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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 16, 2009.

Address Comments to: Record Center, Pipeline and Hazardous Materials, Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5 117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 6, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
New Special Permits				
14932-N	TUV Rheinland Taiwan Ltd., Kaohsiung.	49 CFR 173.302a 173.304a and 180.209.	To authorize the manufacture, marking, sale, and use of non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinders for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4, 5).
14933-N	Tobin Scientific a division of Tobin & Sons Moving and Storage, Inc., Peabody, MA.	49 CFR 173.196	To authorize the transportation in commerce of certain Division 6.2 infectious substances packaged in portable Dewar flask cryogenic shipping containers, insulated liquid nitrogen refrigerated portable tanks, and automatic fill plug-in liquid nitrogen freezers by highway. (mode 1).
14934-N	Saint Louis University, St. Louis, MO.	49 CFR 173.196	To authorize the transportation in commerce of certain infectious substances in alternative packaging (freezers) by highway. (mode 1).
14935-N	E.I. DuPont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.29 and 173.242.	To authorize the one-way transportation in commerce of certain portable tanks and intermediate bulk containers containing the residue of a Class 3 hazardous material for cleaning so they can be repaired. (mode 1).
14937-N	Sears National Calibration Laboratory, Garland, TX.	49 CFR 180.213	To authorize the transportation in commerce of certain cylinders that have requalifier markings on a label embedded in epoxy instead of stamping. (mode 1).
14938-N	EP Container, Cerritos, CA.	49 CFR 173.12(b)(2)	To authorize the manufacture, marking, sale, and use of a UN standard 4G fiberboard box for use as the outer packaging for lab pack applications in accordance with § 173.12(b). (modes 1, 3).
14939-N	EP Container, Cerritos, CA.	49 CFR 173.12(b)(2)	To authorize the manufacture, marking, sale, and use of a UN standard 11 G fiberboard TBC for use as the outer packaging for lab pack applications in accordance with § 173.12(b). (modes 1, 3).
14940-N	Crown Aerosol Packaging, Philadelphia, PA.	49 CFR 173.306	To authorize the manufacture, marking, sale and use of non-DOT specification cans similar to a DOT 2P or 2Q inner metal receptacle except for wall thickness for the transportation in commerce of certain compressed gases. (mode 1).
14941-N	Columbia Analytical Services, Kelso, WA.	49 CFR 173.4a	To authorize the transportation in commerce of small quantities of Class 3 and Class 8 hazardous materials as excepted quantities under 49 CFR 173.4a except that the packagings were tested without the inner packagings being filled to 98% capacity. (modes 1, 4).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14944-N	Dean Foods Corporation, Broomfield, CO.	49 CFR 178.33b	To authorize the transportation of Specification 2S inner nonrefillable plastic receptacles containing an aerosol food product that was testing using a modified test protocol. (modes 1, 4, 5).

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0204 (PD-33 (F))]

City of Boston Requirements for Highway Routing of Certain Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), United States Department of Transportation (DOT).

ACTION: Notice of administrative determination of preemption.

Applicants: American Trucking Associations, Inc. and Massachusetts Department of Highways.

Local Laws Affected: Massachusetts Ordinances of 1979, Chapter 39, Document 78; the City of Boston Regulations Controlling the Transportation of Hazardous Materials, and the Traffic Rules and Regulations of the City of Boston.

Applicable Federal Requirements: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and FMCSA regulations at 49 CFR part 397.

SUMMARY: Federal hazardous material transportation law preempts the following highway routing designations of the City of Boston Regulations Controlling the Transportation of Hazardous Materials:

1. The Traffic Rules and Regulations of the City of Boston, Article VII, section 8B, Hazardous Materials Route; and

2. The *de facto* ban on hazardous materials transportation through the City of Boston due to the change in administration of the City's hazardous materials permitting system.

DATES: *Effective Date:* This preemption decision is effective on May 17, 2010.

Petitions for Reconsideration of this preemption decision must be submitted to the FMCSA Administrator no later than December 7, 2009.

FOR FURTHER INFORMATION CONTACT: James Simmons, Chief, Hazardous Materials Division (MC-ECH), (202) 493-0496, FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590, or

at james.simmons@dot.gov, or Charles Fromm, Assistant Chief Counsel, Office of Chief Counsel, Enforcement and Litigation Division (MC-CCE), (202) 366-3551, FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590, or at charles.fromm@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

American Trucking Associations, Inc. (ATA) and the Massachusetts Department of Highways (Mass Highway) applied for an administrative determination concerning whether Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, and FMCSA regulations at 49 CFR part 397 preempt certain hazardous material routing requirements that have been established or modified by the City of Boston (the City or Boston). The FMCSA published notice of ATA's application in the **Federal Register** on August 8, 2008. 73 FR 46349. The FMCSA published notice of Mass Highway's application in the **Federal Register** on September 2, 2008. 73 FR 51335. Both applications were consolidated into one docket because of their overlapping issues. Comments and rebuttal comments were received on the consolidated docket on or before December 1, 2008.¹ FMCSA received 17 comments and one rebuttal comment generally or specifically in support of the position that the City of Boston should have complied with the current Federal regulations regarding hazardous material highway routing designations but failed to do so. One comment and one rebuttal comment were received, both from the City of Boston, arguing that the City of Boston's hazardous material routing designations were in compliance with applicable statutes and

should not be preempted. On March 3, 2009, the FMCSA published a notice of delay in making the preemption decision to allow additional time for fact-finding and legal analysis of the issues raised in the preemption applications. 74 FR 9328.

ATA's preemption application submits that the City of Boston made two impermissible hazardous material routing designations regarding the transportation of non-radioactive hazardous material (NRHM).² The first is a change in the designated hazardous material route that resulted from construction of the Central Artery Tunnel (CA/T), also known as "the Big Dig," in downtown Boston. The second is a change in Boston's administration and use of its hazardous material permitting program.

With respect to the City's hazardous material route change, ATA alleges that Boston did not properly comply with Federal requirements, discussed herein, for the establishment or modification of a hazardous material route when the City began enforcing a new hazardous material route on July 3, 2006. Due to various road changes stemming from the Big Dig construction project, the City altered its hazardous material route by amending a section of the City of Boston Traffic Rules and Regulations. This route change relates to transportation of certain hazardous materials for vehicles having a point of origin or destination within the City of Boston.³ The practical effect of the route change is to move hazardous material vehicle traffic from Commercial Street to Cross Street in downtown Boston. According to comments from the City of Boston (Boston Comments), this shift in route is one roadway over and was done to

¹ Comments and/or rebuttal comments were received from the following: American Trucking Associations, Associated Industries of Massachusetts, Brewer Petroleum Service, Inc., C. White and Son Inc., City of Boston, Dangerous Goods Advisory Council, Dennis K. Burke, Inc., DJ Cronin, Institute of Makers of Explosives, J&S Transport Co., Inc., J.P. Noonan Transportation, Inc., Lighter Association, Inc., Massachusetts Motor Transportation Association, Massachusetts Oilheat Council, National Tank Truck Carriers, Inc., P.J. Murphy Transportation, Inc., Salvoni Transportation and Triumvirate Environmental Incorporated.

² NRHM is defined at 49 CFR 397.65 as "[a] non-radioactive hazardous material transported by motor vehicle in types and quantities which require placarding, pursuant to Table 1 or 2 of 49 CFR 172.504."

³ Presumably, this same route would also be used for any hazardous materials vehicles authorized by permit to travel through the City of Boston, in addition to those vehicles with a point of origin or destination within the City. As discussed below, however, the City has not issued any permits for through transportation of hazardous material since the route change took effect, so it is unclear which routes would be approved for through transportation.