businesses in increasing numbers were avoiding the public safety and emergency preparedness provisions of State and Federal law by using unique storage methods for hazardous materials. The businesses then claimed that the materials were still in transportation in commerce and, thus, subject to Federal regulation. For example, California OES says that businesses handling bulk chemicals were using bulk containers, such as tank cars, for fixed long-term storage at their facilities while they gradually off-loaded the material. According to California OES, a facility also would shuttle a bulk container to different nearby locations within the facility and claim that it still was in transportation in commerce. California OES asserts that chlorine has been one of the key chemicals involved in this ''non-transportation related'' storage practice. It says that to address the significant public safety risk of these chemicals, and to reduce ambiguity, Chapter 6.95 was amended to clearly identify when a business became subject to emergency response requirements.

Finally, California OES asserts that ''the California Code does not explicitly prohibit a business of any type that handles hazardous materials from operating if it does not comply with the code, nor does it require permits for operation. Instead, the purpose of the California Code is to ensure that fixed facilities that handle hazardous material implement appropriate emergency planning and accident prevention programs.''

Congressman Miller states that a July 1993 chemical spill in Richmond, California, located in Contra Costa County, underscores the importance of denying SPCMA's request for preemption of certain provisions of Chapter 6.95. He indicates that communities such as Contra Costa County currently are covered by the risk management and prevention program (RMPP), under Title 2 of Chapter 6.95, which requires responsible management of Acutely Hazardous Materials (AHM), such as chlorine. He expresses concern that RSPA's preemption of provisions of Chapter 6.95 will set a policy precedent that could render the RMPP useless, thereby depriving communities of accident prevention measures and emergency response planning.

Assemblyman Campbell and 23 other State legislators also cite the July 1993 chemical spill in Richmond, California, as evidence of a need to strengthen California's risk management and prevention laws. The legislators indicate that the State has worked diligently to put in place statutory and regulatory programs designed to minimize the risk of chemical accidents, citing Chapter 6.95 as an example. They say that California's regulatory requirements are intended to reduce the risk of accidents and assist in emergency response in the event that an accident occurs. They maintain that it does not conflict with Federal hazmat law and the HMR.

(4) Analysis. As discussed above in the General Preamble, unless ''otherwise authorized by Federal law'' or unless a waiver of preemption is granted by the Department of Transportation (DOT), Federal hazmat law explicitly preempts any requirement of a State or political subdivision thereof or Indian tribe if it applies to the ''handling'' of hazardous materials and is not substantively the same as the Federal requirement. *See* 49 U.S.C. 5125(b)(1)(B). ''Handling'' includes the unloading of hazardous materials, incidental to transportation in commerce.

In 1986, Congress enacted SARA Title III, 42 U.S.C. §§ 11001, *et seq.*, which requires States to establish State and local emergency planning groups to develop chemical emergency response plans for each community. SARA Title III also requires facilities to provide information regarding the hazardous chemicals they have on site to States, local planners, fire departments and, through them, the public. This information forms the foundation of both the community emergency response plans and the public-industry dialogue on risks and risk reduction.

SARA Title III directly delegates to States the authority to engage in emergency response planning, through the use of information gathered from regulated facilities. SARA Title III does not apply to the transportation, including storage incident to transportation, of any substance or chemical subject to the requirements of Title III. *See* 42 U.S.C. 11047. In its regulations implementing SARA Title III, EPA states that a substance is stored ''incident to transportation'' if it is still under active shipping papers and has not reached the ultimate consignee. *See* 40 CFR 355.40(b)(4)(ii). Consequently, hazardous materials that are stored incident to transportation are not subject to the requirements of SARA Title III. On the other hand, regulated materials that have been delivered to the ultimate consignee's facility are not stored ''incident to transportation,'' as that term is defined by EPA, and are subject to SARA Title III requirements.

Pursuant to the requirement in § 302 of SARA Title III, 42 U.S.C. 11002, EPA has issued a list of extremely hazardous substances (which includes chlorine) and threshold planning quantities for each substance. California regulates all 360 of the extremely hazardous substances on EPA's § 302 list. A facility is subject to the requirements of SARA Title III if a substance on the § 302 list is present at the facility in an amount in excess of the threshold planning quantity established for the substance. 42 U.S.C. 11002(b)(1).

Among other requirements, facilities subject to SARA Title III must prepare and submit an emergency and hazardous chemical inventory form to the appropriate local emergency planning committee (LEPC), State emergency response commission (SERC), and fire department with jurisdiction over the facility. 42 U.S.C. 11022(a)(1). Section 303(d)(3) of SARA Title III, 42 U.S.C. 11003(d)(3), specifically requires the owner or operator of a facility to promptly provide to an LEPC, on request, information that the LEPC believes is necessary for developing and implementing an emergency plan. Thus, certain hazardous materials (including chlorine) that are on site at SPCMA members' facilities, in above-threshold quantities, awaiting consumption in the manufacturing process, are regulated under SARA Title III. Furthermore, SARA Title III specifically authorizes California, and all other States, to collect information regarding these materials, for emergency response purposes, from facilities that are subject to SARA Title III requirements.

Although SARA Title III governs emergency response planning, it does not mandate that facilities establish accident prevention programs. The CAA Amendments of 1990, P.L. 101–549, 104 Stat. 2399, amended § 112 of the Clean Air Act, 42 U.S.C. 7412, by adding a new subsection (r), which includes requirements related to chemical accident prevention. The goal of § 112(r) is to prevent accidental releases, from facilities, of regulated substances and other extremely hazardous substances to the air, and to minimize the consequences of releases of chemicals that pose the greatest risk.

Section 112(r) has a number of provisions. It establishes a general duty for facility owners or operators to identify hazards that may result from releases, design and maintain a safe facility, and minimize the consequences of releases when they occur. Section 112(r)(3) requires EPA to promulgate a list of at least 100 substances that are known to cause, or reasonably may be anticipated to cause, death, injury, or serious adverse effects to human health or the environment when released to air. EPA also is required to set thresholds for each listed substance. The list of regulated substances and thresholds,