Via FedEx and email to phmsachiefcounsel@dot.gov

April 21, 2026

Keith Coyle, Esq.
Chief Counsel
Pipeline and Hazardous Materials Safety Administration (PHMSA)
U.S. Department of Transportation, East Building,
PHC-1, 1200 New Jersey Avenue, SE
Washington, DC 20590-0001

RE: Rebuttal Comments of GPA Midstream Association
Docket No. PHMSA-2025-0777
PDA-42(R)

Dear Mr. Coyle,

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to provide a rebuttal to certain comments filed in opposition to ExxonMobil Corporation's (Exxon) August 26, 2025 request for preemption determination. GPA Midstream supports ExxonMobil's request.

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 (NGLs), 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 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.

As discussed in more detail below, the Hazardous Materials Transportation Act (HMTA) set out clear criteria for determining whether a state law is preempted. These criteria are broad by design, consistent with the Congressional goal of uniform standards for the safe and efficient transportation of hazardous material.

The opposing commenters raise a variety of arguments that attempt to unnecessarily complicate this otherwise straightforward preemption analysis. Opposing commenters question the appropriateness of PHMSA's hazardous materials regulations (HMR) and the constitutionality of HMTA preemption. They raise arguments that erroneously interpret the HMTA preemption provisions at 49 U.S.C. §§ 5125(a) and 5125(b) and misapprehend the scope of PHMSA's regulatory jurisdiction under the HMTA. And they overstate the effect of granting preemption, asserting that other federal agencies, states, and private litigants would be stripped of their regulatory powers or their ability to recover for damages sustained from the conduct of another. None of these arguments have merit, and PHMSA should grant Exxon's request.

A. The HMTA preempts state laws that purport to fill gaps in the HMR, even where PHMSA has not established affirmative standards in the area.

Even though the original HMTA contained a conflict preemption-based provision prior to 1990, many states and localities instituted their own transportation safety standards which "creat[ed] the potential for unreasonable hazards in other jurisdictions and confound[ed] shippers and carriers which attempt to comply with multiple and conflicting … requirements."[1] Recognizing the impracticability of a state patchwork of different requirements, Congress specifically sought to replace it with nationally uniform hazardous material transportation standards. This effort served as the "linchpin" to Congress's 1990 amendments to codify § 5125(b), which set out an additional, express preemption framework.[2]

Section 5125(b) presents a simple two-step framework to determine whether a state hazardous material law is preempted. First, the state law must simply be "about" one of the several enumerated areas in Section 5125(b)(1). Many of these areas are broad, such as "handling," which includes loading and unloading of hazardous material. A state law need not only be "about" an enumerated area. Therefore, state laws that govern an activity that relates to or affects one of the enumerated areas would satisfy the first criteria of preemption under Section 5125(b).

Second, the state law must be "substantively the same" as the HMTA or HMR's requirements. This means that if the state law about an enumerated area imposes requirements that the HMTA or HMR does not, it would be subject to preemption. It does not mean, as some of the opposing

---

[1] Massachusetts' Definition of Hazardous Materials, 74 Fed. Reg. 4287, 4288 (Jan. 13, 2009)(admin determination of preemption PD-26(R)).

[2] *Colo. Pub. Utils. Comm'n v. Harmon*, 951 F.2d 1571, 1575-1578 (10th Cir. 1991).

commenters contend,[3] that PHMSA must have established a standard in the specific area governed by the state law before the state law could be preempted. Thus, the fact that PHMSA may not have established, for example, vapor exposure limits for gasoline or vapor pressure limits for crude oil, does not give states free rein to establish such standards.[4] A contrary position would defeat the core Congressional goal with the 1990 HMTA amendments to achieve uniformity, especially considering PHMSA has already established comprehensive safety standards for the transportation of hazardous materials, including Class 3 materials like gasoline.

As discussed further below, the state common law sought by the Plaintiff would impose requirements that meet the above two criteria for preemption under Section 5125(b), and in some cases, the criteria for conflict preemption under Section 5125(a).

B. Granting Exxon's request would not present federalism or constitutional concerns over states rights because states expressly retain the ability to seek approval to retain their own standards.

Some opposing comments claim that if PHMSA were to find preemption in this matter, it would strip the ability of states to exercise police powers, maintain their own common law in tort, or otherwise intrude on their sovereignty.[5] This is simply not the case. Moreover, none of these supposed effects are relevant to applying the clear and unambiguous language in the HMTA for federal law to serve, with limited exception, as the exclusive standards governing safety of hazardous materials transportation. State common law must yield to federal law where Congress says so pursuant to its constitutional authority.[6] The HMTA reflects such a Congressional statement.

The opposing comments state sovereignty concerns do not reflect the fact that the HMTA specifically provides a process for states to implement their own hazardous material transportation safety standards.[7] This preemption waiver request mechanism carefully balances state motivations for establishing individual standards against their impact on commerce. None of the opposing states have requested an HMTA waiver for any of the standards contained in the common law at issue. PHMSA should reject the states' federalism concerns and apply the HMTA preemption provision as written.

---

[3] *See, e.g.*, Locks Law Firm Comment at 8.

[4] *See* Admin. Preemption Determination PD-40, 85 Fed. Reg. 29511 (May 15, 2020); *Buono v. Tyco Fire Prods*., LP, 78 F.4th 490, 500 (2d Cir. 2023).

[5] *See* New York AG, et al. Comments at 2.

[6] *See, e.g.*, *Riegel v. Medtronic, Inc.,* 552 U.S. 312 (2008).

[7] 49 U.S.C. § 5125(e).

C. State common law requirements on benzene content in gasoline fall within the scope of PHMSA's regulatory authority under the HMTA.

The state common law at issue would require limiting or further restricting benzene content in gasoline. Multiple commenters contend that these requirements fall outside the scope of transportation in the HMTA.[8] However, previous attempts by states to impose standards on the properties of petroleum products have been found preempted by PHMSA.

In 2020, PHMSA determined that Washington's attempts to impose a vapor pressure limit on crude oil loaded or unloaded for transportation by rail was preempted.[9] PHMSA found that such a restriction would be preempted under Section 5125(b) as it was about handling, and the HMR imposed no such limitation.[10] PHMSA also found that Washington's law was preempted under Section 5125(a) because it would encourage multiple states to set their own standards that would invariably lead to confusion among offerors and carriers.[11] PHMSA also expressed concern that such a state law would amount to a de facto ban on transportation of crude oil by rail through Washington, leading offerors to turn to drastic measures such as rerouting shipments and avoiding transportation through entire jurisdictions, which does not further transportation safety.[12]

The state common law requirement at issue here is arguably even more drastic than the Washington law that PHMSA found preempted. It would effectively ban loading or unloading of gasoline as it currently exists within the state of New Jersey (and any other states that institute similar measures). Each of the reasons expressed by PHMSA supporting its preemption determination of the Washington law equally apply here.

D. The state common law requirements pertaining to warnings to carriers fall within the scope of PHMSA's regulatory authority under the HMTA.

The state common law at issue would require warnings to be posted around gasoline terminals and additional warning information to be included in safety data sheets, all with the purported aim of educating the carrier about the hazards of benzene in gasoline. In addition, it would require additional warning information on container labeling and on shipping papers. Numerous

---

[8] *See, e.g.*, Am. Ass'n for Just. Comment at 9; Locks Law Firm Comment at 15-17.

[9] Admin. Preemption Determination PD-40, 85 Fed. Reg. 29511 (May 15, 2020).

[10] *Id*. at 29525.

[11] *Id*. at 29526.

[12] *Id*.

commenters argue that these requirements take place outside the scope of "transportation" under the HMTA, and thus are not preempted.[13]

In fact, all of these requirements are within the scope of PHMSA's regulatory authority under the HMTA. Pursuant to the HMTA, PHMSA regulates both transportation activities (including the act of loading or unloading hazardous material by a carrier), as well as pre-transportation functions.[14] Pre-transportation functions are those "specified in the HMR that [are] required to assure the safe transportation of a hazardous material."[15] Activities to educate carriers and other transportation workers to provide for the safe transportation of gasoline are "pre-transportation functions" under the HMR. PHMSA has already promulgated a comprehensive set of requirements for education-based, pre-transportation activities, including training of hazmat employees to cover hazards of the materials being handled, and providing descriptive information about the hazardous materials and appropriate emergency response information to carriers.[16]

The state common law warning requirements are, therefore, activities governed by the HMTA. They are also "about" the handling, labeling, and description of hazardous materials under Section 5125(b)(1)(A) and (B), as well as about shipping documents under Section 5125(b)(1)(C). As the state common law would impose requirements that are not required under the HMR, PHMSA should find these requirements to be preempted.

E. The state common law requirements for offerors of gasoline to establish particular work practices and institute vapor control equipment during loading and unloading fall within the scope of PHMSA's authority under the HMTA.

The state common law at issue would require operators of gasoline terminals to install special vapor control equipment and provide PPE to carriers, as well as institute exposure control practices, all for allegedly minimizing the carrier's exposure to benzene in gasoline during loading and unloading. Multiple commenters say that each of these activities do not fall within the scope of transportation and thus cannot be preempted by the HMTA.[17] This is incorrect.

Each of these activities are squarely within the scope of transportation. The HMTA specifically defines "transportation" as "the movement of property and loading, unloading, or storage incidental to the movement" (emphasis added).[18] They are also "about" the handling of hazardous

---

[13] *See, e.g.*, Am. Ass'n for Just. Comment at 8; Locks Law Firm Comment at 10.

[14] 49 C.F.R. § 171.1(b), (c).

[15] 49 C.F.R. § 171.8.

[16] *See* 49 C.F.R. Part 172, Subparts C – H.

[17] *See, e.g.*, Am. Ass'n for Just. Comment at 9; Locks Law Firm Comment at 16; Earthjustice Comment at 8.

[18] 49 U.S.C. § 5102(13).

material, as "handling" includes the acts of loading or unloading by a carrier.[19] And, although the HMR specifies a comprehensive set of requirements for loading and unloading of gasoline and other Class 3 materials, it does not include the requirements specified in the state common law at issue. It is, therefore, not substantively the same as the HMR. The state common law meets each of the criteria for preemption under Section 5125(b).

F. PHMSA has expertise over working conditions associated with hazardous material transportation activities.

Numerous commenters contend that PHMSA should yield to OSHA because PHMSA simply does not have the expertise or resources to adequately protect workers such as carriers.[20] These comments do not acknowledge the HMTA's directive to PHMSA to broadly institute standards in many aspects of hazardous material transportation, necessarily including working conditions. These comments also do not acknowledge the agency's comprehensive regulatory efforts towards achieving safety in hazardous material transportation-related working conditions.

The HMTA directs PHMSA to promulgate standards for handling hazardous material, including the "minimum levels of training and qualifications for personnel," "equipment for detecting, warning of, and controlling risks posed by the hazardous material," and "specifications for the use of equipment and facilities used in handling and transporting the hazardous material."[21] These broad directives necessarily touch upon working conditions associated with loading and unloading hazardous material.

Accordingly, PHMSA has "has developed a special expertise" that makes it "uniquely qualified to play the primary Federal regulatory role in the protection of workers who operate motor vehicles … used to transport hazardous materials."[22]

While OSHA may also have expertise in regulating working conditions, OSHA yields to PHMSA or other federal agencies when the other agency has "exercise[d] statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health."[23] PHMSA has exercised its authority under the HMTA and harnessed its "special expertise" by promulgating comprehensive standards for loading and unloading hazardous materials, including special requirements for gasoline and other Class 3 materials.[24] PHMSA has regulated the working

---

[19] Admin. Preemption Determination PD-40, 85 Fed. Reg. at 29525 (May 15, 2020).

[20] *See, e.g.*, Am. Ass'n for Just. Comment at 6; AFL-CIO Comment at 2; Locks Law Firm Comment at 6.

[21] 49 U.S.C. § 5106.

[22] Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage, 68 Fed. Reg. 61906, 61927 (October 30, 2003).

[23] 29 U.S.C. § 653(b)(1).

[24] *See* 49 C.F.R. §§ 177.834 and 177.837.

conditions associated with loading and unloading gasoline, thus limiting OSHA's regulatory authority in this area. And, in any event, preemption of state common law under the HMTA as requested by Exxon does not in any way affect the viability of OSHA standards.

G. A state common law requirement to train non-employees is preempted under both Section 5125(a) and (b).

The state common law at issue would require operators of gasoline terminals to provide training on the purported hazards of benzene in gasoline to persons who are not its hazmat employees. As noted above, the education of carriers on how to safely handle hazardous material is "about" handling under Section 5125(b)(1)(B).[25] Some commenters argue that the state common law requirements on training should not be preempted because the HMR supposedly authorizes more stringent state requirements on training, so that the state common law is substantively the same as the HMR.[26]

The HMR does not, however, permit the type of training standards the state common law at issue here would institute. The HMR provides that more stringent state requirements are only allowed to the extent that they "do not conflict with the training requirements" in the HMR.[27] The state common law's training requirements substantially conflict with the HMR's requirements, though.

The state common law would effectively redefine the terms "hazmat employer" and "hazmat employee" in the HMR[28] and impose a potentially limitless scope of training requirements for offerors and carriers. Most carriers of gasoline visit multiple companies' terminals. This means that a single carrier may have to undergo training sessions and testing with each of these companies, separately. And, the company-specific material on which the employee is trained could conflict with that provided by other companies. The issue would be even more acute for carriers who transport across state lines, where different states could set their own training requirements and frequencies. This approach jeopardizes safety by potentially confusing carriers through an array of different training sessions. Much of the carrier's time would be diverted away from transporting hazardous material and towards needless training that is already provided by a single entity – their own employer.

Thus, the state common law is inconsistent with the HMR's current framework of training specifically between hazmat employers and employees. The state common law is not substantively

---

[25] *See Parrish v. JCI Jones Chems., Inc*., 2019 WL 1410880 (D. Hi. March 28, 2019) at *4.

[26] *See, e.g.*, Am. Ass'n for Just. Comment at 10; Locks Law Firm Comment at 5.

[27] 49 C.F.R. § 172.701.

[28] *See* 49 C.F.R. § 171.8.

the same as the HMR (under Section 5125(b)) and stands as an impediment to implementation of the HMTA (under Section 5125(a)).

In closing, the comments opposing Exxon's preemption determination request needlessly complicate what is a straightforward application of the HMTA's preemption provision. GPA Midstream urges PHMSA to grant Exxon's request and preserve national uniformity in hazardous material transportation standards as Congress intended.

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.

Sincerely,

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