



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2025-0777; PDA-42(R)]

Hazardous Materials: Notice of Preemption Application from Exxon Mobil Corporation and Invitation for Public Comments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Public Notice and Invitation to Comment.

SUMMARY: Interested parties are invited to comment on an application submitted to PHMSA by the Exxon Mobil Corporation for an administrative determination as to whether the Federal hazardous material transportation laws preempt certain common law tort claims regarding the marking, employee training, loading and unloading, and hazardous material classification for gasoline transported by cargo tank motor vehicle.

DATES: Comments received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] and rebuttal comments received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Any rebuttal comments may only discuss issues raised by comments received during the initial comment period.

ADDRESSES: Interested parties may review the application and all comments received in the Docket Operations Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The application and all comments received are available on the U.S. Government Regulations.gov website at <http://www.regulations.gov>.

Comments must refer to Docket No. PHMSA-2025-0777 and may be submitted by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax*: 1-202-493-2251.
- *Mail*: Docket Operations Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- *Hand Delivery*: Docket Operations Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Commenters must send a copy of their comment to the individuals listed below.

Commenters must include a certification that a copy of the comment has been sent to these persons:

- Ilana H. Eisenstein, Counsel for Exxon Mobil Corporation, DLA Piper LLP, 1650 Market Street, Suite 5000, Philadelphia, PA 19103.
- The Honorable Bruce J. Kaplan, Civil Presiding Judge, Middlesex County Courthouse, 56 Paterson Street, New Brunswick, NJ 08901.
- Andrew J. Dupont, The Curtis Center, Suite 720 East, 601 Walnut Street, Philadelphia, PA 19106.
- Jeffrey Kluger, McGivney, Kluger, Clark & Intoccia, P.C., 290 W. Mt. Pleasant Ave., Suite 4200, Livingston, NJ 07039.

In accordance with 5 U.S.C. § 553(c), DOT solicits comments from the public to inform its processes. DOT posts these comments, without edit, including any personal information the

commenter provides, to <https://www.regulations.gov>, as described in the system of records notice , which can be reviewed at <https://www.dot.gov/privacy>.

A subject matter index of hazardous materials preemption cases, including a listing of all inconsistency rulings and preemption determinations, is available through PHMSA’s home page at <http://phmsa.dot.gov>. From the home page, click on “Regulations and Compliance,” then on “Preemption Determinations” located on the right side of the page. A copy of the index will be provided at no cost upon request to Mr. Patrick Doyle, at the address and telephone number set forth in the FOR FURTHER INFORMATION CONTACT section below.

FOR FURTHER INFORMATION CONTACT: Patrick Doyle, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590; Telephone No. 202-366-4400.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The Exxon Mobil Corporation (“Exxon”) has applied for an administrative determination as to whether the Federal hazardous material transportation law (HMTA) preempts certain state common law tort claims against it regarding the marking, employee training, loading and unloading, and hazardous material classification for gasoline transported by cargo tank motor vehicle (CMTV).¹ Exxon’s application for a preemption determination originated from common law tort claims brought against it in a New Jersey state court by a former driver whose duties included driving a CMTV and filling it with gasoline at an Exxon facility.² The tort claims focus on an assertion that the benzene in gasoline causes an unreasonably high risk of cancer for hazardous materials employees who transport it. The New Jersey state court denied the Defendants’ motion for summary judgment on June 24, 2025, in which Exxon claimed the state

¹ The HMTA is codified at 49 U.S.C. 5101 *et seq.*

² PHMSA will file Exxon’s application in the Federal Register docket applicable to this notice.

common law tort claims are preempted by federal law.³ Exxon now asks PHMSA to consider questions similar to what it presented to the New Jersey state court.

In its preemption application filed with PHMSA, Exxon presents four main arguments for why it believes Federal law preempts the state common law tort claims against it. First, Exxon argues the HMTA preempts the tort claims because they would impose on Exxon a duty to mark gasoline containers and shipping papers with warnings regarding gasoline's benzene content. Exxon argues these markings or warnings specific to the benzene content of gasoline would not be "substantively the same" as the marking and shipping paper requirements already in the Hazardous Materials Regulations (HMR).⁴ In addition to the argument that these requirements are preempted because they are not substantively the same as the Federal requirements, Exxon also argues that complying with the state requirements would impose an obstacle to complying with the Federal requirements in the HMR.

Second, Exxon argues the HMR's training requirements for hazardous materials employees preempt the state common law tort claims because the duty to train contemplated in the tort claims are not substantively the same as the Federal requirements.⁵ Specifically, Exxon characterizes the HMR as requiring that a "hazmat employee has knowledge of hazmat and the HMR, and can perform assigned hazmat functions property."⁶ Exxon argues any state common law duty to warn hazardous materials employees about the dangers of the materials being transported, such as any cancer risk from exposure benzene, are preempted because the HMTA covers "packing, repacking, handling, labeling, marking, and placarding," which Exxon argues includes the HMR's requirement that hazardous materials employees train their employees.⁷

³ The New Jersey state court opinion is included as Exhibit 1 to Exxon's Application a Preemption Determination (the "Application"). PHMSA will also add this opinion to the Federal Register docket. The case is captioned *Singh, et. al v. Exxon Mobil Corp., et. al*, and is filed in the Superior Court of New Jersey in Middlesex County with Docket No. MID-L-004215-22.

⁴ 49 U.S.C. § 5101(b)(1)(B) and (C).

⁵ 49 U.S.C. § 5125(b).

⁶ Application at 31.

⁷ 49 U.S.C. § 5125(b)(1)(A).

Related to this argument, 49 CFR 172 subpart H contains requirements for employers to ensure that “each of its hazmat employees is trained in accordance with the requirements prescribed in this subpart,” which include “measures to protect the employee from the hazards associated with hazardous materials to which they may be exposed in the workplace, including specific measures the hazmat employer has implemented to protect employees from exposure.” As part of this argument, Exxon makes the separate but related factual assertion that the tort claimant did not work for Exxon but rather for a separate transportation company.

Third, the tort claimant argues the loading arm used to transfer gasoline at the Exxon facility into the CMTV was defectively designed. Exxon argues the HMTA’s preemption provisions apply to the “packing” and “handling” of hazardous materials and the tort claimant seeks to impose a duty that is not “substantively the same” as the HMR provisions pertaining to the loading, unloading, or storage incidental to movement of hazardous materials.⁸ In addition, Exxon notes the HMR explicitly pertains to “loading incidental to movement,” which for bulk packaging is defined in the HMR as follows, “loading incidental to movement is filling the packaging with a hazardous material for the purpose of transporting it when performed by carrier personnel or in the presence of carrier personnel...”⁹

Fourth, Exxon argues the tort claims at issue would impose a duty for gasoline producers to redesign their product to remove benzene. Exxon argues that not only is it scientifically impossible to redesign gasoline to remove benzene, but that any such state law requirement would also be preempted because it would not be the substantively the same as the current HMR requirements for the classification of hazardous materials. Exxon notes that gasoline is currently classified as a Class 3 flammable liquid and the tort claimant’s arguments would require gasoline to be reclassified as a Class 6.1 poisonous material.

⁸ 49 CFR 171.1(c).

⁹ 49 CFR 171.1(c)(2).

Overall, Exxon asserts the impact of finding these tort claims are not preempted would lead to a “patchwork of state regulations that would make it impossible to label and ship gasoline in interstate commerce.”¹⁰ To highlight this potential impact, Exxon notes the Plaintiff in the New Jersey case has brought similar cases against in Pennsylvania and New York, and that another plaintiff has brought similar claims in Louisiana. Therefore, in summary, Exxon asks that PHMSA issue an administrative determination finding that the HMTA preempts the tort claims against it regarding the marking, employee training, loading and unloading, and hazardous material classification for gasoline transported by CMTV.

II. Federal Preemption

Section 1711(b) of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2319), 49 U.S.C. § 5125(a) provides that a requirement of a State, political subdivision of a State, or Indian tribe is preempted—unless the non-Federal requirement is authorized by another Federal law or DOT grants a waiver of preemption under section 5125(e)—if (1) complying with the non-Federal requirement and the Federal requirement is not possible; or (2) the non-Federal requirement, as applied and enforced, is an obstacle to accomplishing and carrying out the Federal requirement. These two sentences set forth the "dual compliance" and "obstacle" criteria that PHMSA’s predecessor agency, the Research and Special Programs Administration, had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA).¹¹ The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption.¹²

Subsection (b)(1) of 49 U.S.C. § 5125 provides that a non-Federal requirement concerning any of the following subjects is preempted—unless authorized by another Federal law or DOT grants a waiver of preemption—when the non-Federal requirement is not

¹⁰ Application at 5.

¹¹ Pub. L. 93-633 § 112(a), 88 Stat. 2161 (1975).

¹² *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Grower v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield*, 435 U.S. 151 (1978).

“substantively the same” as a provision of Federal hazardous material transportation law, a regulation prescribed under that law, or a hazardous materials security regulation or directive issued by the Department of Homeland Security. To be "substantively the same," the non-Federal requirement must conform "in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted."¹³ The five subject areas include: 1) the designation, description, and classification of hazardous material; 2) the packing, repacking, handling, labeling, marking, and placarding of hazardous material; 3) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents; 4) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material and other written hazardous materials transportation incident reporting involving State or local emergency responders in the initial response to the incident; and 5) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

The 2002 amendments and 2005 reenactment of the preemption provisions in 49 U.S.C. § 5125 reaffirmed Congress's long-standing view that a single body of uniform Federal regulations promotes safety (including security) in the transportation of hazardous materials. More than thirty years ago, when it was considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order 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."¹⁴ When Congress expanded the preemption provisions in

¹³ 49 CFR 107.202(d). Additional standards apply to preemption of non-Federal requirements on highway routes over which hazardous materials may or may not be transported and fees related to transporting hazardous material. See 49 U.S.C. § 5125(c) and (f). See also 49 CFR 171.1(f) which explains that a “facility at which functions regulated under the HMR are performed may be subject to applicable laws and regulations of state and local governments and Indian tribes.”

¹⁴ S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974).

1990, it specifically found many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements. And because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable. Therefore, to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.¹⁵ A United States Court of Appeals has found uniformity was the "linchpin" in the design of the Federal laws governing the transportation of hazardous materials.¹⁶

III. Preemption Determinations

Under 49 U.S.C. § 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to PHMSA to make determinations of preemption, except for those concerning highway routing (which have been delegated to the Federal Motor Carrier Safety Administration).¹⁷

Section 5125(d)(1) requires notice of an application for a preemption determination to be published in the Federal Register. Following the receipt and consideration of written comments, PHMSA publishes its determination in the Federal Register.¹⁸ A short period of time is allowed

¹⁵ Pub. L. 101-615 § 2, 104 Stat. 3244. (In 1994, Congress revised, codified, and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103-272, 108 Stat. 745 (July 5, 1994)).

¹⁶ *Colorado Pub. Util. Comm'n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991).

¹⁷ 49 CFR 1.97(b).

¹⁸ See 49 CFR 107.209(c).

for filing of petitions for reconsideration.¹⁹ A petition for judicial review of a final preemption determination must be filed in the United States Court of Appeals for the District of Columbia or in the Court of Appeals for the United States for the circuit in which the petitioner resides or has its principal place of business, within 60 days after the determination becomes final.²⁰

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution, or statutes other than the Federal hazardous material transportation law unless it is necessary to do so to determine whether a requirement is authorized by another Federal law, or whether a fee is “fair” within the meaning of 49 U.S.C. § 5125(f)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute.²¹

In making preemption determinations under 49 U.S.C. § 5125(d), PHMSA will consider the principles and policies set forth in Executive Order (E.O.) 13132, entitled *Federalism* (64 FR 43255 (Aug. 10, 1999)), and the May 20, 2009 Presidential Memorandum on *Preemption* (74 FR 24693 (May 22, 2009)). Section 4(a) of E.O. 13132 authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Similarly, the May 20, 2009 Presidential Memorandum sets forth the policy “that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.”

IV. Public Comments

¹⁹ 49 CFR 107.211.

²⁰ 49 U.S.C. § 5127(a).

²¹ *Colorado Pub. Util. Comm'n*, 951 F.2d at 1581 n.10.

All comments should be directed to whether 49 U.S.C. § 5125 preempts state common law tort claims regarding the marking, hazardous material employee training, loading and unloading, and hazardous material classification for gasoline transported by cargo tank motor vehicle. Comments should specifically address the preemption criteria discussed in Part II above.

Issued in Washington, DC, on January 6, 2026.

Keith J. Coyle,

Chief Counsel.

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