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Preemption for Common Law Tort Claims Concerning the Transportation of Gasoline: Pipeline and Hazardous Materials Safety Administration Administrative Determination Issued

09/15/2026

The Pipeline and Hazardous Materials Safety Administration ("PHMSA") issued on September 9th a notice styled:

Hazardous Materials: Administrative Determination of Preemption for Common Law Tort Claims Concerning the Transportation of Gasoline ("Preemption Determination").

PHMSA is providing a notice of final administrative determination of preemption addressing state common law claims concerning the safe transportation of gasoline in commerce.

Exxon Mobil Corporation ("Exxon") sought from PHMSA a determination that federal law preempts state and common law claims brought against it in New Jersey concerning the safe transportation of gasoline in commerce. PHMSA's Preemption Determination concludes that the State common law tort claims presented by Exxon are preempted.

It further states:

... Each of these duties, if imposed, would present an obstacle to compliance with the Federal regulatory framework essential for the safe transportation of gasoline. In addition, any claims about covered subjects, such as the marking, loading and unloading, and classification of gasoline that are not substantively the same as the applicable HMR provisions are preempted.

The acronym HMR refers to the federal Hazardous Materials Regulations.

The Energy Marketers of America ("EMA") publication *Regulatory Alert* states that the Exxon petition arose from state tort litigation seeking to impose obligations on gasoline marketers. This is stated by EMA to have included additional benzene-specific warning labels, carrier-level employee training duties, loading equipment redesign, and product reclassification that the organization states went beyond what the HMR requires.

EMA notes that various organization including EMA argued that allowing state tort claims to function as de facto regulatory requirements would fracture the uniform federal framework that protects both safety and interstate commerce, creating a patchwork of conflicting obligations.

The EMA publication includes a topic-by-topic analysis addressing each claim category which includes:

- Container Marking and Shipping Papers.
- Employee Training.
- Loading and Unloading Equipment Design.
- Hazardous Material Classification.

The Arkansas Oil Marketers Association is a state chapter of EMA.

A copy of the [PHMSA Preemption Determination](#) and the [EMA Regulatory Alert publication](#) can be found here.