

## Synopsis of 9<sup>th</sup> Circuit Decision on California Public Utilities Commission Rules

CPUC Rules adopted pursuant to California legislation and establishment of 13 local safety hazard locations following meta sodium spill in Sacramento River, 1991;

1. Required railroads to cooperate in developing performance based standards on train configuration. (This was ruled as preempted by the District Court, affirmed on appeal by 9<sup>th</sup> Circuit based on Interstate Commerce Clause)
2. Develop Standards for dynamic brake systems. (Preempted by District Court – not appealed by CPUC.)
3. Equip trains with telemetry devices. (Preempted by District Court – not appealed by CPUC.)
4. Institute Training Programs. (Preempted by District Court, affirmed by 9<sup>th</sup> Circuit. FRA’s rules requiring railroads periodically instruct on operating rules per 240.123 and requiring continuing training for engineers under 240.123 covers the subject matter.)
5. *Install Hot Bearing Detectors. (Not preempted by District Court – not appealed by railroads.)*
6. Maintain requirement for track standards at one location. (Not preempted by District Court, appealed by RR’s, Preempted by 9<sup>th</sup> Circuit due to being covered by federal regulations and not constituting a local safety hazard because it could be addressed by national standards.)
7. Required railroads to obtain approval for CPUC prior to changing train make-up rules. (Preempted by District Court – not appealed by CPUC.)
8. Required railroads to implement state approved locomotive maintenance plans. (Preempted by District Courts – not appealed by CPCU.)
9. *Required railroads to comply with their own train make-up rules and instated fines. (Not preempted by District Court – upheld by 9<sup>th</sup> Circuit, because FRA does not mandate compliance of railroads with their own operating rules a state may require compliance without undue burden to interstate commerce. 9<sup>th</sup> Circuit could find no grounds for “negative” preemption.)*
10. Not discipline employees who report violations. (unknown disposition)

## Provisions of 1970 Federal Rail Safety Act with 9<sup>th</sup> Circuit provisions added.

Criteria for a “local safety hazard” designation.

1. Condition can not be “statewide” in character
2. Condition has to be incapable of being addressed adequately in uniform national standards.
3. Environmental concerns are not sufficient for determining if a condition constitutes a local safety hazard.

Standards for State adoption of Regulations

1. If the Secretary of Transportation has not prescribed a regulation or issued an order covering the subject matter of the state requirement.
2. If DOT has “covered” the subject matter a state may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order.
  1. is necessary to eliminate or reduce an essentially local safety hazard.
  2. is not incompatible with a law, regulation, or order of the United States Govt., and
  3. does not unreasonable burden interstate commerce.

Note: “Covering” subject matter means federal regulation must do more than just “touch upon” or “relate to” the subject matter. Preemption will lie only if the federal regulations substantially subsume the subject matter of the state law.