



**Via FedEx and email to [phmsachiefcounsel@dot.gov](mailto:phmsachiefcounsel@dot.gov)**

March 23<sup>rd</sup>, 2026

Keith J. Coyle  
Chief Counsel  
Pipeline and Hazardous Materials Safety Administration  
US Dept. of Transportation  
East Building, PHC-1  
1200 New Jersey Ave SE  
Washington, DC 20590

**RE: Docket ID PHMSA-2025-0777  
PDA-42(R)**

Dear Mr. Coyle:

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to submit to the Pipeline and Hazardous Materials Administration (PHMSA) comments on the January 27, 2026 preemption determination application submitted by ExxonMobil under the Hazardous Materials Transportation Act (HMTA). GPA Midstream is a non-profit trade association established in 1921 that represents approximately 50 corporate members who directly employ over 57,000 people. GPA Midstream members gather, process, transport, treat, store and market hydrocarbons including natural gas, natural gas liquids, crude oil and refined products. In 2024, GPA Midstream members operated more than 500,000 miles of pipelines, gathered nearly 91 billion cubic feet per day of natural gas, and operated more than 340 natural gas processing facilities. GPA Midstream members also transport liquid hydrocarbons via truck and rail modes. GPA Midstream members account for more than 90 percent of natural gas liquid (NGL) products such as ethane, butane, and natural gasoline moved in the United States. GPA Midstream is a primary advocate for a sustainable midstream industry focused on enhancing the viability of natural gas, NGLs, and crude oil. GPA Midstream therefore has a direct interest in the outcome of PHMSA's preemption determination in this matter.

GPA Midstream supports ExxonMobil's request for determination that the New Jersey state court's application of tort common law is preempted under the HMTA. It is apparent that Congress

intended that the HMTA achieve uniformity and prevent a “multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.”<sup>1</sup> The New Jersey Court’s decision would contradict this Congressional intent and impose a series of additional and different state-specific requirements affecting the transportation of gasoline beyond what is prescribed in the federal Hazardous Materials Regulations (HMR), hindering the flow of gasoline in interstate commerce. The state court’s decision contradicts the plain language of the HMTA and the Hazardous Materials Regulations (HMR) in the following ways and should be preempted.

## **1. Preemption Framework**

The court appears to have determined that express preemption of state law under the HMTA occurs only when the criteria in 49 USC § 5125(a) and (b) are both met. This is an incorrect reading of the HMTA. Instead, the HMTA provides that preemption occurs when *either* the criteria of § 5125(a) (impossibility or obstacle preemption) *or* § 5125(b) (state laws not “substantively the same” as HMR standards in certain areas) are met.<sup>2</sup> State common law may be the subject of preemption under either or both of these provisions.<sup>3</sup>

## **2. Shipping Papers**

The court incorrectly determined that the HMTA does not preempt claims under state common law that shipping papers should have included additional warnings on purported health risks of benzene in gasoline, because “the HMTA is directed exclusively at mobile or transport-related items and do not extend to ... shipping papers”, and because 49 CFR § 172.201 “does not prohibit additional information [on shipping papers] that is not inconsistent with the regulations.” PHMSA should determine that the court erred on both points, and that state common law requiring shippers or offerors to include additional information on shipping papers would be preempted by the HMTA.

The preparation and contents of shipping papers are extensively addressed in the HMR.<sup>4</sup> Nothing in the HMR requires offerors to include the information sought in the claims before the state court. State laws establishing more stringent or additional requirements beyond those contained in the HMR for shipping papers are thus expressly preempted under 49 USC §

---

<sup>1</sup> *Colo. Pub. Utils. Comm'n v. Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991) (finding that the HMTA preempted a Colorado law requiring carriers of nuclear hazardous materials to carry the State Patrol telephone number and inspection report in the vehicle, to obtain state permits for hazardous materials transportation, and to provide the state with advance notification of shipment); S. Rep. No. 93-1192, at 37 (1974).

<sup>2</sup> *Harmon*, 951 F.2d at 1580.

<sup>3</sup> *See, e.g.*, Common Law Tort Claims Concerning Design and Marking of DOT Specification 39 Compressed Gas Cylinders, 77 Fed. Reg. 39,567 (July 3, 2012).

<sup>4</sup> 49 C.F.R. § 171.1(b)(7); 49 C.F.R. § 172.201.

5125(b)(1)(C). Allowing for state law to require additional information on shipping papers based on purported health risks for each constituent in gasoline (or other materials such as NGLs) would potentially lead to confusing and voluminous shipping papers, with different information for different states. This would not improve safety and would impede the ability of carriers and first responders to quickly access important information, such as emergency contact information.

### 3. Training

The court wrongly determined that the HMTA does not preempt claims under state common law that owners of gasoline terminals should train and otherwise provide educational information to non-employee carrier personnel on alleged health hazards associated with gasoline. Carrier employees are already hazmat employees and already receive training from the carrier on the risks of handling gasoline. PHMSA should find that the HMTA preempts New Jersey common law to the extent it would require shippers to provide hazmat training (including information on potential exposure hazards associated with materials being transported) to carriers employed by a distinct entity.

Section 5125(b)(1)(B) expressly preempts any state law (including common law) about the “handling” of hazardous material, which includes training and provision of information to hazmat employees.<sup>5</sup> Under the HMR, hazmat employers must train their own hazmat employees specifically on “measures to protect the employee from the hazards associated with hazardous materials to which they may be exposed in the work place, including specific measures the hazmat employer has implemented to protect employees from exposure,” as well as “methods and procedures for avoiding accidents.”<sup>6</sup>

The HMR does not require, nor would it be practicable, for hazmat employers (in this case the terminal operators offering gasoline) to provide this training to non-employees (employees of the carrier who are already trained hazmat employees). This would be inefficient and unnecessary to protect carrier employees. More fundamentally, it would require offerors to locate and access non-employees to administer training. This issue is particularly acute considering that carrier employees often visit facilities of multiple offerors. Carrier employees would be required to undergo multiple, duplicative, and potentially conflicting training sessions administered by various offeror companies.

State common law requiring the provision of additional, duplicative safety training or information such as through signage at a terminal facility covering the information on which personnel are trained under § 172.704(a)(3) to those employed by an *unaffiliated carrier employer*,

---

<sup>5</sup> See *Parrish v. JCI Jones Chemicals, Inc.*, 2019 WL 1410880 (D. Hi. March 28, 2019) at \*4 (finding that a plaintiff’s claim of negligence under state tort law arising from exposure to chlorine leaking from an allegedly defective cylinder and from allegedly improper training was preempted by the HMTA under § 5125(b)(1)(E) and (B)).

<sup>6</sup> 49 C.F.R. § 172.704(a)(3).

would therefore not be substantively the same as training requirements under the HMR and is expressly preempted by the HMTA.<sup>7</sup>

#### **4. Gasoline characteristics and loading equipment.**

The court erroneously determined that the HMTA does not preempt claims under state common law that only benzene-free gasoline should be offered, or that offerors should achieve certain exposure standards for loading equipment (such as vapor recovery devices or provision of personal protective equipment (PPE)). PHMSA should find that the HMTA preempts state tort common law that would impose a duty on shippers to limit or eliminate benzene content in gasoline that will be loaded into or unloaded from tanker trucks, or to achieve certain exposure standards through implementation of enhanced vapor recovery or PPE.

The HMR has established extensive regulations governing the handling (including loading and unloading) of Class 3 materials, such as gasoline, and these standards do not provide for any limit or prohibition on benzene content.<sup>8</sup> PHMSA has also prescribed detailed specifications for loading and unloading of hazardous materials for transport by highway, including those specifically for Class 3 materials. Although the HMR prescribes exposure control measures for loading or unloading of certain types of materials (such as for certain gaseous materials under Division 6.1 or Class 2),<sup>9</sup> it has chosen not to impose such exposure controls for loading or unloading Class 3 materials. The court's conclusion would impose such a requirement where the federal law does not. Such common law is, by definition, not substantively the same as the requirements of the HMR and is thus expressly preempted under § 5125(b)(1)(B).

In addition, the court's determination stands as an obstacle to implementing the nationally uniform framework set out in the HMTA and HMR. It would impose a benzene concentration or exposure control standard on gasoline which does not exist in the HMR and potentially amount to a *de facto* ban on gasoline transport. Specifically, such a restriction would preclude the shipment of gasoline to or from New Jersey and would therefore significantly restrict transportation of a regulated commodity in interstate commerce. In effect, the court's determination directs the creation of a new product altogether which does not currently exist (benzene-free gasoline), which would not function as a motor fuel based on its poorer combustion properties and octane rating.

---

<sup>7</sup> See, e.g., Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances, 59 Fed. Reg. 28,913, 28,919 (June 3, 1994) (finding that state regulations establishing special training requirements beyond that required under the HMR for transporters of oil were preempted).

<sup>8</sup> See, e.g., Notice of Administrative Determination of Preemption, The State of Washington Crude Oil by Rail Volatility Requirements, 85 Fed. Reg. 29,511, 29,525 (May 15, 2020) (“loading and unloading fall within the scope of ‘handling,’ which is a covered subject for purposes of the HMTA preemption analysis”).

<sup>9</sup> See, e.g., 49 CFR § 177.841(a), directing loading or unloading of arsenic compounds in a manner “to accomplish such loading with the minimum spread of such compounds into the atmosphere by all means that are practicable”; *id.* at § 177.840(k), directing the use of self-contained breathing apparatuses when handling certain carbon monoxide materials.

PHMSA has previously determined that these types of state commodity standards fall within the scope of § 5125(a) preemption.<sup>10</sup>

It is important to note that a finding that the court's determination is preempted by the HMTA would not preempt or otherwise displace existing regulatory standards established by other federal statutes and agencies, such as those of the Occupational Safety and Health Administration (OSHA) and the US Environmental Protection Agency (EPA), as they pertain to benzene exposure or benzene content in materials such as gasoline. Section 5125 only serves to preempt "requirements of a State, political subdivision of a State, or Indian tribe," but not other federal statutes or regulations promulgated thereunder. As such, OSHA's benzene exposure standards or EPA standards for benzene in products such as gasoline would be unaffected by a preemption determination by PHMSA.

In any event, the fact that these other agencies also regulate materials or facilities that may otherwise be involved in transportation functions should not be construed to limit PHMSA's jurisdiction under the HMTA with respect to the activities considered by the court. As noted in earlier rulemaking, PHMSA indeed has a primary role in "ensuring that there are adequate protections for transportation employees during the transportation of hazardous materials in commerce."<sup>11</sup> The activities performed by the plaintiff in the court proceeding constituted loading and unloading of gasoline, each of which are considered as part of transportation under the HMR. Accordingly, any exposures to benzene during the course of loading and unloading of gasoline squarely fall within PHMSA's expertise and regulatory ambit.

In closing, GPA Midstream supports a PHMSA determination that the court's application of state common law is preempted by the HMTA. If you have any questions regarding the above, please contact me at the email address listed below.

I certify that copies of this comment have been sent to Ilana H. Eisenstein, Hon. Bruce J. Kaplan, Andrew J. Dupont, and Jeffrey Kluger at the addresses specified in the Federal Register notice.

---

<sup>10</sup> Notice of Administrative Determination of Preemption, The State of Washington Crude Oil by Rail Volatility Requirements, 85 Fed. Reg. at 29,527 ("Furthermore, a patchwork of varying and conflicting State and local regulations would likely increase risk by exporting potentially unreasonable hazards to other jurisdictions as offerors employ various avenues of compliance either through rerouting shipments; seeking alternate markets or modes of transportation; or avoidance of a jurisdiction altogether. *This last option is particularly troubling as it resembles a de facto ban on transportation*") (emphasis added).

<sup>11</sup> Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage, 66 Fed. Reg. 32,420, 32,429 (June 14, 2001).

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Saulters". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stuart Saulters  
Vice President, Federal Affairs  
GPA Midstream Association  
6060 S. American Plaza St E  
Suite 700  
Tulsa, Oklahoma 74135  
[ssaulters@gpamidstream.org](mailto:ssaulters@gpamidstream.org)