be held at the U.S. Embassy in Ottawa, Canada on July 13, 2004, at 9 a.m. The Commissioners will discuss aspects of their reporting in FY2001.

The Commission was reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000). The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles ''Tre'' Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Matt J. Lauer at (202) 203–7880.

Dated: June 14, 2004.

Matthew J. Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 04–14109 Filed 6–21–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Delegation of Authority 275]

Delegation by the Deputy Secretary of State to the Assistant Secretary for Educational and Cultural Affairs of All Authorities Normally Vested in the Under Secretary for Public Diplomacy and Public Affairs

By virtue of the authority vested in the Secretary of State by the laws of the United States, including the Mutual Educational and Cultural Exchange Act of 1961, the United States Information and Educational Exchange Act of 1948, and the State Department Basic Authorities Act of 1956, and delegated to me pursuant to Delegation of Authority No. 245 (April 23, 2001), I hereby delegate to the Assistant Secretary for Educational and Cultural Affairs, to the extent authorized by law, all authorities vested in the Under Secretary for Public Diplomacy and Public Affairs, including all authorities vested in the Secretary that have been delegated to that Under Secretary by Delegation of Authority No. 234 (October 1, 1999), or that may be delegated or re-delegated to that Under Secretary.

Any authorities covered by this delegation may also be exercised by the Secretary, the Deputy Secretary, and the Under Secretary for Political Affairs.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

This delegation shall enter into effect on June 17, 2004, and shall expire upon the appointment and entry upon duty of a new Under Secretary for Public Diplomacy and Public Affairs.

Any re-delegation of authority by the Under Secretary for Public Diplomacy and Public Affairs to the Assistant Secretary for Educational and Cultural Affairs, pursuant to Delegation of Authority No. 234, shall remain in effect.

This delegation shall be published in the **Federal Register**.

Dated: June 11, 2004.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 04–14108 Filed 6–21–04; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–02–13481 (PD–29(R))]

Massachusetts Requirements on the Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste

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

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

Local Laws Affected: Title 105 Code of Massachusetts Regulations (CMR) 480.000 *et seq.*

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.

Modes Affected: Highway and Rail.

SUMMARY: Federal hazardous material transportation law preempts the following requirements because they are not substantively the same as requirements in the Federal hazardous material transportation law and the HMR:

(1) 105 CMR 480.100(a) that storage containers must be ''rodent proof'' and ''fly-tight'' when those containers are used for transporting medical waste in commerce, including preparing medical waste for transportation in commerce.

(2) 105 CMR 480.200(C) that 3 mil bags must be used for waste that is transported off-site.

(3) 105 CMR 480.200(E) that pathological waste and contaminated animal carcasses must be double-bagged in 3 mil bags when transported off-site for disposal.

(4) 105 CMR 480.300(A) that a distinctive label must be used on a container of ''sharp wastes * * * to indicate that it contains sharp waste capable of inflicting punctures or cuts'' when those containers are used for transporting medical waste in commerce, including preparing medical waste transportation in commerce.

(5) 105 CMR 480.300(B) that a label with the name, address, and telephone number of the generator must be placed on ''every container or bag of waste that has not been rendered noninfectious and which will be transported off the premises of the waste generator.''

(6) 105 CMR 480.500(C) that the generator of medical waste must designate on a manifest the address of the delivery site, that the transporter and disposal facility must sign the manifest, and that the disposal facility must return the signed original to the generator.

(7) 105 CMR 480.500(E) that the generator must retain more than one copy of the manifest, and retain a copy of the manifest for more than 375 days after the material is accepted by the initial carrier.

The following requirements are not preempted to the extent that they are applied and enforced in the same manner as requirements in the HMR:

(1) 105 CMR 480.500(A) & (B) that the generator of medical waste to be transported in commerce must prepare a shipping paper or manifest that includes a description of the waste, the total quantity, and the type of container in which the waste is transported.

(2) 105 CMR 480.500(C) that the generator of medical waste must sign the manifest.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

In this determination, RSPA considers requirements of the Massachusetts Department of Public Health (Mass-DPH) applicable to the storage and disposal of ''infectious or physically dangerous medical or biological waste.'' These requirements in 105 CMR 480.000 *et seq.* are in addition to, and appear to differ from, the requirements in the HMR for the transportation of infectious substances, including regulated medical waste. (Massachusetts appears to have two sets of State regulations applicable to these materials, because it has also adopted the ''highway related portions of the Federal Hazardous Materials Regulations'' in 49 CFR parts 171–180 ''as regulations of the Registry of Motor Vehicles governing * * * the transportation of hazardous materials upon the public ways of the Commonwealth of Massachusetts in both intrastate and interstate commerce.'' 540 CMR 14.03.)

In its August 30, 2002 application, the Medical Waste Institute (the ''Institute'') applied for a determination that Federal hazardous material transportation law preempts certain packaging, labeling, and manifesting requirements for these waste materials on the ground that these requirements are not substantively the same as requirements in the HMR. The Institute specifically challenges requirements in:

—105 CMR 480.100(a) that storage containers must be ''rodent proof'' and ''fly-tight'' without defining those standards, which are not contained in the HMR

—105 CMR 480.200(C) & (E) that 3 mil bags must be used for waste that is transported off-site, and that pathological waste and contaminated animal carcasses must be double-bagged in 3 mil bags when transported off-site for disposal.

—105 CMR 480.300(A) that a distinctive label must be used on a container of ''sharp wastes * * * to indicate that it contains sharp waste capable of inflicting punctures or cuts.''

—105 CMR 480.300(B) that a label with the name, address, and telephone number of the generator must be placed on ''every container or bag of waste that has not been rendered noninfectious and which will be transported off the premises of the waste generator.''

—105 CMR 480.500 for use of a ''manifest'' containing specified information as a ''tracking document designed to record the movement of waste from the generator through its trip with a transporter to an approved disposal facility and final disposal.''

In a notice published in the **Federal Register** on December 12, 2002 (67 FR 76443), RSPA invited interested persons to submit comments on the Institute's application and address specific issues including the differences between the packaging requirements in 105 CMR 480.100 & 480.200 and the requirements in the HMR; the meaning of requirements for a ''rodent proof'' and ''fly-tight'' container; and whether the Massachusetts packaging, labeling, and manifesting requirements (i) are substantively the same as requirements in the HMR, (ii) present an obstacle to accomplishing and carrying out Federal hazardous material transportation law or the HMR, or (iii) are authorized by another Federal law. In response to that notice, Mass-DPH and the Maine Department of Environmental Protection (Maine-DEP) submitted comments. Essential Services Partnerships, LLC (ESP) and the Institute submitted rebuttal comments.

II. Federal Preemption

As discussed in the December 12, 2002 notice, 49 U.S.C. 5125 contains express preemption provisions that are relevant to this proceeding. 67 FR at 76444–45. As amended by Section 1711 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2319), 49 U.S.C. 5125(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, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland 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.

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 is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not ''substantively the same as'' a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Secretary of Homeland Security:

(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).

The November 2002 amendments to the preemption provisions in 49 U.S.C. 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. Thirty years ago, when it was 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 Congress expanded the preemption provisions in 1990, it 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 § 2, 104 Stat. 3244. (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.) A United States Court of Appeals has found that uniformity was the ''linchpin'' in the design of the Federal laws governing the transportation of hazardous materials. *Colorado Pub. Util. Comm'n* v. *Harmon,* 951 F.2d 1571, 1575 (10th Cir. 1991).

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 tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 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 will publish its determination in the **Federal Register**. *See* 49 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. 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

A. Federal Regulation of Medical Waste as a Hazardous Material, not as a Hazardous Waste

For more than 30 years, DOT has regulated the transportation of medical waste as a hazardous material, as RSPA explained in PD–23(RF), Morrisville, PA Requirements for Transportation of ''Dangerous Waste,'' 66 FR 37260 (July 17, 2001), decision on petition for reconsideration, 67 FR 2948 (Jan. 22, 2002). Because ''the majority of [medical] wastes are untreated and, thus, may potentially contain infectious substances, RSPA strongly believes that the public and transport personnel [should] be protected from the hazards of these materials during transportation.'' *Id.,* quoting from 56 FR 66124, 66142 (Dec. 20, 1991). Except for a two-year demonstration project in five States, the U.S. Environmental Protection Agency (EPA) has not regulated medical waste and, in a March 24, 1989 final rule (54 FR12326), EPA confirmed that it ''did not list infectious waste in the final rule'' listing hazardous wastes under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

The requirements in the HMR for transporting infectious substances, including regulated medical waste, were most recently revised in 2002 and are based on the classification criteria for infectious substances in the ''risk group'' table of the World Health Organization. 67 FR 53119 (Aug. 14, 2002); revision of effective date, 67 FR 54967 (Aug. 27, 2002); correction, 67 FR 57635 (Sept. 11, 2002). In these revisions, RSPA defined ''regulated medical waste'' as

> a waste or reusable material known to contain or suspected of containing an infectious substance in Risk Group 2 or 3 and generated in the diagnosis, treatment, or immunization of human beings or animals; or the production or testing of biological products. *Regulated medical waste* containing an infectious substance in Risk Group 4 must be classed as Division 6.2, described as an infectious substance, and assigned to UN 2814 or UN 2900 as appropriate.

49 CFR 173.134(a)(5). This category clearly includes the ''infectious or physically dangerous medical or biological waste'' subject to the Massachusetts requirements in 105 CMR 480.000 *et seq.* The Institute does not ''take issue'' with the definition of ''infectious or physically dangerous medical or biological waste'' in 105 CMR 490.010 but suggests that this definition may be preempted under 49 U.S.C. 5125(b)(1)(A) to the extent that it is not substantively the same as the designation, description, and classification of ''regulated medical waste'' in the HMR.

B. Summary of Application and Comments

In its application, the Institute contends that the challenged Massachusetts requirements are preempted because they are not substantively the same as requirements in the HMR. The Institute states that the HMR do not require ''testing or other proof to ensure that a container is rodent proof and fly-tight,'' and that the HMR do not require the use of 3 mil bags, but rather allow ''for a variety of packaging materials as long as the user can show that the packaging complies with the performance tests or requirements in the exceptions to the rules.'' The Institute states that the HMR do not require ''a special label to be used on sharps containers nor * * * a label to indicate information about the generator.'' The Institute also argues that ''manifesting by state and local governments for other than hazardous wastes is in conflict with the HMR,'' under RSPA's decision in PD–23(RF).

The Institute notes that ''[s]hippers and carriers should not be confused by the rules regardless of where they are conducting business nor should they be required to stop at every town and state border to repackage, re-label, and prepare new shipping documents.'' In response to comments from Maine DEP, the Institute argues that ''stopping at every state border to repackage, re-label, and re-create shipping papers would not prevent terrorist activity, but would provide a clear opportunity for such activity.''

Mass-DPH appears to accept the Institute's arguments with respect to the packaging and labeling requirements at issue. It states that it ''is contemplating making changes in its regulations to assure its approach is better coordinated with applicable federal requirements,'' and it addresses only ''those questions that are relevant to the claim that RSPA should find that the Department's manifesting requirements are preempted.'' Mass-DPH states that its manifest requirements differ from those considered in PD–23(R) because it does not require a ''specific form'' but rather that the generator prepare a ''tracking document'' that contains certain information, is signed by the generator, transporter, and disposal facility, and then is returned to the generator for retention for three years. Mass-DPH argues that, because its regulations do not ''extend or require the use of the Federal hazardous waste manifest,'' its manifest requirement is not preempted under the ''substantively the same as'' standard, and that, ''because the use of the Federal hazardous waste manifest has not been extended to materials not defined as hazardous waste, * * * the Massachusetts requirement in no way presents ''an obstacle to carrying out Federal hazmat law or the HMR.'''

In rebuttal comments, the Institute compares the specific requirements in 105 CMR 480.500 with the HMR. It notes that the requirement to include a ''description of the waste'' is not as specific as the requirements in 49 CFR 172.202, and that shippers (generators) appear to be omitting the packing group when they identify the ''type of container'' used. The Institute also states that the HMR (1) do not require a shipping paper to contain the address where a hazardous waste is to be delivered, (2) do not require the transporter or consignee to sign a shipping paper, (3) do not require the consignee to return a copy of the shipping paper to the offeror (generator), and (4) require an offeror to maintain a copy of the shipping paper (or an electronic image thereof) for 375 days, rather than copies ''as initially sent out and as returned by the disposal facility for a period of three years.''

Maine-DEP comments that the Massachusetts packaging, labeling and manifest requirements do not present an obstacle to complying with Federal hazardous material transportation law and the HMR, because the ''majority of these requirements are the responsibility of the generator of the medical waste and will not be a burden to the transporter.'' It states that these requirements ''have been put in place to protect public health and the environment,'' and that ''a valid argument has not been put forth to justify preempting these requirements for medical waste'' that ''has an inherent negative value.'' Maine-DEP also states that ''proper labeling, packaging, and manifest requirements for medical waste are consistent with the national effort to combat acts of bio-terrorism,'' and that it is important for emergency ''response personnel and regulatory inspectors be able to easily identify infectious medical waste.'' It asserts that ''[r]equiring the generator to initiate a manifest is a prudent step toward managing medical waste.''

ESP states that it has encountered ''discriminatory, arbitrary and capricious regulatory obstacles * * * stemming from conflicting adoption and interpretation'' of the regulations in 105 CMR 480.000 *et seq.* by the Massachusetts Department of Environmental Protection. While ESP states that the Mass-DPH regulations in ''105 CMR 480.000 *et seq.* are not inherently in conflict with the regulations of the DOT,'' ESP's greater concerns seem to be with the authority of ''each of the 350 communities in Massachusetts to issue a permit, require a fee and require and conduct a vehicle inspection of Interstate Transportation haulers of [regulated medical waste] in the form of an 'Offal Permit.' '' ESP states that a ''broader ranging federal preemption decision is needed from the DOT to provide public health regulators and hazardous material haulers with the ability to over come the solid waste permitting constraints and the 'NIMBY' mentality that infects both the implementation and interpretation of solid waste regulations when they are used for solid waste regulators for RMW management in the United States.''

C. Packaging and Labeling Requirements

The HMR provide that packagings used for the transportation of infectious substances must meet the general packaging requirements in subpart B of 49 CFR part 173 and also, in most cases, certain performance requirements in the HMR (such as a free-fall drop, stacking, leakproofness, water spray, or resistence to puncture by a steel rod, depending on the type of packaging and its contents). 49 CFR 173.196, 173.197. There are also specific requirements for the inner packagings that may be used when regulated medical waste is shipped in a ''large packaging,'' a ''wheeled cart,'' or a ''bulk outer packaging.'' 49 CFR 173.197(e). Among these inner packaging requirements are:

—Solid (or absorbed liquid) regulated medical waste may be placed in plastic film bags that (1) do not exceed 175 L (46 gallons), (2) are marked and certified as having passed specified standard test methods of the American Society of Testing and Materials for tear and impact resistance, and (3) are marked or tagged with the name and location of the offeror except when the entire contents of the large packaging, wheeled cart, or bulk outer packaging originates at a single location and is delivered to a single location.

—Liquid regulated medical waste must be in a rigid inner packaging that is no larger than 19 L (5 gallons).

—Inner containers for sharps must be puncture-resistant and, if larger than 76 L (20 gallons) must be capable of passing performance tests in the HMR at the Packing Group II performance level.

However, there is no requirement in the HMR that packagings used to transport medical waste must be ''rodent proof'' or ''fly-tight.'' In addition, plastic film bags are not authorized as single or outer packagings for medical waste; as inner packagings, these bags must meet the tear and impact resistence tests, but they need not be 3 mil thick and no wastes need be ''double bagged.''

The HMR require that a bulk packaging containing a regulated medical waste must be marked with the UN identification number of this material (UN3291) and the ''BIOHAZARD'' marking conforming to 29 CFR 1910.1030(g)(1)(i) in the regulations of the Occupational Safety and Health Administration. 49 CFR 172.302(a), 172.323. A non-bulk packaging for regulated medical waste must be marked with the proper shipping name (''Regulated Medical Waste'') and UN identification number. 49 CFR 172.301(a). The ''INFECTIOUS SUBSTANCE'' hazard warning label must also be affixed to the outer packaging, except when the transportation is by a private or contract carrier and the packaging is marked with the ''BIOHAZARD'' marking. 49 CFR 172.400(a), 173.134(c)(1)(i). (There is no placard specified for infectious substances, including regulated medical waste.). But the HMR do not require a distinctive label on sharps containers and, while inner packagings for regulated medical waste ''must be durably marked or tagged with the name and location (city and state) of the offeror,'' 49 CFR 173.197(e), there is no requirement for the outer packaging to have a label with the name, address, and telephone number of the generator of the waste. Indeed, in its final rule on ''Security Requirements for Offerors and Transporters of Hazardous Materials,'' 68 FR 14510, 14512–13 (Mar. 25, 2003),

RSPA decided not to adopt its earlier proposal to require a hazardous material shipping paper to include the name and address of the consignor and consignee of the shipment.

Accordingly, as applied to medical waste in transportation in commerce, or prepared for transportation in commerce, these packaging and labeling requirements in 105 CMR 480.100(a), 480.200(C) & (E), and 480.300(A) & (B) are not substantively the same as requirements in the HMR and, accordingly, are preempted under 49 U.S.C. 5125(b)(1)(B).

D. Manifest Requirements

The HMR provide that any person who offers an infectious substance, including regulated medical waste, for transportation in commerce must describe the material on a shipping paper that contains:

—The proper shipping name, hazard class or division, identification number, and packing group of the material, in that sequence (49 CFR 172.202 (a)(1)–(4), (b));

—the total quantity of the material (with an indication of the unit of measurement, except that the total quantity of a material in bulk packagings may be indicated by the number of packages, *e.g.*, ''1 cargo tank'') and the number and type of packages, before or after the previous description (49 CFR 172.202(a)(5)(c));

—the telephone number, that is monitored at all times the material is in transportation, of a person who is either knowledgeable of the material and has comprehensive emergency response information for that material or who has immediate access to a person who possesses such knowledge and information (49 CFR 172.201(d), 172.604(a)(3)); and

—a signed certification by the offeror that the material is ''properly classified, described, packaged, marked and labeled, and . . . in proper condition for transportation according to the regulations of the Department of Transportation'' (49 CFR 172.204(a)(1)).

As noted above, in a recent rulemaking, RSPA decided not to require the shipping paper to include the name and address of the consignor and consignee of the shipment. Moreover, there is no requirement in the HMR for the transporter or the consignee (delivery facility) to sign the shipping paper or for the delivery facility to return a copy of the shipping paper to the offeror. At present, the HMR also provide that the offeror and carrier of an infectious substance, including a regulated medical waste, must retain a copy of the shipping paper (or an electronic image thereof) for 375 days after the material is accepted by the initial carrier. 49 CFR 172.201(e), 174.24(b), 177.817(f). (DOT has proposed an amendment to 49 U.S.C. 5110 to increase to three years the period for retaining shipping papers.)

The requirements in 105 CMR 480.500(B) for the manifest to include a description of the waste, the total quantity, and the type of container in which the waste is transported, and the requirement in 105 CMR 480.500(C) for the generator to sign the manifest, appear to be substantively the same as requirements in the HMR and, therefore, are not preempted under 49 U.S.C. 5125(b)(1)(C). To the extent that these requirements are applied or enforced in a different manner than the requirements in the HMR, as suggested in the Institute's rebuttal comments, these requirements may be preempted under 49 U.S.C. 5125(a)(2) as an ''obstacle to accomplishing and carrying out'' the HMR.

On the other hand, the requirements in 105 CMR 480.500(C) for the generator to designate the address of delivery site, for the transporter and disposal facility to sign the manifest, and for the disposal facility to return the signed original to the generator, and the requirement in 105 CMR 480.500(E) for the generator to retain more than one copy of the manifest, or to retain any copy for more than 375 days after the material is accepted by the initial carrier, are not substantively the same as requirements in Federal hazardous material transportation law and the HMR and, accordingly, are preempted under 49 U.S.C. 5125(b)(1)(C). If and when 49 U.S.C. 5110 is amended to increase to three years the retention period for shipping papers, that requirement in 105 CMR 480.500(C) will no longer be preempted (so long as the three-year retention period is applied in the same manner as specified in the Federal hazardous material transportation law and the HMR).

IV. Ruling

Federal hazardous material transportation law preempts the following requirements because they are not substantively the same as requirements in the Federal hazardous material transportation law and the HMR:

(1) 105 CMR 480.100(a) that storage containers must be ''rodent proof'' and ''fly-tight'' when those containers are used for transporting medical waste in commerce, including preparing medical waste transportation in commerce.

(2) 105 CMR 480.200(C) that 3 mil bags must be used for waste that is transported off-site.

(3) 105 CMR 480.200(E) that pathological waste and contaminated animal carcasses must be double-bagged in 3 mil bags when transported off-site for disposal.

(4) 105 CMR 480.300(A) that a distinctive label must be used on a container of ''sharp wastes * * * to indicate that it contains sharp waste capable of inflicting punctures or cuts'' when those containers are used for transporting medical waste in commerce, including preparing medical waste transportation in commerce.

(5) 105 CMR 480.300(B) that a label with the name, address, and telephone number of the generator must be placed on ''every container or bag of waste that has not been rendered noninfectious and which will be transported off the premises of the waste generator.''

(6) 105 CMR 480.500(C) that the generator of medical waste must designate on a manifest the address of the delivery site, that the transporter and disposal facility must sign the manifest, and that the disposal facility must return the signed original to the generator.

(7) 105 CMR 480.500(E) that the generator must retain more than one copy of the manifest, and retain a copy of the manifest for more than 375 days after the material is accepted by the initial carrier.

The following requirements are not preempted to the extent that they are applied and enforced in the same manner as requirements in the HMR:

(1) 105 CMR 480.500(A) & (B) that the generator of medical waste to be transported in commerce must prepare a shipping paper or manifest that includes a description of the waste, the total quantity, and the type of container in which the waste is transported.

(2) 105 CMR 480.500(C) that the generator of medical waste must sign the manifest.

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).

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 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 action. 49 CFR 107.211(d).

Issued in Washington, DC on June 15, 2004.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–14075 Filed 6–21–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4470]

Pipeline Safety: Meeting of the Technical Pipeline Safety Standards Advisory Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; Meeting of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will convene a conference call of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) to vote on a proposed rule to require underwater periodic inspection of gas and hazardous liquid pipelines. The advisory committees will discuss the proposals and comments and vote on the reasonableness, cost-effectiveness, and practicability of the proposed regulation.

ADDRESSES: The conference call will be held on June 30, 2004, from 1 p.m. to 4 p.m., EST. The Advisory Committee members will participate via telephone conference call. Members of the public may attend the meeting at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC Room 6332–6336.

An opportunity will be provided for the public to make short statements on the topic under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493–0967, not later than June 25, 2004, on the topic of the statement and the length of the presentation. The presiding officer at the meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit comments [identified by DOT DMS Docket Number RSPA–03–15852] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN for this rulemaking). For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov.* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–40 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

You may obtain copies of this proposed rule or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, RSPA/OPS, (202) 366–4431 or Richard Huriaux, RSPA/OPS, (202) 366–4565, in regard to the subject matter of this notice.

SUPPLEMENTARY INFORMATION:

The TPSSC and THLPSSC are statutorily mandated advisory committees that advise the Research and Special Programs Administration's Office of Pipeline Safety on proposed safety standards for gas and hazardous liquid pipelines. These advisory committees are constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committees consist of 15 members—five each representing government, industry, and the public. The TPSSC and THLPSSC are tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

Federal law requires that RSPA/OPS submit cost-benefit analyses and risk assessment information on proposed safety standards to the advisory committees. The TPSSC and the THLPSSC evaluate the merits of the data and methods used within the analyses, and when appropriate, provide recommendations relating to the cost-benefit analyses.

The advisory committees will discuss the Notice of Proposed Rulemaking (NPRM) entitled, ''Pipeline Safety: Underwater Periodic Inspection'' (68 FR 69368) and vote on the reasonableness, cost-effectiveness, and practicability of the proposed regulation. The NPRM proposes to amend the pipeline safety regulations to require operators of gas and hazardous liquid pipelines to have procedures for periodic inspections of underwater pipeline facilities in waters less than 15 feet deep. These inspections will inform the operator if the pipeline is exposed or a hazard to navigation.

RSPA/OPS will issue a final rule based on the proposed rule, the comments received from the public, and the vote and comments of the advisory committees.