operating in California that is in compliance.

SPCMA concludes that § 25501.3 should be preempted because the requirement that handlers of hazardous materials comply with Chapter 6.95 is in addition to and different from Federal hazmat law and HMR requirements, and is an obstacle to accomplishing and carrying out those Federal requirements.

In its comments, CWTI agrees with SPCMA that loading and unloading operations constitute ''handling,'' which CWTI argues is a ''covered subject area.'' Specifically, CWTI states that,

> Congress recognized the importance of loading and unloading operations to ensure the safety of hazardous materials in transportation when it included ''packing, repacking, (and) handling * * * of hazardous materials'' as one of several regulatory subject areas reserved to the federal government. Non-federal requirements, unless they are ''substantively the same'' as the HMRs, are preempted.

Nevertheless, CWTI acknowledges that Congress limited the preemptive reach of Federal hazmat law to those non-Federal requirements that are not ''otherwise authorized by Federal law.'' CWTI notes that both SARA Title III, 42 U.S.C. §§ 11001, *et seq.*, and § 112(r) of the CAA Amendments, 42 U.S.C. 7412(r),

> Impose requirements on persons and facilities that handle hazardous materials with varying provisions for separate state action. [CWTI] thinks that the impact of these statutes, whether at the federal, state, or local level, cannot be avoided for facilities and operations handling hazardous materials that are not ''in transportation.''

HASA supports SPCMA's request for preemption and comments that the provisions of Chapter 6.95, as implemented by Los Angeles County through LACoC Titles 2 and 32, are applied and enforced ''as soon as the tank car containing liquefied chlorine is moved by the railroad from the railroad right-of-way to [HASA's] property and are applied and enforced on a continuous basis until the unloaded tank car is moved from [HASA's] property back to the railroad right of way.'' HASA further asserts that the provisions of Chapter 6.95 are applied and enforced against the railroad while the railroad is moving the car both onto and off of HASA's property.

ATA also believes that Federal hazmat law preempts § 25501.3. It urges RSPA to find that ''transportation ends and storage begins when the rail car or freight container is emptied of its contents, regardless of the time period it awaits the unloading process on the property of the ultimate user. In this instance, the [Federal hazmat law] prevails and should, therefore, preempt the [CHSC].'' Nevertheless, ATA also states that authority under Federal hazmat law ''does not extend to the storage and use (unloading) of hazardous materials once transportation has ended.'' ATA cites several cases interpreting the Interstate Commerce Act of 1887, 49 U.S.C. § 1 *et seq.* (repealed by Act, October 17, 1978, P.L. 95–473, § 4(b), 92 Stat. 1467, subject to certain exceptions) for the proposition that ''where on-site transportation is conducted at the location where compressed gases are used or have come to 'rest,' [Federal hazmat law] no longer prevails. A material comes 'to rest' when the intent of the shipper is fulfilled. It is the intent, with persistence, that governs when a product is in transportation.''

(3) Comments Opposing Preemption. Contra Costa states that Federal hazmat law addresses safety during transportation in commerce, while Chapter 6.95 continues attention to safety in the manufacturing process following that transportation. Contra Costa emphasizes throughout its comments that the intent of Chapter 6.95 is to regulate the users of hazardous materials, not the transporters. It states that Chapter 6.95 requirements apply to the ''handling of hazardous materials during processing and storage (*i.e.*, manufacturing), not during transportation.'' Contra Costa stresses that, contrary to statements made by SPCMA in its application, there is no provision of Chapter 6.95 that prohibits a carrier from delivering hazardous materials to a consignee. Also, it states that, contrary to SPCMA's assertions, there are many businesses and industries operating in Contra Costa County that are in compliance with Chapter 6.95.

Furthermore, Contra Costa states that even if there is an overlap of Federal hazmat law and Chapter 6.95 jurisdiction in the area of consignee loading or unloading of hazardous materials, the requirements of Chapter 6.95 are not incompatible or in conflict with the Federal requirements. Contra Costa indicates that § 25501.3 is consistent with the Environmental Protection Agency's (EPA's) intention to regulate tank car unloading to a manufacturing process. Specifically, Contra Costa notes that EPA issued a Notice of Proposed Rulemaking (NPRM) wherein it proposed a list of regulated substances and threshold quantities as required under § 112(r) of the CAA Amendments, 42 U.S.C. 7412(r). 58 FR 5102, January 19, 1993. Contra Costa states that, in the NPRM, EPA sets forth proposed requirements for chemical accident prevention steps that must be taken by the owner or operator of a stationary source. Contra Costa notes that EPA defines ''stationary source'' to include ''transportation containers that are no longer under active shipping orders and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading, or unloading.''

California OES states that, through local government agencies, the State of California has required over 75,000 businesses to complete hazardous material emergency planning activities. It states that any reduction of California's ability to regulate emergency preparedness would increase the potential for chemical disasters. California OES asserts that Chapter 6.95 requirements are substantially the same as those set forth in SARA Title III and § 112(r) of the CAA Amendments. It notes that those Federal statutes, like Chapter 6.95, require businesses to develop and implement emergency response plans and accidental release prevention programs, to submit inventories of hazardous materials used and stored at their facilities, and to notify government agencies of releases of hazardous materials.

California OES also argues that Chapter 6.95 defines ''handling'' and ''handle'' specifically not to include transportation in commerce, but rather to regulate only the use or potential use of hazardous materials at business facilities. For example, by providing that the immediate transfer of hazardous materials to or from a system or process is outside the scope of ''handling,'' as defined in § 25501.3, California OES believes Chapter 6.95 avoids regulating the loading or unloading of hazardous materials incidental to transportation in commerce. California OES further states that—

> SPCMA fails to point out that immediate transfers from ''approved portable tanks'' also are specifically excluded from the Code, which would include the common practice of unloading or loading a rail car, truck or marine vessel as regulated under [Federal hazmat law]. * * * SPCMA presents no evidence whatsoever demonstrating that loading or unloading from such approved tank cars cannot occur, and that the Code's exemption for such practices is therefore not applicable.

California OES indicates that §§ 25501.3 and 25503.7 (discussed below) were designed to close a loophole in the State's regulation of hazardous materials at fixed facilities. California OES states that in 1991 it came to the attention of emergency responders and the State legislature that