

Regulatory rules with complete immunity preemption language not yet finalized as of 11/18/08:

FDA

August 29, 2006 – The FDA issued a proposed rule on skin bleaching drug products with preemption language in the preamble. 71 Fed. Reg. at 51153.

December 12, 2006 – The FDA includes what appears to be boilerplate preemption language in the preamble to its proposed rule regarding labeling of over-the-counter drugs. 71 Fed. Reg. at 74480-81.

December 26, 2006 – The FDA issues a proposed rule that requires over-the-counter analgesics to include new warnings regarding potential risks which contain preemption language. 71 Fed. Reg. at 77345.

January 5, 2007 – The FDA issues a proposed rule on labeling claims regarding calcium which contain preemption language in the preamble. 72 Fed. Reg. at 516.

August 27, 2007 – The FDA issues a proposed rule regarding changes to the labels for sunscreen, which contains preamble language seeking to preempt state tort law. 72 Fed. Reg. at 49109.

November 27, 2007 – The FDA issues a proposed rule on fatty acids with preemption language in the preamble. 72 Fed. Reg. at 66116.

May 29, 2008 – The FDA publishes its proposed rule regarding requirements for pregnancy and lactation labeling which contains preemption language. 73 Fed. Reg. at 30831.

NHTSA

August 19, 2005 - NHTSA issues a proposed rule on roof crush strength with a weak standard and a preamble that explicitly preempts all state law requirements and state tort law. 70 Fed. Reg. at 49223.

September 12, 2005 – NHTSA issues a proposed rule regarding rearview mirrors which seeks to preempt all state statutes, regulations, and common law. 70 Fed. Reg. at 53768-69.

October 9, 2007 – NHTSA issues a proposed rule regarding standards for electric-powered vehicles which includes boilerplate preemption language. 72 Fed. Reg. at 57265.

October 9, 2007 – NHTSA issues a proposed rule regarding brake hoses which includes boilerplate preemption language. 72 Fed. Reg. at 57468.

December 20, 2007 – NHTSA issues a proposed rule regarding platform lifts for motor vehicles which includes boilerplate preemption language. 72 Fed. Reg. at 72335.

July 7, 2008 – NHTSA publishes its proposed rule regarding requirements for windshield zone intrusion which contains boilerplate preemption language yet still allows the states to regulate in this area. 73 Fed. Reg. at 38373.

September 12, 2008 – NHTSA issues a proposed rule removing the sunset provision for occupant crash requirements which contains boilerplate preemption language. 73 Fed. Reg. at 52941.

September 17, 2008 – NHTSA issues a proposed rule regarding motorcycle brake systems which contains boilerplate preemption language. 73 Fed. Reg. at 54034.

October 2, 2008 – NHTSA issues a proposed rule regarding motorcycle helmets which contains boilerplate preemption language. 73 Fed. Reg. at 57297.

FRA

April 1, 2008 – The FRA/ Pipeline Hazardous Materials Safety Administration jointly issue a proposed rule to improve the crashworthiness protection of railroad tank cars designed to transport hazardous materials with preemption language in the preamble. 73 Fed. Reg. at 17852.

April 16, 2008 – The FRA/ Pipeline Hazardous Materials Safety Administration jointly issue an interim final rule enhancing rail transportation safety with preemption language in the preamble. 73 Fed. Reg. at 20755.

September 9, 2008 – Although it is after the White House's proposed "deadline" for proposed rules, the FRA issues a proposed rule regarding incident reporting requirements, which contains a new iteration of its previous language preempting state tort law. 73 Fed. Reg. at 52519.

TSA

December 21, 2006 – The TSA issues a proposed rule regarding rail transportation security which includes preemption language in the preamble. 71 Fed. Reg. at 76878-79.

DHS

December 28, 2006 – The Department of Homeland Security (DHS) issues proposed chemical facility anti-terrorism regulations with extensive language seeking to preempt state tort law. 71 Fed. Reg. at 78292-93. DHS issues these regulations despite the short timeframe (statute requires regulations to be effective by April 4, 2007) and the fact that this preemption language was expressly rejected during the 109th Congress. April 9, 2007 – DHS issues interim final rules which continued to contain preemption language, despite outrage from Congress. Congress addressed this problem through the use of appropriations bills.