



Via email to phmsachiefcounsel@dot.gov

October 19, 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

GPA Midstream Comments in Response to Petitions for Reconsideration
Docket No. PHMSA-2025-0777

Dear Chief Counsel Coyle,

The GPA Midstream Association (GPA Midstream) appreciates the opportunity to submit these comments pursuant to 49 C.F.R. § 107.211(c), opposing the September 29, 2026 Petitions for Reconsideration¹ filed in the above docket regarding the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Preemption Determination No. 42(R).² The Preemption Determination correctly determined that state common law tort claims brought against ExxonMobil are preempted because they are both not substantively the same as PHMSA's Hazardous Materials Regulations (HMR) pursuant to 49 U.S.C. § 5125(b), and present an obstacle to implementation of the Hazardous Materials Transportation Act ("HMTA") pursuant to 49 U.S.C. § 5125(a).

The Petitions raise a variety of unsupported arguments in an attempt to undermine the HMTA's clear goal of achieving uniformity of standards regarding the transportation of hazardous material, and to sidestep the HMTA's express avenues for state input on hazmat

¹ See Docket No. PHMSA-2025-0777-0037, Petition for Reconsideration submitted by the States of New York, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Virginia, and the District of Columbia, dated Sept. 29, 2026; Docket No. PHMSA-2025-0777-0038, Petition for Reconsideration of Peter C. Singh, Chrismae Singh, Harrington Watt, Grace Watt, and Kenneth Vieldhouse, dated Sept. 29, 2026

² 91 Fed. Reg. 57,439 (Sept. 9, 2026).



transportation – through seeking a preemption waiver or petitioning for regulatory amendments. PHMSA should reject the Petitions for the following reasons.

1. The Occupational Safety and Health Act (OSH Act) cannot shield the state common law from HMTA preemption.

The Petitions argue that the state common law claims at issue are preserved through a savings clause at 29 U.S.C. 653(b)(4) of the OSH Act, and therefore that they cannot be preempted by the HMTA because 49 U.S.C. § 5125(a) excepts from preemption those requirements “authorized by another law of the United States.”³ But the state common law claims are, in fact, not “authorized” by OSHA for HMTA preemption purposes. Both case law and PHMSA’s preemption precedent make clear that “authorization” does not occur merely by way of a savings clause that provides that it does not displace state law. In particular, the court in *Colo. Pub. Utils. Comm’n v. Harmon*, found that the HMTA preempted a state law requiring nuclear hazardous material carriers to submit proof of insurance to a state agency as part of obtaining a permit from the agency to transport the material.⁴ The court specifically rejected the state’s argument that another federal law (the Motor Carrier Safety Act, MCSA) authorized the state’s insurance requirement because the MCSA did not preempt such state law, stating “the fact that the MCSA does not preempt [the state] requirement cannot be construed as an authorization of the regulation.”⁵ Other courts and PHMSA have reached the same conclusion regarding the HMTA’s preemption provision:

- *New York v. DOT*⁶ (state law restricting hazardous waste transportation preempted by HMTA notwithstanding RCRA provision preserving states’ ability to establish hazardous waste-related standards);
- *So. Blasting Servs., Inc. v. Wilkes County*⁷ (ordinance restricting explosives transportation by truck was preempted notwithstanding another federal law preserving states’ ability to regulate motor vehicle safety);

³ Petition of New York et al at 8-9; Petition of Singh et al at 4-5.

⁴ 951 F.2d 1571, 1581 (10th Cir. 1991).

⁵ *Id.*

⁶ 37 F. Supp. 2d 152 (N.D.N.Y. 1999).

⁷ 162 F. Supp. 2d 455 (W.D.N.C. 2001).



- PHMSA preemption determination PD-7(R)⁸ (state law requiring hazardous waste carriers to obtain certification preempted by HMTA notwithstanding RCRA provision preserving states' ability to establish hazardous waste-related standards).

Accordingly, the savings clause that Petitioners point to cannot serve to “authorize” the state common law claims at issue to preclude its preemption under the HMTA. Applying the Petitioners’ overbroad reading of the OSH Act savings clause and § 5125(a) would effectively nullify the whole preemption provision altogether – essentially all transportation activities regulated under the HMTA are conducted in the course of employment, giving states carte blanche to impose whatever standards they see fit. It is clear that Congress did not intend that result, given the HMTA’s central purpose of achieving uniformity over hazardous material transportation standards as acknowledged in PHMSA’s Preemption Determination.⁹

2. The failure-to-warn, loading equipment design, and design defect claims are properly preempted.

Petitioners reiterate earlier arguments that the HMTA does not reach and cannot preempt common law requirements to warn, achieve certain loading equipment design standards, or achieve certain benzene content specifications for gasoline.¹⁰ Instead, the Petitioners aver that these requirements are outside of PHMSA’s jurisdiction under the HMTA, and within the Occupational Safety and Health Administration’s (OSHA’s) or Environmental Protection Agency’s (EPA’s) jurisdiction.¹¹

The Petitioners ignore the fact that PHMSA has previously recognized that it is the principal regulatory authority for working conditions encountered specifically during hazardous material transportation activities, such as loading and unloading.¹² Each of the above common law claims directly relate to transportation – through the Plaintiffs’ theory that more warnings, more vapor collection equipment, or lower benzene content – would supposedly improve the safety of loading or unloading gasoline. PHMSA is therefore the appropriate regulator for such activities under the HMTA, and such claims are “about” the marking, handling, and classification of hazardous material, as well as the design of packaging components used in loading. Although OSHA and EPA may impose parallel standards regarding loading and unloading, the state common

⁸ 59 Fed. Reg. 28913 (June 3, 1994).

⁹ Additionally, it does not appear that Exxon ever employed the plaintiff bringing the state common law action. OSH Act Section 4(b)(4) therefore is inapplicable to this matter (specifically relating to rights, duties, or liabilities of “employers and employees ... arising out of, or in the course of, employment”).

¹⁰ Petition of Singh et al at 6-8.

¹¹ *Id.*

¹² 68 Fed. Reg. at 61926-27.



law standards are distinct from these federal standards, and are not authorized by them. PHMSA correctly determined that these claims are preempted by the HMTA.

3. Durnell supports PHMSA's preemption finding.

Petitioners argue that the recent Supreme Court case *Monsanto Co. v. Durnell*¹³ is inapplicable to the matter at hand because the statute involved there (Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) has a different framework and distinct preemption provision.¹⁴ They contend FIFRA concerns different risks and may be broader than the HMTA's preemptive scope. The Petitioners raise surface-level differences to try to obfuscate core similarities to the HMTA's preemption provision. In fact, both FIFRA and HMTA's preemption provisions prohibit states from establishing additional or distinct requirements not found in the federal standards, while the HMTA also recognizes preemption in cases where the state law otherwise serves as an obstacle to implementing the HMTA.¹⁵ If anything the HMTA's preemption provision may be *more* robust than FIFRA's. PHMSA's correctly recognized the applicability of *Durnell* in reaching its conclusion that the state common law claims were preempted.

4. Federalism concerns raised by Petitioners are meritless.

State Petitioners continue to contend that finding preemption of the state common law claims intrude upon state sovereignty.¹⁶ These arguments are unavailing because they are predicated on implied preemption contexts. Here, however, there is an express provision within the HMTA in which Congress plainly specified when preemption occurs. Express preemption provisions effectively foreclose the States' police powers or larger federalism arguments.¹⁷

The States' federalism concerns appear to be a pretext for its ultimate belief that the Petitioners are unsatisfied with the HMR's current standards. Although GPA Midstream believes such belief is unfounded and that the current HMR standards are appropriate with respect to loading and unloading of gasoline, the HMTA gives States and other parties the ability to act upon that belief. Specifically, States could enact more stringent state laws on hazardous material transportation and seek a preemption waiver under § 5125(e), or petition for rulemaking to amend the current HMR standards to mirror the state common law they seek. The Petitioners have not

¹³ 146 S. Ct. 2001 (2026).

¹⁴ Petition of New York et al at 10-11; Petition of Singh et al at 8-9.

¹⁵ 49 U.S.C. § 5125(a)(2).

¹⁶ Petition of New York et al at 6-8.

¹⁷ See, e.g., *Chamber of Commerce of United States of Am. v. Whiting*, 563 U.S. 582, 594 (2011).



done so. Instead, they seek a shortcut by disposing of the HMTA's preemption framework and Congress' ultimate aim of achieving uniformity of hazardous material transportation standards altogether. PHMSA should reject the Petitioners' attempts to do so.

In conclusion, GPA Midstream opposes the Petitions for Reconsideration for the reasons outlined above. Please contact me at the email address listed below should you have any questions.

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