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Part VI

Department of Transportation

Research and Special Programs Administration

Inconsistency Ruling No. IR-18; Prince Georges County, MD; Code Section Governing Transportation of Radioactive Materials; Notice of Decision on Appeal

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-29]

Inconsistency Ruling No. IR-18; Decision on Appeal; Prince Georges County, MD; Code Section Governing Transportation of Radioactive Materials

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

ACTION: Notice of decision on appeal.

SUMMARY: In response to the appeal of Prince Georges County from the findings made in Inconsistency Ruling No. IR-18 (52 FR 200, January 2, 1987), that Inconsistency Ruling is affirmed.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590 (Tel: 202/366-4400).

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(a) of the Hazardous Materials Transportation Act (HMTA) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a State or political subdivision thereof, which is inconsistent with any requirement of the HMTA or the Hazardous Materials Regulations (HMR) issued thereunder (49 CFR Parts 171-179). Section 107.209(c) of Title 49, Code of Federal Regulations sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent:

(1) Whether compliance with both the State or political subdivision requirement and the HMTA and the HMR is possible (the "dual compliance" test); and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings and decisions on appeal only address preemption issues under the HMTA and the HMR. They do not address issues of preemption arising under other statutes or under the Commerce Clause of the United States Constitution.

On May 5, 1983, the Government of Prince Georges County, Maryland (the County) filed an application for an administrative ruling seeking a determination as to whether Prince Georges County Code Section 18-187, restricting the movement of radioactive materials into, within, through, and out of the County, is inconsistent with the HMTA or the HMR.

On December 18, 1986, the Director, Office of Hazardous Materials Transportation (hereinafter the "Director" and "OHMT") issued Inconsistency Ruling No. 18 (IR-18), which was published at 52 FR 200 on January 2, 1987. That ruling determined that subsections (b)(2), (c), (d), (e) and (f) of Prince Georges County Code Section 18-187 are inconsistent with the HMTA and the HMR and therefore preempted by section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). The procedural regulations governing issuance of inconsistency rulings are codified in 49 CFR 107.201-107.211

On January 20, 1987, pursuant to 49 CFR 107.211, the County filed an appeal of IR-18 with the Administrator of RSPA. Comments opposing the appeal were filed by the Baltimore Gas and Electric Company

II. The Appeal: Issues and Decisions

A. Introduction

I am issuing this decision in my capacity as Administrator of RSPA. I have thoroughly considered all of the issues raised in the appeal and the comments on the appeal. All of the findings being appealed were discussed exhaustively by the Director in IR-18. I will respond only to the specific issues raised on appeal and generally will not reiterate the discussions in IR-18.

In its appeal, the County raises both general and specific arguments against the findings made in IR-18. I have considered the County's arguments in the order presented.

The County's general arguments are that (1) the HMTA and the HMR are not adequate to regulate the flow of hazardous materials through local jurisdictions, (2) the Director incorrectly assumes that the County's certificate requirement amounts to a routing rule which effectively redirects radioactive materials transportation, and (3) the Director incorrectly concludes that the County Code fails the dual compliance and obstacle tests.

The County's specific arguments challenge the Director's findings of consistency concerning the County's definitions and its requirements concerning communications, information, certification, bonds and penalties.

B. The County's General Arguments

1. The County's first general argument is that "[b]y its own admission, the DOT through the HMTA and HMR is not equipped to adequately regulate and monitor the flow of hazardous waste materials (radioactive material in particular) through local jurisdictions" and that, therefore, DOT should recognize a right in local jurisdictions to establish requirements to prepare safety measures in the event of an emergency.

In IR-18, the Director stated, in discussing the Federal-State relationship in the area of highway transportation safety, that "there are certain aspects of hazardous materials transportation that are not amenable to exclusive nationwide regulation," including safety hazards which are peculiar to a local area. DOT did not "admit" that it cannot adequately regulate but instead stated that "to the extent that nationwide regulations do not adequately address a uniquely local safety hazard, state or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard. The mere claim of uniqueness, however, is insufficient to insulate a non-Federal requirement from the preemption provisions of the HMTA." 52 FR 200. Thus, the Department does recognize a legitimate role for State and local governments in hazardous materials transportation, so long as the non-Federal requirement does not conflict with the national standards.

The County further asserts that "DOT's assumption that the HMTA and HMR are sufficient to assist the state localities in this effort is clearly erroneous." The Department has made no such assumption. The conclusions in IR-18 do not rely on the adequacy of the Federal regulations. Instead, the conclusions in IR-18 are based on the existence of Federal regulations governing specific areas of radioactive materials transportation safety with which the County's requirements are in conflict.

Furthermore, in adopting the HMR, the Department was implementing the express Congressional objectives underlying enactment of the HMTA: (1) "To protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 App. U.S.C. 1801); and (2) "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. 1192, 93d Cong., 2d Sess. 37 (1974)). While the

HMTA did not totally preclude State or local action in the area, Congress apparently intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR restricts the scope of authority historically exercised by State and local governments. The nature, necessity and number of hazardous materials shipments make uniformity of standards a critical factor in the safe transportation of these materials.

2. The County's second general argument is that the Director incorrectly assumed that the County certificate requirement amounts to a routing rule and in effect bans shipments on U.S. 301, a State-designated preferred route. The County argues that in order for a State or local "routing rule" to constitute an inconsistent requirement, it not only must "effectively redirect" the movement of hazardous materials but it must also "significantly 'restrict or delay' transportation," which the County argues its permit requirement does not do.

Appendix A to 49 CFR Part 177, defines a "routing rule" as "any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects."

It is important to understand that Appendix A is not a regulation, but a non-binding statement of agency policy. Thus, IR–18 did not rely upon Appendix A in finding the County's certificate requirement inconsistent, but instead relied on findings of inconsistency with specifically enumerated Federal regulations discussed in IR–18. In any event, the County's interpretation of Appendix A is incorrect. A "routing rule" is any action which effectively redirects *or* otherwise significantly restricts or delays transportation of hazardous materials. Thus, a State or local requirement only "redirecting" transportation constitutes a routing rule.

Furthermore, a local routing rule is not per se inconsistent. Paragraph III.B. of Appendix A provides that a local routing rule that applies to highway route controlled quantity radioactive materials is inconsistent with Part 177 if it prohibits or otherwise affects transportation on routes authorized by Part 177 or authorized by a State routing agency in a manner consistent with Part 177. In IR–18, the Director found the County's certificate requirement to be inconsistent because it would allow the County to ban shipments on State-designated preferred routes. As discussed in IR–18, Maryland has designated preferred routes in accordance with 49 CFR 177.825(b). A preferred route is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with the Department's guidelines. Maryland's routes include U.S. 301 and Interstates I–95 and I–495 which run through the County. The Director found that the "permit requirements of section 18–187 would circumvent the State's designation of U.S. 301 by providing the County with an almost unfettered ability to ban shipments on this State-designated route and thereby usurping the State's authority under 49 CFR 177.825(b); it also is inconsistent with that Federal regulation's requirement that highway route controlled quantity radioactive materials be carried on an Interstate System Highway in the absence of a state-designated route." 52 FR 204.

The County also argues that section 18–187 does not attempt to effectively redirect, restrict, delay, or even ban transportation of radioactive materials but is merely to provide notification. The purpose of the County's requirements, however well-intentioned, is not relevant. The County's certificate requirement has the *effect* of redirecting the movement of hazardous materials in order to avoid the County's inconsistent information and permit requirements. Moreover, as discussed at length in IR–18, the County's requirements would ignore the preferred highways designated by the State of Maryland pursuant to 49 CFR 177.825(b). The County argues that any decrease in use of U.S. 301 is attributable to the increased use of Interstates 95 and 495 which are designated (by Maryland) as primary routes and therefore are primarily used. The finding in IR–18 was not based on an actual measurement of traffic on the routes in question, nor is such a measurement required. It is sufficient that the County's requirements would have the effect of circumventing the State's designation of preferred routes and exporting the risk inherent in the transportation of radioactive materials to adjacent jurisdictions. For the reasons discussed above, I conclude that the Director correctly found that the County's certificate requirement is inconsistent with the HMTA and the HMR.

3. The County's third general argument is that the Director incorrectly concludes that the County's certificate requirement fails both the "dual compliance" and "obstacle" tests set forth in 49 CFR 107.209(c). The County asserts that "a transporter can comply with the County's Code certification requirements without violating any of the HMTA or the HMR" and that the certificate requirement "has not proven to redirect traffic to other jurisdictions nor to delay or restrict the transportation of radioactive materials, nor has it proven to be an undue burden or obstacle to the HMTA and HMR." The County also asserts that in IR–18 the Director found that a Michigan permit requirement similar to the County's requirement did not fail the "dual compliance" test, and therefore the County's requirement should not have failed the test.

The County is apparently referring to the statement in IR–8 that "a carrier which complied fully with the [Michigan] rules, thereby obtaining the necessary written approvals, could transport highway route controlled quantity radioactive material via preferred routes in Michigan, and thereby be in compliance with the Federal requirement as well. Consequently, application of the 'dual compliance' test reveals that it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the [Michigan] rules." 49 FR 46639, November 27, 1984.

In IR–18, the Director stated that "the essence of section 18–187 is found in subsection (c)(1), which prohibits the transportation in the County of certain classes of radioative materials" unless a County certificate is obtained. 52 FR 202. The Director determined that the County requirement had, in effect, created a new hazard class by the imposition of additional requirements on a subgroup of radioactive materials. The Director further stated that "the regulations here fail to distinguish between highway route controlled quantity radioactive materials, which are regulated under 49 CFR 177.825(b), and radioactive materials for which placarding is required, which is [sic] regulated under 49 CFR 177.825(a). The effect of these County provisions is to bar transportation of radioactive materials which is in compliance with the HMTA and the HMR unless a County Certificate is obtained". 52 FR 203. Thus the Director found that the County's certificate requirement fails the "dual compliance" test because compliance with the Federal requirements would cause the non-Federal requirements to be violated.

I disagree. In this case, as in IR–8, a carrier can comply with the Federal regulations without violating any of the County regulations, and apparently can comply with the County regulations

without violating any of the Federal regulations. Thus, there is no failure to meet the "dual compliance" test. Therefore, I find that the Director erred in determining that the County's certificate requirement violated the "dual compliance" test. However, the Director also found that the County's hazard class designations, extensive advance notification and information requirements, permit processing discretion, and other provisions exceed the Federal requirements, create additional burden or delay, "prevent" presumptively safe shipments (because they are undertaken in compliance with the HMR), and thus are an obstacle to accomplishment of the HMTA and HMR for the reasons detailed in IR-18 itself. 52 FR 203. Accordingly, I affirm the finding that the County's certificate requirement fails the "obstacle" test and thus is inconsistent with the HMTA and the HMR.

C. The County's Specific Arguments

1. Subsection 18-187(b)(2)

The County appeals the finding in IR-18 that subsection (b)(2), the definition of "large quantity radioactive materials", is inconsistent with the HMTA and the HMR.

The term "large quantity radioactive materials" is defined in Section 18-187(b)(2) as "a quantity the aggregate radioactivity of which exceeds that specified in Volume 10 of the Code of Federal Regulations (CFR) Part 71 entitled 'Packaging of Radioactive Material for Transport'; section 71.4(f)". When the County adopted this regulation, the HMR contained a similar definition. However, in a final rule issued on July 1, 1983 (Docket No. HM-169; 48 FR 10218), the term "highway route controlled quantity" was substituted for "large quantity radioactive materials".

The County argues that not only is the County's definition "consistent appearing", it is based on a Federal definition and is therefore consistent. The Director concluded that "use of the superseded terminology could cause confusion and undermine compliance with the HMTA and the HMR". I concur with the Director's conclusion. In a field so extensively regulated by the Federal Government, it would be confusing to those attempting to comply with the HMTA and the HMR to try to distinguish between two different, albeit similar, terms for radioactive material. Such confusion lessens the possibility of compliance.

2. Subsection 18-187(c)(1)

The County appeals the finding in IR-18 that subsections (c)(1)(A-G) (erroneously referred to as (a)(2)(A-G) on page 6 of the Appeal) constitute a system of hazard class designations that is inconsistent with the HMTA and the HMR. The County argues that in IR-8 and IR-12 the Director relied improperly on IR-5 and IR-6, and therefore in IR-18 he should not have relied on the erroneous rulings in IR-8 and IR-12.

The County contends that in IR-8 and IR-12, and in turn IR-18, the Director should not have relied on IR-5 because IR-5 concerned non-radioactive materials hazard classes rather than radioactive materials, and because the definitions in IR-5 overlapped the Federal definitions, whereas the County's definition "merely creates a subclassification".

The rationale articulated in IR-5 and reiterated in IR-8, IR-12 and IR-18 applies without regard to whether the hazard classes concern non-radioactive or radioactive materials, or whether the non-Federal hazard classes overlap or constitute a subset of the Federal hazard classes. The Congressional intent is the promotion of nationwide uniformity in hazardous materials transportation. It is well-settled that hazard class definitions "are the starting point for determining the applicability of nationally uniform requirements", (IR-6, 48 FR 760, January 6, 1983) and that "if every jurisdiction were to assign additonal requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety". (IR-12, 49 FR 46651, November 27, 1984.)

The County also argues that the Director should not have relied on the erroneous ruling in IR-8, which in turn relied on IR-6, because IR-6 dealt with overbroad and subjective non-Federal definitions, whereas the County contends its regulations are clear and unambiguous.

In IR-18, the Director cited IR-8 (not IR-6) for the correct proposition that the Federal role in the definition of hazard classes is exclusive. As stated above, State and local requirements assigned on the basis of hazard classes that differ from the Federal hazard classes increase the likelihood of confusion, lessen the possibility of compliance, and thus decrease public safety. The mere fact that others' definitions arguably may have been more inconsistent does not authorize the County's inconsistent hazard class definitions. Therefore, the County's argument is without merit.

The County argues specifically that subsection 18-187(c)(1)(E), the classification for large quantity radioactive materials, should not have been ruled inconsistent.

For the reasons discussed above under subsection (b)(1), I affirm the Director's finding in IR-18 on this point. The County also contends that subsection 18-187(c)(1)(F) concerning fissile class III materials should not have been ruled inconsistent. The County appears to argue that its hazard class, though different in phraseology than 10 CFR 71.4(d)(3), is a more accurate interpretation, and thus furthers the goal of safe transportation. Again, the Federal role in hazard class definition is exclusive, and the County's argument must fail.

3. Subsections 18-187(c)(2) and 18-187(c)(3)

The County appeals the finding in IR-18 that subsections (c)(2) (D) and (E) fail the dual compliance test because they violate the Federal prohibition against disclosure to non-law enforcement local authorities of schedules and itineraries for specific shipments of specified quantities of radioactive materials which is contained in 10 CFR 73.21 and incorporated by reference in 49 CFR 173.22(c). The County argues that there is only one office to which the information is to be reported, that its employees are local law enforcement authorities, that it is erroneous to assume that they would disclose the information to unauthorized personnel, and that, therefore, the subsections do not fail the "dual compliance" test. While it is true that subsection (c)(2) requires the information to be submitted to a single entity, the County Executive, it does not specify that the information is to be limited to the law enforcement personnel of that office. The County has not provided any information to show that all the employees of the County Executive are law enforcement personnel. Absent such a showing, I concur with the Director's finding in IR-18.

The County also contends that the Ruling erred in finding subsection (c) inconsistent without separately discussing subsections (c)(2)(A-C), (c)(2)(F-G), and (c)(3). Subsection (c)(2) requires information concerning the names of the shipper, carrier, and designee (subsections A, B and F); the type and quantity of radioactive material (subsection (C)); and any other information required by the County Executive which is reasonably related to

the above information (subsection G). With the exception of subsection G, all of this information is required to be provided in advance to the Maryland Governor's Designated Representative for receipt of advance notification of nuclear waste shipments. The requirement is set forth as part of the Nuclear Regulatory Commission (NRC) physical protection regulations (10 CFR 73.37(f)). Section 173.22(c) of the HMR requires shippers to comply with a physical protection plan established under the NRC requirements or equivalent requirements approved by OHMT. To the extent that State or local rules require the submission of the same information as required by the Federal rules, they are redundant, and such "redundancy does not further transportation safety." (IR–2, 44 FR 75571, December 20, 1979). Therefore, I find that subsections (c)(2) (A–C), and (F) constitute obstacles to the accomplishment of the HMTA and are inconsistent.

Although the Director did not specifically discuss in IR–18 every information requirement in subsection (c)(2), he did quote subsection (c)(2)(G), among others, in concluding that the "County's permit system includes extensive and open-ended advance notification requirements [which] exceed Federal requirements, create an additional burden or delay and thus are inconsistent with the HMTA and the HMR" (citations omitted). 52 FR 203, January 2, 1987.

Subsection (c)(3) provides that no certificate may be issued for the transportation of radioactive waste or spent fuel primarily or solely for storage or disposal in the State of Maryland unless the storage or disposal is authorized under State law. Generally, local requirements for compliance with otherwise consistent State requirements are consistent. IR–3 (46 FR 18918, March 26, 1981). While I have not examined the State requirements and do not offer an opinion of their consistency with the HMTA, reliance by local jurisdictions on common State and Federal requirements is not inconsistent with the HMTA. However, because the Director IR–18 found the County's certificate requirement as a whole inconsistent, it was not necessary to make a determination regarding each individual requirement. Therefore, I affirm the Director's finding in IR–18 that subsection (c) is inconsistent with the HMTA.

4. Subsections 18–187(d)(1)(A), 18–187(d)(2), and 18–187(d)(5)

The County appeals the finding in IR–18 that to the extent subsection (d)(1)(A) "represents a local packaging requirement, it is inconsistent." 52 FR 203 (January 2, 1987). The County asserts that "this provision merely requires a 'showing' that the packaging, labeling, and transporting will be in compliance with the Federal regulations. There are absolutely no additional or separate local requirements enumerated in the provisions of the Code nor can this Ruling assume that such requirements exist."

Contrary to the County's assertion, subsection (d)(1)(A) requires a showing that radioactive material has been or will be packaged in conformity with Federal regulations or the regulations of "any other Federal or *County agency having jurisdiction*" (emphasis added). The Director found subsection (d)(1)(A) inconsistent only to the extent that it represents a local packaging requirement. State and local governments may not issue packaging requirements that differ from or add to Federal ones. IR–2 (44 FR 75568, December 20, 1979). Requiring a showing of compliance with unspecified county packaging regulations violates the "dual compliance" test. Therefore, I find the Director correctly determined subsection (d)(1)(A) to be inconsistent with the HMTA and the HMR to the extent it represents a local packaging requirement.

The County also asserts that the Ruling erred in not specifically discussing subsections (d)(2) and (d)(5), and requested that if the Director intended to declare these sections inconsistent, the same argument made in the Appeal regarding certification should be applied to those sections.

Subsection (d)(2) provides that "no certificate shall be issued without a finding that appropriate procedures and precautions exist to protect Prince Georges County and its inhabitants in the event of a transportation accident." The Director discussed subsection (d)(2) (erroneously referring to it as subsection (d)(3)), in stating that "among other fatal defects in section 18–187 are * * * vague prohibitions against such transport in the absence of findings of adequate emergency response capability (section 18–187(d)(3) [sic])." The Director found subsection (d)(2), inconsistent, stating:

> With respect to emergency response, for example, the County neither can shift its own responsibility to carriers, IR–2 (44 FR 75565, December 20, 1979), nor hold carriers hostages to the County's case-by-case determination of its emergency response capabilities. These requirements conflict with the comprehensive OHMT/NRC regulatory system for the transportation of radioactive materials and constitute obstacles to the achievement of the HMTA and HMR. 52 FR 203.

I concur and affirm the Director's finding on this point.

Subsection (d)(5) requires the County Executive to adopt regulations to carry out Code Section 18–187 and establish a fee schedule. The Director did not discuss subsection (d)(5) because it was not necessary to reach that issue in determining the County's certificate requirement as a whole to be inconsistent with the HMTA and the HMR. Generally, regulations to implement and fees to fund inconsistent requirements are themselves inconsistent. IR–8(A), 52 FR 13006 (April 20, 1987); IR–17(A), 52 FR 36200 (September 25, 1987). For the reasons discussed in IR–18 and reiterated in this decision, the County's certificate requirement is inconsistent with the HMTA. Therefore, I find subsection (d)(5) is inconsistent because it is a requirement to implement and fund inconsistent provisions.

5. Subsections 18–187(d)(3) and 18–187(d)(4)

The County appeals the Director's finding in IR–18 that subsection (d)(3) is inconsistent with the HMTA and the HMR. Sbsection (d)(3) provides that the certificate "shall be granted upon a finding that the transporting of such [radioactive] material shall be accomplished in a manner necessary to protect public health and safety of the citizens of the County." The Director found this provision vague and an obstacle to the achievement of the HMTA and the HMR. The County contends that the Director erroneously assumes that even if all the criteria are met, the County still has the discretion to deny the certificate, when in fact, the County has never refused to give a certificate to a carrier who has complied with the provisions of Section 18–187.

The finding was not based on any such erroneous assumption. The finding was based on the vagueness of the threshold criteria themselves and the unbridled discretion to determine when those criteria are satisfied. Therefore, I find that the Director correctly determined subsection (d)(3) to be inconsistent.

The County also appeals the finding that subsection (d)(4) is inconsistent because of the open-ended authority to require escorts. The County argues that its escort provision does not require more than the Federal regulations, and is not a "requirement" but merely an alternative to the County's authority to change dates, routes, and times.

Subsection (d)(4) provides in relevant part:

> The County Executive or his designee may require changes in dates, routes, or time for the transporting of such material or the use of escorts in the transporting of such material if necessary to protect the public health and safety.

The escort provision clearly is a requirement (because, if exercised by the County Executive, it imposes an obligation to act) that fails the "dual compliance" test. As discussed in IR–18, a State or local requirement identical to or facilitating the requirement of the Nuclear Regulatory Commission for front and rear escorts for certain shipments is consistent, but a requirement which goes beyond the NRC's escort provisions is inconsistent with the HMTA and the HMR. 52 FR 203. In the instant case, the County provision does not specify the type or extent of escorts, who is to furnish the escorts, or when they would be required. In short, the County provision is neither identical to, nor does it facilitate compliance with, the Federal requirement. Therefore, I affirm the Director's finding on subsection (d)(4).

6. Subsection 18–187(e)

The County appeals the finding in IR–18 that subsection (e) is inconsistent because it is an indemnification or insurance requirement for transporting radioactive materials that is different from, or in addition to, the Federal requirements. Subsection (e) allows the County to impose a bond in an amount to be determined, or to waive the bond if the applicant proves it has made adequate provision for indemnifying the County for "the costs of cleanup, decontamination, health care, and related expenses" arising from radiation exposure. The County argues that the Director improperly relied on IR–11 and IR–15 by erroneously assuming that the County's bond requirement directly results in the diversion of shipments into other jurisdictions and thus poses an obstacle to the accomplishment of increased hazardous materials transportation safety.

The Director did not rely on IR–15 to find subsection (e) inconsistent. The Director cited the finding in IR–11 (49 FR 46647, November 27, 1984) which relied on the reasoning in IR–10, not IR–15, to reach the conclusion that where a local insurance requirement is not quantified, the effect is to divert shipments to other jurisdictions. As discussed in IR–18, there is no indication that compliance with the motor carrier financial responsibility provisions of 49 CFR Part 387 (which is required by 49 CFR 177.804 of the HMR) would be deemed "adequate" by the County.

The County also contends that the Director erroneously assumed that the County imposes bonds that are higher than allowed by the HMTA and HMR, when in fact the bonds required do not exceed those allowed by the HMTA and the HMR. The County has incorrectly drawn the inference that if the maximum local bond requirements are lower than the Federal requirements then there is no inconsistency. As plainly stated in IR–18, local bond requirements *in addition to* the Federal requirements are inconsistent. The County's bond provision would authorize the County to require a bond of unspecified amount if the County determines that the carrier's level of financial responsibility is not adequate. Such a requirement allows the *ad hoc* exercise of local discretion which may have the effect of diverting shipments to other jurisdictions and increasing the overall risks of radioactive materials transportation. For the reasons discussed above, I affirm the Director's in IR–18 that subsection (e) is inconsistent with the HMTA and the HMR.

7. Subsection 18–187(f)

The County appeals the finding in IR–18 that subsection (f), concerning fines for violations of Section 18–187, is inconsistent. The Director found that while penalties for violating consistent requirements are themselves consistent, penalties for violating inconsistent requirements are inconsistent. 52 FR 204. For the reasons discussed above, I affirm the finding that subsection (f) is inconsistent because it constitutes a penalty for violating inconsistent requirements.

III. Conclusion

For the reasons indicated above and for the reasons set forth by the Director in IR–18 itself, I affirm the determination of the Director of the Office of Hazardous Materials Transportation in IR–18 that subsections (b)(2), (c), (d), (e) and (f) of Prince George's County Code Section 18–187 are inconsistent with the HMTA and the HMR. This decision on appeal constitutes the final administrative action in this proceeding.

Issued in Washington, DC, on July 21, 1988.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 88–17163 Filed 7–28–88; 8:45 am]

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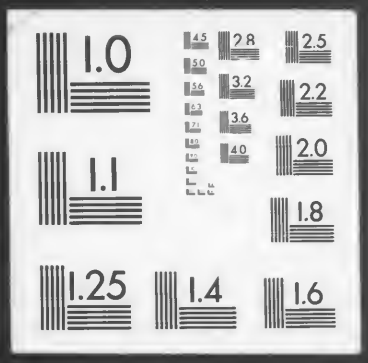
S.J. Res. 318/Pub. L. 100-375

To designate the week of July 25-31, 1988, as the "National Week of Recognition and Remembrance for Those Who Served in the Korean War." (July 26, 1988; 102 Stat. 880; 2 pages) Price: $1.00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