

Federal Law Governing Routing of Household Goods (Non-HazMat) and Non-Radioactive Hazardous Materials (NRHM)

It has long been established that the federal government, on the basis of interstate commerce, has taken the lead role in the designating of truck routes. Accordingly, federal law and regulations have generally established framework processes by which local government, state or otherwise, can make routing decisions. Federal law has a separate framework for the approval of routing for household goods and NRHM. For NRHM, federal regulations lay out a specific process to be followed by the designated state or local authority. In the case of household goods or non-hazardous materials, the federal government has created a less strict process which is overseen by the state transportation authority. This white paper provides a very brief overview of the two complex processes.

Household Goods / Non-Hazardous Materials

Under the applicable provisions of the Surface Transportation Assistance Act (“STAA”), local governments are prohibited from denying reasonable access to trucks. 49 U.S.C. § 31114. Further, under the STAA, trucks transporting household goods must have access to points of loads and unloading. 49 U.S.C. 31114(a)(2) and 23 C.F.R. 6 658.19(a). A municipality, if legally trying to create citywide or even specific route exclusions, cannot unilaterally declare that limited truck routes exist within its confine. 23 C.F.R. § 658.11(d)(1). A local municipality must petition the Governor of the Commonwealth, through his representative the Massachusetts Department of Transportation (“MassDOT”), for truck route and time exclusions. *Id.* MassDOT then works with the local municipality to conduct a study which contemplates, among other things, the volume of heavy commercial vehicles, alternative routes, the condition of the pavement, and many other factors. The state’s request is then forwarded to the Federal Highway Administration (“FHWA”) – this approval by FHWA constitutes the final decision of the United States Department of Transportation. 23 C.F.R. § 658.11

Non-Radioactive Hazardous Materials

While states maintain a role in designating hazardous materials routes, to preserve the federal authority over this activity, Congress included language providing for federal preemption of any state, local or territory hazardous materials route established after 1994 that did not follow an appropriate review and study process. 49 USC § 5125. Pursuant to this shared authority, “a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).” 49 U.S.C. § 5125(c)(1) (emphasis added).

The standards required by 49 U.S.C. § 5112(b) for establishing highway routing requirements for non-radioactive hazardous materials (“NRHM”) are set forth in 49 CFR part 397, subpart C, and apply to any designations established or *modified* on or after November 14, 1994. *See* 49 CFR § 397.69(a) (*emphasis added*). A State, a political subdivision or Indian tribe must follow these standards, promulgated by the Federal Motor Carrier Safety Administration (“FMCSA”), when establishing highway routing requirements for hazardous materials. The procedures and standards include, but are not limited to: notice to the public for comment (49 CFR §397.71(b)(2)); ensuring through routing between adjacent areas (49 CFR §397.71(b)(4)); allowing reasonable access to points of loading and unloading (49 CFR §397.71(b)(7)); a requirement for the state designated “routing agency” to ensure compliance with federal regulations, if a political subdivision seeks to create a NRHM route (49 CFR §397.71(b)(8)); conducting a complete analysis and review, including but not limited to effects on affected persons and localities, among other factors. (49 CFR §397.71(b)(9)). The designated “routing agency” of the Commonwealth is MassDOT. *See* 49 CFR § 397.65. (Note: due to the nature of radioactive hazard materials, the factors are weighed depending on the specific material and locale.)

In both circumstances, routing restrictions created through means other than the processes highlighted above will lead a route to be declared preempted or invalid. In certain circumstances, the federal government has threatened to withhold federal highway funds from impacted jurisdictions to force adherence to the appropriate routing process. In rare circumstances, federal agencies have assumed direct control and oversight over a state or local routing process.