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February 5, 2026

PHMSA Preemption Determination Application
Docket No. PHMSA-2025-0777

Dear Sir or Madam,

The Alliance for Innovation and Infrastructure (Aii) respectfully submits the following comment to address the scope of federal preemption under the Hazardous Materials Transportation Act (HMTA), as implemented by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

Introduction

As a critical safety agency, PHMSA does not serve as a platform for resolving conflicts between state and federal requirements. Instead, it was granted explicit and robust preemptive authority by Congress to oversee a unified regulatory framework for hazardous materials comprehensively across the nation. Congress conferred this authority upon PHMSA specifically to prevent the fragmentation of safety regulations by state and local authorities, including tort duties. Even when viewed as additive or complementary, such diverse state-level tort laws induce imbalance and uncertainty, ultimately compromising the objective of a singular, strong, and clear federal standard.

HMTA Preemption

The HMTA includes strong preemptive authority due to the risk of mishandling, coupled with the need to ensure uniformity across national and international boundaries. Strong, prescriptive regulations are required in this context to ensure safety for professionals, communities, and the surrounding environment. The nation relies on millions of daily shipments of hazardous materials to power the economy, ensure safe drinking water, and sustain the basic functions of modern life. Furthermore, the nation relies on PHMSA to ensure that these shipments are delivered reliably and safely.

Under the HMTA, non-federal requirements in covered subject areas are preempted if:

1. It is impossible to comply with both state/local law and federal law at the same time;
2. Complying with the state/local law is an “obstacle” to complying with federal law; or
3. The state/local requirement is not “substantively the same” as federal provisions.¹

Additionally, Congress identified specific “covered subject areas” for which uniform national requirements must apply. Categories of state requirements that would also be preempted are listed in the text.

- (A) the designation, description, and classification of hazardous material.
- (B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.
- (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
- (D) 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.
- (E) 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. (49 U.S.C. §5125(b)(1))²

This structure demonstrates that Congress, through the HMTA, vested PHMSA with broad authority over the transportation of hazardous materials, underscoring the central role such transportation plays in the national economy and public safety.³ The text repeatedly emphasizes that overlapping or inconsistent state requirements pose a risk to commerce and safety, and has been reviewed in the past for putting a strong emphasis on preemption.⁴ Accordingly, PHMSA’s role is to safeguard the integrity of the federal regulatory framework.

¹ <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-C/part-171/subpart-A/section-171.1#p-171.1%28f%29>

² <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title49-section5125&num=0&edition=prelim>

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<https://uscode.house.gov/view.xhtml?edition=prelim&path=%2Fprelim%40title49%2Fsubtitle3%2Fchapt%2F171>

⁴ <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/standards-rulemaking/hazmat/preemption-determinations/57061/preemption-index-march-2017-december2017.pdf>

Importantly, the significance of uniformity in hazardous materials transportation extends beyond domestic federalism. PHMSA works closely with international partners and standard-setting bodies to harmonize hazardous materials – or “dangerous goods,” as they are often termed globally – requirements, reflecting the widely recognized safety and commerce benefits of consistent rules. PHMSA provides U.S. leadership in international forums and regularly updates federal standards to maintain alignment with international model regulations, including United Nations recommendations and multimodal dangerous goods codes. This international emphasis underscores that hazardous materials transportation is a domain in which uniformity is not merely an administrative preference, but a foundational safety principle essential to coherent oversight and reliable movement of critical materials.

Tort-Duties as Non-Federal Requirements

State common-law tort duties can operate as ‘requirements’ for HMTA preemption purposes. Where such duties would impose additional or different obligations in core areas of federally governed hazardous materials transportation – such as marking, classification, or training – they are not ‘substantively the same’ as federal requirements and risk undermining the uniform national hazmat framework. In this domain, Congress chose a federal regulatory regime as the mechanism of accountability – not a parallel system of state-by-state tort duties.

Even if tort duties are framed as complementary safety incentives, the fragmentation of requirements undermines that rationale by creating uncertainty as to which incidents may arise. For hazardous materials transportation, uniformity is itself a core safety mechanism, ensuring consistent operations, and interstate oversight. Most importantly, allowing tort duties to impose additional or different requirements would weaken PHMSA’s ability to serve as the central authority Congress intended and further undermine the very core of interstate transportation.

The implications of allowing tort law to function as a supplementary regulatory regime in hazmat transportation extend beyond the current context. Not only would it force industry operators to constantly shift obligations based on litigation outcomes, but it would also encourage forum shopping and require courts to resolve complex technical issues outside their institutional design. Allowing state tort standards to diverge from federal requirements would introduce uncertainty and inconsistency within a regulatory framework that Congress intended to be uniform.

Conclusion

Congress structured the HMTA to establish a comprehensive and centralized national safety framework. Fragmented, state-by-state supplementation of hazardous materials transportation requirements is incompatible with effective national safety governance. **More than 2.3 million hazardous materials shipments occur daily nationwide**, across all modes of transportation.⁵ A

⁵ <https://www.phmsa.dot.gov/node/32431> pg. 53.

uniform regulatory regime that aligns operators, workers, and regulators nationwide is essential to safe transportation.

Aii respectfully recommends that PHMSA reaffirm its preemption authority to preserve federal exclusivity in core areas of hazardous materials transportation, at least with respect to the covered subject areas enumerated in §5125(b)(1).

Best,



Benjamin Dierker

Executive Director

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