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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA-2025-0776; PDA-41(R)]**

#### **Hazardous Materials: California's Reusability Requirement for Propane Cylinders**

**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 by Worthington Enterprises, Inc. for an administrative determination as to whether Federal hazardous material transportation law preempts the State of California's law requiring that propane cylinders sold or offered for sale in California must be refillable or reusable.

**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. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

**ADDRESSES:** Worthington Enterprises, Inc.'s application and all comments received may be reviewed 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 are available on the U.S. Government Regulations.gov website: <http://www.regulations.gov>.

Comments must refer to Docket No. PHMSA-2025-0776 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.

A copy of each comment must also be sent to (1) Joseph B. Hayek, President and Chief Executive Officer, Worthington Enterprises, Inc., 200 West Old Wilson Bridge Road, Columbus, OH 43085; and (2) Rob Bonta, Attorney General, The State of California, Office of the Attorney General, 1300 "I" Street, Sacramento, CA 95814-2919. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Mr. Hayek and Mr. Bonta at the addresses specified in the Federal Register.")

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing a comment submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78), or you may visit <http://www.regulations.gov>.

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 paper copy of the index will be provided at no cost upon request to Mr. Horsley, at the address and telephone number set forth in the **FOR FURTHER INFORMATION CONTACT** section below.

**FOR FURTHER INFORMATION CONTACT:** Adam Horsley, Office of Chief Counsel (PHC-10), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590; telephone No. 202-366-4400; facsimile No. 202-366-7041.

**SUPPLEMENTARY INFORMATION:**

I. Application for a Preemption Determination

Worthington Enterprises, Inc. has applied for a determination whether the Federal hazardous material transportation law (HMTA), 49 U.S.C. 5101 *et seq.*, preempts the State of California’s requirements regarding the sale of propane cylinders, as codified in California Public Resources Code, Cal. Pub. Res. Code §§ 42395 – 42395.2. Specifically, Worthington alleges that the law bans the sale of non-reusable and non-fillable propane cylinders of certain sizes, such as those manufactured by Worthington. On or after January 1, 2028, only reusable or refillable propane cylinders shall be sold or offered for sale in California, meaning cylinders that are explicitly designed and marketed to be utilized multiple times for the same product, designed for durability to function properly in its original condition for multiple uses, and supported by adequate infrastructure to ensure the cylinders can be conveniently and safely reused or refilled multiple times.<sup>1</sup> There are exceptions, including cylinders that are customarily designed for use in the construction industry and have a capacity of less than 15 ounces of fuel; cylinders that have an overall product height-to-width ratio of 3.55 to 1 or greater; and cylinders that are offered to a state or local government agency for purchase pursuant to

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<sup>1</sup> Cal. Pub. Res. Code §§ 42395, 42395.1.

the U.S. General Services Administrations’ State and Local Disaster Purchasing Program or its successor.<sup>2</sup>

Worthington presents two main arguments for why it believes California’s law should be preempted. First, Worthington asserts that the HMTA preempts that law’s requirement that all propane cylinders of certain sizes be reusable or refillable as not substantively the same as the HMTA or the Hazardous Materials Regulations (HMR) because it is about “the designing, manufacturing,...[or] maintaining” a “container” used for the transportation of hazardous materials, given that propane is classified as a hazardous material under the HMR and California’s reusability requirement imposes additional requirements on how cylinders containing propane must be designed and prohibits designs that are authorized by the HMR. Worthington argues that California’s law mandates that propane cylinders must be “explicitly designed” to be used multiple times. Further, Worthington asserts the law requires propane cylinders to be manufactured in such a way to be durable enough to withstand “multiple uses.” Worthington contends this reusability requirement is not substantively the same as the HMTA or HMR because it prohibits single-use cylinder designs expressly authorized by the HMR. Last, Worthington asserts California’s propane cylinder reusability requirement is preempted because it is “an obstacle to accomplishing and carrying out” the HMTA. Specifically, Worthington argues California’s law undermines uniformity in hazardous material regulation by imposing requirements only applicable in California, creates an economic burden on cylinder manufacturers, and undermines the HMTA’s safety objectives by taking propane cylinders with a proven safety record off the market.

In summary, Worthington contends California’s law requiring that propane cylinders sold or offered for sale in California must be refillable or reusable should be preempted because:

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<sup>2</sup> Cal. Pub. Res. Code § 42395.

- It is not substantively the same as federal regulations governing the design, manufacture, and maintenance of cylinders used in transportation of hazardous materials; and
- It is an obstacle to the federal hazardous material transportation legal and regulatory regime.

## II. Federal Preemption

Section 5125 of 49 U.S.C. contains express preemption provisions relevant to this proceeding. As amended by 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). Pub. L. 93-633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

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 "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. The five subject areas include: the designation, description, and classification of hazardous material; the packing, repacking, handling, labeling, marking, and placarding of hazardous material; the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents; 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 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.

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." 49 CFR 107.202(d).<sup>3</sup>

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 fifty 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

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<sup>3</sup> 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."

as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When Congress expanded the preemption provisions in 1990, it specifically found that 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, in order 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.<sup>4</sup>

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

### 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

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<sup>4</sup> 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)).

highway routing (which have been delegated to the Federal Motor Carrier Safety Administration). 49 CFR 1.97(b).

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. *See* 49 CFR 107.209(c). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. 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. 49 U.S.C. 5127(a).

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 in order 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. *Colorado Pub. Util. Comm'n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), PHMSA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (Aug. 10, 1999)), and the President's May 20, 2009 memorandum on "Preemption" (74 FR 24693 (May 22, 2009)). Section 4(a) of that Executive Order 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. The President's May 20, 2009 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." Section 5125 contains express preemption provisions, which PHMSA has implemented through its regulations.

#### **IV. Public Comments**

All comments should be directed to whether 49 U.S.C. 5125 preempts the State of California's law requiring that propane cylinders sold or offered for sale in California must be refillable or reusable. 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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