

U.S. Department of Transportation Inconsistency Rulings

Introductory Note

Part I of this appendix describes 16 inconsistency rulings and one nonpreemption determination issued by the U.S. Department of Transportation (DOT) as of May 1986. Court actions that have been brought pertaining to these cases are also noted. Each summary indicates whether the State and local requirements reviewed by

DOT were found to be inconsistent or consistent with the Hazardous Materials Transportation Act (HMTA); however, the basis for each decision is not specified. Instead, Part 11 of this appendix, a table, summarizes the reasons underlying DOT's conclusions for each of the major requirement types considered in the inconsistency rulings.

PART 1: STATE AND LOCAL REQUIREMENTS CONSIDERED IN DOT INCONSISTENCY RULINGS

Inconsistency Ruling 1 New York City

Associated Universities, Inc. (AUI), operators of Brookhaven National Laboratories located in Upton, Long Island, shipped spent fuel over a 6-week period each year prior to 1976. This practice ceased after New York City passed an ordinance which became effective on January 5, 1976, that effectively banned most commercial shipments of radioactive materials in or through the city. AUI subsequently used a water crossing from Long Island to Connecticut until local jurisdictions in Connecticut prohibited the use of their roads. The Brookhaven shipments have been suspended since that time. AUI filed an inconsistency ruling application with DOT on March 1, 1977, to determine whether the New York City restrictions were inconsistent. DOT published a decision on April 20, 1978, concluding that there was no identifiable requirement in the HMTA or associated regulations providing a basis for a finding of inconsistency (43 F.R. 16954). However, DOT announced that it intended to examine the need for Federal routing requirements. On January 19, 1981, DOT issued Federal routing requirements for high-level radioactive materials such as spent nuclear fuel, Docket HM - 164; however, transportation modes alternative to the use of highways were not addressed.

New York City filed suit against DOT on March 25, 1981, challenging the validity of the Federal routing rule. The District Court opinion, issued on February 19, 1982, found that although HM-164 was procedurally within the scope of DOT'S authority, it violated the HMTA and the National Environmental Policy Act (NEPA) as it did

not address the problems posed by low-probability, high-consequence accidents. Moreover, the District Court held that the HMTA required DOT to compare the relative safety of different transport modes (536 F. Supp. 1237 (1982)). This decision was reversed by the U.S. Court of Appeals for the Second Circuit on August 10, 1983. The Court of Appeals ruled that DOT is not required to maximize public safety on a jurisdiction-by-jurisdiction basis; the Court also found that a comparison of different transportation modes was not required (715 F.2d 732 (1983)). The City and State of New York appealed to the Supreme Court, but the Court declined to hear the case (104 S. Ct. 1403 (1984)).

On December 24, 1984, New York City filed an amended application with DOT requesting a waiver of the preemptive effects of HM-164 on its routing restrictions for irradiated or spent fuel. Following a public comment period, DOT issued the first nonpreemption determination under the HMTA. DOT's decision, published on September 12, 1985, denied New York City's request because the City failed to show that HM-164 does not provide an adequate level of safety because of unique physical conditions, and that the establishment of alternate routes is the responsibility of a State routing agency (50 F.R. 37308). New York City filed an administrative appeal with DOT (50 F.R. 47321, November 15, 1985); public comments are currently under review.

Inconsistency Ruling 2 Rhode Island

The Division of Public Utilities and Carriers of Rhode Island issued rules and regulations governing the trans-

portation of liquefied natural gas and liquefied petroleum gas that became effective on November 3, 1978. Shortly thereafter, National Tank Truck Carriers, Inc. (NTTC) filed suit against Rhode Island seeking preliminary and permanent injunctive relief preventing enforcement of the regulations. Rhode Island filed an inconsistency ruling application with DOT on December 1, 1978. The District Court denied NTTC's motion for a preliminary injunction except for three State requirements pertaining to vehicle equipment (two-way radio, rear bumper sign, and frangible lock requirements) pending DOT's inconsistency ruling; the preliminary Injunction was upheld on appeal by the U.S. Court of Appeals for the First Circuit (608 F.2d 819 (1979)).

DOT issued its inconsistency decision on December 20, 1979, concluding that the following Rhode Island rules and regulations were consistent: radio communications via two-way radios, immediate notification of the State Police of any accident, use of headlights at all times, vehicle inspections, and definitions. However, other requirements were found to be inconsistent: written notification of State agencies regarding accidents, illuminated rear bumper signs, frangible shank-type locks on trailers, permit requirements for each shipment, and prohibitions on travel during rush hours (44 F.R. 75565).

Following publication of DOT's ruling, Rhode Island decided not to enforce the bumper sign and lock requirements, but appealed those portions of the DOT ruling on the requirements for written notification of State agencies of accidents, permit requirements, and travel prohibitions during rush hours. DOT's second decision was consistent with its earlier ruling (45 F.R. 71881, October 30, 1980).

The District Court upheld DOT's inconsistency ruling on March 17, 1982, by ordering a permanent injunction against the permit, curfew, and written accident report requirements. Regulations concerning two-way radio communication, immediate reporting of accidents, illumination of headlights, and vehicle inspections were found to be consistent with the HMTA and not in violation of the equal protection or commerce clauses of the Constitution (535 F. Supp. 509 (1982)). NTTC appealed the District Court opinion, but the U.S. Court of Appeals for the First Circuit affirmed the lower court decision (698 F.2d 559 (1983)).

Inconsistency Ruling 3 Boston

The Boston Fire Commissioner and the Commissioner of Health and Hospitals promulgated regulations on December 15, 1980, governing the transportation of hazardous materials, including restrictions on the use of city streets. On February 5, 1980, the Hazardous Materials

Advisory Council (HMAC) and the Massachusetts Motor Trucking Association, Inc. (MMTA) filed an inconsistency ruling application with DOT; the American Trucking Association (ATA) subsequently filed an application. In addition, on March 2, 1980, ATA and MMTA filed suit against Boston seeking an injunction and declaratory relief from the Boston regulations. A Temporary Restraining Order against the implementation and enforcement of the regulations was granted by the Federal District Court the following day.

DOT published its inconsistency ruling on March 26, 1981 (46 F.R. 18918). The decision concluded that the following regulations were consistent: immediate reporting of accidents to local officials, requiring the use of major thoroughfares except as necessary for pickups and deliveries, assessing penalties associated with valid local regulations, requiring the use of headlights, specifying separation distances between vehicles, vehicle operating requirements, and adopting Federal and State motor carrier safety regulations. However, several Boston regulations were found to be inconsistent: marking vehicles to identify products being carried, requiring signs on vehicles when residual materials are present, requiring written accident reports, restricting travel during morning rush hours, and restricting the use of certain city streets. The routing restrictions diverted traffic onto routes passing through suburban jurisdictions. DOT did not provide rulings for several other regulations. For example, a decision about the validity of a permitting system was not provided because the scope and conditions of the permits were not defined; however, DOT noted that Boston regulations requiring transporters to carry permits in a vehicle cab and to display decals, to the extent they are valid, were reasonable aids to local enforcement.

On August 10, 1981, Boston appealed DOT's ruling on the routing restrictions and written accident reports. In response, DOT upheld its earlier decision with respect to written accident reports, but rescinded its earlier inconsistency ruling on the routing restrictions, stating that it could not reach a conclusion about the validity of those requirements. The reason for DOT's opinion was that although Boston had demonstrated that its restrictions enhanced public safety, consultation with affected jurisdictions had been limited. (47 F.R. 18457).

Following publication of the first DOT decision, HMAC, MMTA, and ATA asked the Court to issue a preliminary injunction. On April 6, 1981, the Court granted a preliminary injunction against the regulations requiring trucks to carry permits and decals and for the vehicle marking requirements; by stipulation, Boston agreed to drop these requirements. Subsequently, a trial was held to consider the routing and curfew restrictions. As of May 1986, a decision had not yet been issued by the District Court.

Inconsistency Ruling 4 State of Washington

In March 1980, the Washington State Legislature approved a law requiring intrastate shipments of hazardous materials transported by motor vehicle to be accompanied by red or red-bordered shipping papers. On July 1, 1980, NTTC filed an inconsistency ruling application. DOT's ruling, published on January 11, 1982, found the Washington State law and associated regulations to be inconsistent (47 F.R. 1231).

Inconsistency Ruling 5 New York City

On August 7, 1982, a tank truck owned by Ritter Transportation was carrying liquefied petroleum gas from New Jersey to New York across the George Washington Bridge when it developed a leak, causing an extensive traffic jam. Subsequently, New York City filed suit against Ritter in a New York State Supreme Court charging that fire department regulations, adopted in 1962 and revised in 1963 and 1979, prohibiting the transportation of hazardous compressed gases in the city without a permit, had been violated. The fire department regulations also covered placarding and container testing and specified hazard class definitions for gas under pressure, combustible or flammable gas, combustible mixture, and inflammable mixture; these requirements and definitions differed from DOT regulations and hazard class definitions. Between September and November 1980, applications for inconsistency rulings regarding the definitions were submitted to DOT by Ritter Transportation, the National LP-Gas Association, and the Propane Corp. of America; DOT consolidated the proceedings into one action.

After the New York Supreme Court preliminarily enjoined Ritter from transporting hazardous compressed gases in the city, Ritter appealed to the U.S. District Court asking that the injunction be vacated. In addition, NTTC and Ritter filed an action against the city in the same Federal court seeking a declaratory judgment that the fire department regulations burdened interstate commerce and were preempted by the HMTA. The District Court denied Ritter's motion to vacate the preliminary injunction and found the fire department routing regulations to be consistent, but ruled that the truck placarding and container testing requirements were inconsistent. The District Court did not rule on the definitions (515 F. Supp. 663).

Ritter and NTTC appealed the decision on the routing and definition regulations to the U.S. Court of Appeals for the Second Circuit. The Court of Appeals upheld the routing regulations on May 3, 1982; however,

the case was remanded to the District Court for a determination as to whether the definitions were preempted under the HMTA. The Court of Appeals noted the inconsistency ruling pending before DOT (677 F.2d 270). DOT's ruling, published on November 18, 1982, determined that the definitions used by the city were inconsistent (47 F.R. 51991).

Inconsistency Ruling 6 Covington, Kentucky

General Battery Corp. submitted an application to DOT on September 25, 1980, for an inconsistency ruling on an ordinance established by the city of Covington earlier in the year requiring all commercial rail, barge, and truck operators to give advance notification of their intent to transport dangerous and hazardous substances within the city. The ordinance also defined substances covered by the notification rule; the Covington definitions extended the scope of its ordinance to materials not covered by DOT's regulations. DOT concluded that both the definitions and the notification requirements were inconsistent (48 F.R. 760, January 6, 1983).

Inconsistency Rulings 7 to 15

Inconsistency rulings 7 to 15 pertain to the transportation of spent nuclear fuel from Chalk River, Ontario, Canada, to a U.S. Department of Energy reprocessing facility at Savannah River, South Carolina. The shipments were arranged by the Nuclear Assurance Corp. (NAC) under a contract with Atomic Energy of Canada, Ltd. Until 1979, shipments from Canada entered the United States by crossing the St. Lawrence River using the Ogdensburg Bridge. These shipments were banned by both the Ogdensburg Bridge and Port Authority and St. Lawrence County in 1980. Alternative routes through Michigan, New York, and Vermont were subsequently approved by the Nuclear Regulatory Commission (NRC). However, a series of requirements and bans enacted by these States, local jurisdictions, and bridge and highway authorities resulted in the cessation of NAC shipments. NAC filed applications for inconsistency rulings on four State and local actions (inconsistency rulings **7, 8, 9, and 10**) and DOT elected to examine several other State and local requirements (inconsistency rulings 11, 12, 13, 14, and 15). All nine rulings were published by DOT on November 27, 1984 (49 F.R. 46632).

Inconsistency Ruling 7 New York State

On October 8, 1982, NAC filed an application for an inconsistency ruling regarding a letter sent by a desig-

nated representative of the Governor of New York State advising NAC to suspend proposed shipments of spent fuel from Canada on two non-Interstate highway routes. The letter was sent because NAC had notified New York about its shipments, as required by NRC. NAC argued that the proposed non-Interstate routes were the only practicable highway routes available because the New York State Thruway (which is part of the Interstate Highway System) and the State of Vermont had suspended spent fuel shipments, foreclosing the use of Interstate highways through New England.

DOT concluded that the letter sent by New York State to NAC was not inconsistent because it required compliance with Federal regulations. DOT also noted that NAC properly chose to abide by the restrictions enacted by Vermont and the New York State Thruway until decisions were reached about their validity (see inconsistency ruling 9 and inconsistency ruling 10 discussions below).

Inconsistency Ruling 8 Michigan

Comprehensive rules for the transportation of radioactive materials by highway, rail, and water, issued by the Michigan State Fire Safety Board and the Department of Public Health, became effective on July 14, 1982. NAC filed an inconsistency ruling application with DOT on October 13, 1982.

DOT concluded that the following Michigan rules were consistent: confidentiality standards, inspection requirements (to the extent they apply to valid regulations), incorporation of Federal regulations, and notification of any shipment schedule changes. However, a number of regulations adopted by Michigan were determined to be inconsistent. These rules pertained to: the definition of radioactive material; submission of an application for approval of shipments; criteria for approving applications, including container testing and certification requirements that differed from Federal regulations; written notification of application approvals; communication requirements for highway, rail, and water; and notification requirements regarding delays and emergency plan implementation. Michigan has appealed the DOT ruling.

Inconsistency Ruling 9 State of Vermont

On October 14, 1982, NAC filed an application for an inconsistency ruling with DOT regarding a letter from the State of Vermont advising NAC that further highway shipments of spent fuel through the State would not be permitted until responsible Federal agencies established and enforced a uniform national policy for such shipments. Specifically, Vermont did not want to allow

through shipments of spent fuel until DOT and NRC determined whether the regulations and ordinances enacted in Michigan and New York were inconsistent with the HMTA. DOT concluded that the letter could not be considered a "state order" and, therefore, the question of inconsistency did not have to be addressed.

Inconsistency Ruling 10 New York State Thruway

An inconsistency ruling application was filed by NAC on October 20, 1982, regarding a New York State Thruway Authority (NYSTA) regulation prohibiting vehicles carrying radioactive materials except under procedures adopted by the NYSTA Board. In practice, shipments of low-level radioactive materials were generally approved by NYSTA; however, shipments of highway route controlled quantities of radioactive material, such as spent nuclear fuel, were not allowed except for certain court ordered shipments. The New York State Thruway is a preferred route under HM-164 because it is part of the Interstate Highway System and alternate routes have not been designated by New York State. DOT concluded that the NYSTA prohibition was inconsistent.

Inconsistency Ruling 11 Ogdensburg-Prescott International Bridge, New York

The Ogdensburg Bridge and Port Authority (OBPA) adopted rules governing the transportation of all radioactive materials. The rules specified crossing times, required an escort and compensation for the costs of the escort, required evidence of proper insurance coverage or indemnification (but did not quantify such coverage), and incorporated St. Lawrence County's requirements (see inconsistency ruling 12). Unlike the New York State Thruway, the Ogdensburg-Prescott Bridge is not part of the Interstate Highway System. Thus, shipments of highway route controlled quantities of radioactive material over the bridge are in violation of Federal routing regulations.

On May 12, 1983, DOT initiated inconsistency ruling proceedings on the premise that New York State could designate the Ogdensburg-Prescott Bridge and associated roads in St. Lawrence County as alternate preferred routes at some point in the future. During the public comment period, the New York State Department of Law urged DOT not to consider this hypothetical case. Other comments received by DOT pointed out that OBPA regulations covered all radioactive materials, not just spent nuclear fuel. Responding to these comments, DOT narrowed its review to the requirements imposed on the transportation of radioactive materials other than

highway route controlled quantities and concluded that they were inconsistent.

Inconsistency Ruling 12 St. Lawrence County, New York

St. Lawrence County, New York, located at the foot of the Ogdensburg-Prescott Bridge, adopted a law on August 11, 1980, for the highway transportation of radioactive materials. Routes through St. Lawrence County, like the Ogdensburg-Prescott International Bridge, are not part of the Interstate Highway System.

DOT initiated inconsistency ruling proceedings for these requirements along with the OBPA rules; the scope of this ruling was also limited to radioactive materials other than highway route controlled quantities for the reasons noted in the discussion of inconsistency ruling 11.

DOT determined that a section of the law which set forth the policy statement was consistent as it posed no obligation to act and did not suggest a regulatory role for the county that conflicted with the HMTA. However, DOT found that permit requirements for certain types of radioactive materials and definitions of hazard classes that differed from Federal classifications were inconsistent.

Inconsistency Ruling 13 Thousand Islands Bridge, New York

The Thousand Islands Bridge Authority (TIBA) issued regulations governing the shipment of hazardous materials, including radioactive materials. The bridge connects Collins Landing, New York, and Ivy Lea, Ontario, and is part of the Interstate Highway System; thus, it is a preferred route for the highway transport of route controlled quantities of radioactive materials.

On March 22, 1982, TIBA applied to DOT for a non-preemption determination without acknowledging the inconsistency of its requirements, despite a direct request from DOT; DOT suspended action on the request. On May 12, 1983, DOT initiated inconsistency ruling proceedings but limited its review to the effect of TIBA permit, fee, and escort requirements on vehicles carrying highway route controlled quantities of radioactive materials. According to TIBA regulations, permits were to be issued by TIBA employees in charge at the bridge; a special escort and payment of fees could be required as a permit condition. DOT found these regulations to be inconsistent with the HMTA.

Inconsistency Ruling 14 Jefferson County, New York

Jefferson County, New York, located at the foot of the Thousand Islands Bridge, enacted a local ordinance gov-

erning highway transportation of radioactive materials. The county requirements included 24-hour prenotification, required front and rear escorts, limited transport to the period between May and October, and prohibited shipments on holidays and during inclement weather. The county also required recognition of and adherence to the permit system established by TIBA. Jefferson County contains an Interstate highway that is a preferred route for highway transport of route controlled quantities of radioactive materials.

DOT initiated inconsistency ruling proceedings on May 12, 1983, because of the connection between the Jefferson County ordinance and the requirements imposed by TIBA. DOT interpreted the types of shipments covered by the ordinance to be highway route controlled quantities of radioactive materials. Except for the escort requirement, DOT concluded that the regulations established by the county were inconsistent with the HMTA; the escort requirements were identical to NRC standards.

Inconsistency Ruling 15 State of Vermont

The Vermont Agency of Transportation adopted comprehensive rules governing highway, rail, and water transportation of irradiated reactor fuel and nuclear waste; these rules were enacted during the comment period for DOT inconsistency rulings 7 through 14. On August 4, 1983, DOT provided notice that it was initiating inconsistency ruling proceedings on the new Vermont rules as they were directly relevant to ongoing proceedings.

DOT concluded that the following rules were consistent with the HMTA: the statement of intent included in the rules, information required as part of an application for approval of shipments that were identical to NRC requirements, confidentiality standards that were the same as Federal standards; and inspection requirements to the extent that they applied to consistent rules.

However, a number of requirements were determined to be inconsistent: application of the rules to a subset of highway route controlled quantities of radioactive materials; submission of applications for approval of shipments (the permit application included indemnification, fee, and container certification requirements); criteria for approving applications, written notification of application approval by Vermont; notification requirements for schedule changes and delays; and monitoring of shipments by State officials such as State Police officers. Vermont has appealed the DOT ruling.

Inconsistency Ruling 16 Tucson, Arizona

Initially, a request for an inconsistency ruling on Tucson requirements for highway shipments of radioactive

materials was submitted by the Arizona Corporation Commission on February 18, 1982. However, shortly after the application was filed, responsibility for hazardous materials transportation was transferred to the Arizona Department of Transportation. On March 25, 1983, a new inconsistency ruling request was submitted by the

Arizona Department of Transportation. The city requirements in question, which DOT found to be inconsistent, established definitions for radioactive material that differed from Federal ones, prohibited the transportation of certain materials within or through the city, and required prenotification (50 F.R. 20571, May 20, 1985).

PART II: SUMMARY OF U.S. DEPARTMENT OF TRANSPORTATION (DOT) INCONSISTENCY RULING DECISIONS

Inconsistency rulings	Decisions by requirement type
	Definitions:
2, 3, 5, 6, 8, 12, 15, and 16	Definitions that differed from Federal regulations (by changing the scope of materials subject to regulation or reclassifying materials) were found to be inconsistent. The basis for these decisions was that multiple definitions presented an obstacle to uniformity of hazardous materials regulations and would reduce compliance with Federal regulations. This could have a detrimental effect on emergency response capabilities resulting in a decrease in public safety.
	Permits and prenotification:
2, 3, 6, 8, 10, 11, 12, 13, 14, 15, and 16	In the decisions issued thus far, DOT has stated that permit and notification requirements as such are not inconsistent; it is necessary to look at what is required (for example, the type of information that must be submitted) to determine whether a permit or notification requirement is valid. With respect to hazardous materials generally, DOT has found requirements to be inconsistent if they cause delays or divert traffic onto routes not normally used by commercial vehicles. Moreover, if information required by a State, locality, or facility differed from what is required on DOT shipping papers, the permit or notification requirement was also found to be inconsistent. In one case, although DOT did not address the validity of the permit system, regulations requiring transporters to carry permits in a vehicle cab and display decals were found to be reasonable aids to local enforcement. For high-level radioactive materials, DOT has ruled that requirements which diverted or delayed traffic did not provide for an equitable distribution of risk and were therefore inconsistent with the routing system established under HM-164. Again, if information was required that differed from NRC and DOT shipping paper regulations, the permit or notification requirement was found to be inconsistent.
	Routing restrictions:
1, 2, 3, 10, 11, 14, and 16	Generally, local routing regulations that increase safety and are enacted by a locality in consultation with neighboring jurisdictions are considered to be consistent requirements. In those cases where transport was banned or prohibited without a permit or some type of special approval, the State, local, or facility requirements were found to be inconsistent. Such prohibitions resulted in traffic diversions and increased transit times. Restrictions affecting service to points of origin or destination within a city were found to be consistent. However, requirements pertaining to time restrictions (for example, no transport during rush hours), weather restrictions, and restrictions on the use of certain roads or streets were found to be inconsistent if they resulted in delays or diverted shipments. For high-level radioactive materials, routing regulations enacted by jurisdictions that were not designated State routing agencies under HM-164 were also found to be inconsistent.
	Accident notification:
2 and 3	Requirements for the immediate notification of local authorities in case of accidents were found to be consistent as there were no Federal regulations providing a basis for inconsistency. However, if written accident reports were required that differed from Federal reporting requirements, they were found to be inconsistent. DOT noted that it was not appropriate to impose additional written reporting requirements on carriers already subject to Federal regulation as information submitted to DOT was publicly available and the written reports were not required for emergency response purposes.
	Operational requirements:
2 and 3	Requirements pertaining to the use of headlights, separation distances, attendance, and parking were found to be consistent because DOT considered them to be proper forms of State and local regulation and there was no direct conflict with existing Federal regulations.
	Communication equipment:
2 and 8	Requirements that conflicted with existing Federal regulations were found to be inconsistent. Where there were no Federal regulations providing a basis for inconsistency, the requirements were upheld,

- 2, 3, 8, and 12 **Inspection and enforcement:** Inspection requirements, to the extent that they were used to enforce consistent requirements, were considered to be valid exercises of State or local police power and, therefore, consistent. Compliance with such requirements was possible without violating Federal law or regulations. DOT also ruled that penalty requirements that differed from Federal ones, were not inconsistent unless they were so extreme or applied so arbitrarily that they diverted or delayed hazardous materials shipments.
- 11, 13, 14, and 15 **Escorts and monitoring:** In three cases, permit systems, including escort provisions, were found to be inconsistent. In another case, monitoring of certain radioactive shipments by State Police officers was required. DOT found that to the extent an obligation to act was imposed on transporters, causing delays, the requirements were inconsistent.
- 2 and 3 **Vehicle placarding:** Vehicle placarding requirements that differed from Federal regulations were found to be inconsistent. DOT argued that State and local placards diverted attention from Federal ones and could have a detrimental effect on emergency response, and, ultimately, public safety. In one case, compliance with both Federal and State regulations was impossible.
- 2, 8, and 15 **Container systems:** Container certification requirements that were identical to Federal requirements, such as NRC regulations, were found to be consistent. Where State container design, testing, or certification requirements differed from Federal ones, they were found to be inconsistent. It is DOT's position that establishing such requirements is an exclusive Federal role and uniform standards are necessary to ensure safe and efficient transport of hazardous materials.
- 4 **Shipping papers:** Shipping paper requirements that differed from Federal regulations were found to be inconsistent. The reason for this **was** that multiple shipping papers could have a detrimental effect on emergency response and, ultimately, public safety. In addition, DOT ruled that multiple requirements obstructed the national regulatory scheme.
- 15 **Fees:** In one State, a fee of \$1,000 per shipment of certain radioactive materials was imposed to fund a monitoring (response) team. The requirement was found to be inconsistent because it was applied in a discriminatory manner (only radioactive substances), replicated Federal emergency response efforts, and diverted shipments. DOT also asserted that approval of such a requirement would encourage other States to take similar actions and undermine HM-164.
- 11, 13, 14, and 15 **indemnification.**^a For high-level radioactive materials, indemnification requirements that exceeded those in the Federal regulations were found to be inconsistent. The reason for this was that the requirements could result in diversions of shipments causing inequitable distributions of risk and were therefore inconsistent with the routing system established by HM-164.

^aIn most cases, prenotification requirements were incorporated into permit or registration requirements.

^bIn these inconsistency rulings, indemnification requirements were part of Permit application requirements.

SOURCE: Office of Technology Assessment, based on U.S. Department of Transportation inconsistency rulings.