWHMT's request to amend its petition, the City requests that in the event RSPA grants AWHMT's request to amend, the entire amended petition, including the new challenge to the minimum distance requirement as well as the challenges to the other provisions of the City's ordinances contained in the original petition filed in March of 1998, be the subject of a notice in the **Federal Register** and the subject to comments by interested parties, including the City of Cleveland, pursuant to 49 CFR 107.205. Opening up the entire petition to comments would allow a newly interested party to comment to all issues, not just the minimum distance requirement. Moreover, it would allow the City of Cleveland the opportunity to supplement its comments already submitted with affidavits, which it was not able to do previously because of time constraints.

This concludes the City of Cleveland's response to AWHMT's submission dated April 15, 1999. We appreciate this opportunity to comment. I hereby certify that a copy of this letter was sent to Cynthia Hilton, on behalf of the Applicant, the Association of Waste Hazardous Materials Transporters.

Very truly yours,

Joyce M. Dodrill,

Assistant Director of Law.

[FR Doc. 99–16623 Filed 6–29–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Innovative Programs To Increase Booster Seat and Seat Belt Use Among Children

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability—discretionary cooperative agreements.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to demonstrate and evaluate innovative programs designed to increase booster seat use among children, ages 4 to 8, who have outgrown their child safety seats but do not fit into adult seat belts, and to increase seat belt use among older children, ages 8 through 15.

DATES: Applications must be received at the office designated below before 2:00 p.m. (EST), on August 30, 1999.

ADDRESSES: Applications must be submitted to the DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Debra J. Crites, 400 7th Street S.W., Room 5301, Washington, D.C., 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program Number DTNH22–99–H–05138.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Debra J. Crites, Office of Contracts and Procurement at (202) 366–9547, or by e-mail at *dcrites@nhtsa.dot.gov.* Programmatic questions relating to this cooperative agreement program should be directed to Lori A. Miller, Contracting Officer's Technical Representative (COTR), Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, S.W., Washington, D.C., 20590, by e-mail at *lmiller@nhtsa.dot.gov,* or by phone at (202) 366–9835. Interested applicants are advised that no separate application package exists beyond the content of this announcement.

SUPPLEMENTARY INFORMATION:

Background

Traffic crashes are the leading cause of death to American children of every age from 5 through15 years old. Restraint use and proper restraint use decreases as children get older. While restraint use for infants is 85 percent, restraint use for children ages 5 through 15 decreases to 64 percent. NHTSA's 1997 Fatal Analysis Reporting System shows that 52.6 percent of fatally injured 4 through 7 year-old passenger vehicle occupants were totally unrestrained and 65.7 percent of fatally injured 8 through 15 year-olds were unrestrained.

Studies also reveal that of the 4 to 8 year-olds who are restrained, most are in safety belts, not booster seats. In addition, a NHTSA observational study showed that, of the children who had outgrown their child seat, at about age 4 and 40 pounds, only 6 percent were in booster seats. Because of their size, children do not fit properly into adult seat belts until they are approximately eight years old and between 60 and 80 pounds. Booster seats help prevent injuries by helping to position lap and shoulder belts properly across the pelvis and shoulder. Booster seats also may help make safety belts more comfortable for children, decreasing the likelihood that children will place the shoulder belt under their arm, put it behind their back, or remove the safety belt altogether.

Despite targeted program and marketing efforts, many parents and caregivers of 4 through 15 year-olds continue to let children ride unrestrained or in inappropriate restraints or seating positions. Research studies, focus group testing, and low usage rates suggest that many parents, even those who have secured younger children in child safety seats, do not know what a booster seat is. Therefore, parents move their children, when they have outgrown their child safety seat, into safety belts or leave them totally unrestrained. Many 8 to 12 year-olds continue to ride unrestrained and in the front seat, even in airbag-equipped vehicles.

Low usage rates and lack of booster seat use may in part be attributed to gaps in child passenger safety laws and seat belt laws which often leave children ages 4 through 15 unprotected. Under most states' provisions, a 10 year-old can ride legally in the back seat unrestrained because laws only apply to front seat occupants. Many states fail to address the issue of children as passengers in the cargo area of pickup trucks. Other gaps, such as exemptions for out-of-state vehicles and overcrowded vehicles (car pooling from school) and exemptions if the driver is not the child's legal guardian, make it even more difficult to reduce injuries.

Programs Addressing Older Child Passengers

The Standardized Child Passenger Safety Training Program, developed by NHTSA in 1997, a program aimed at increasing booster seat and seat belt use among children, is currently being delivered nationwide. This technical training program provides child passenger safety professionals essential information and skills necessary to educate the public and to participate in child safety seat clinics. The program includes hands-on installations and educational information regarding all child restraints, including booster seats and seat belts. To date, over 2,500 technicians across the country have been certified. New classes are available on a regular basis.

The National SAFE KIDS Campaign, in partnership with NHTSA, developed and implemented a grassroots program known as Give Kids a Boost. This program offers educational information regarding booster seats, and in some cases, issues booster seats to parents with age-appropriate children. The delivery system was coordinated through health clinics. When families visit the clinics to receive immunizations and booster shots for their children, parents are provided with the information or the booster seats necessary to protect the children as passengers in a motor vehicle.

Programs addressing the older child passenger have been developed by