



# HAZARDOUS MATERIALS TRANSPORTATION ACT REAUTHORIZATION

## **Issue 1: Equitable Enforcement of Hazmat Regulations**

### **Clarify Limitations for Carrier Responsibility for Violations**

Most carrier violations of the HMR are discovered during roadside inspections. Many of these violations stem from activities that occur outside of the control of the carrier and it is not reasonable to expect carrier employees (i.e., drivers) to discover many of these violations. Carriers must remain responsible for the correct performance of the hazmat regulations under their control; however, activities such as hazmat classification, package selection and marking, and shipping paper preparation are typically performed by other entities. To correct this problem, the HMTA should make clear that carriers should not be held liable for violations that result from activities that are performed by another party in the supply chain unless the carrier has actual knowledge of a violation.

[Proposed Legislative Text: Add 49 U.S.C. 5123(a)(2)]

A carrier shall not be liable for violations of this chapter or a regulation issued hereunder stemming from pre-transportation functions, as defined in 49 CFR section 171.1 that are performed by another person unless a carrier has actual knowledge of a violation.

### **Eliminate Uniformity Exception for Non-Federal Enforcement Standards**

Enforcement of hazardous materials regulations for motor carriers relies in part upon State participation. Most State enforcement actions are based on a “strict liability” standard, rather than the existing federal “willfully” or “knowingly” standards. As such, the strict liability standards were subject to preemption under the HMTA. The 2005 amendments removed all preemptive limitations to State enforcement authority. This preemption exemption should be eliminated and enforcement officials should be required to prove that an individual knowingly or willfully violated the HMRs before issuing a notice of violation.

[Proposed Legislative Text: Strike 49 U.S.C. 5125(h)]

~~(h) Non-Federal Enforcement Standards. This section does not apply to any procedure, penalty, required mental state, or other standard issued by a State, political subdivision of a State, or Indian Tribe to enforce a requirement applicable to the transportation of hazardous material.~~

**SAFETY IMPACTS** – The issuance of violations to carriers for activities that are performed by others does not properly incentivize the responsible party to make corrections. This can result in continuing behavior that is not in accordance with the regulations and the failure to correct unsafe transportation conditions.

**ECONOMIC IMPACTS** – The issuance of violations to motor carriers that stem from the behavior of others results in civil penalties that are assessed to the party that does not have the ability to take corrective action. This could result in qualified carriers making a business decision to cease transporting hazardous materials.

## **Issue 2: Strengthen Uniformity to Enhance Safety and Efficiency**

Given the safety and security issues surrounding the transportation of hazardous materials, a strong federal presence is required to *ensure uniformity* of regulations that protect the public, facilitate compliance, and provide for the efficient movement of these essential materials in intrastate, interstate, and foreign commerce. To this end, Congress explicitly provided preemptive authority to DOT.

Congress should continue to strengthen DOT's ability to ensure uniform regulations covering the transportation of hazardous materials by allowing DOT to use an "internal consistency test" in evaluating the burden on commerce. This standard was articulated by the Supreme Court in Healy v. Beer Institute, and would require DOT to evaluate "the practical effect of [a state] statute . . . not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other states and what effect would arise if not one, but many or every, State adopted similar legislation." Congress should further strengthen DOT's authority to ensure uniform regulations of hazardous materials transportation by clarifying that DOT is authorized to consider such burdens on commerce when evaluating applications for preemption determinations.

[Proposed Legislative Text: 49 U.S.C. 5125(a)(3)]

Except . . . a requirement of a State, political subdivision of a State, or Indian tribe is preempted if . . . .

(3) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an unreasonable burden on commerce.

States should not be allowed to enact regulations that require carriers to notify state and local officials immediately upon the release of a hazardous material in transportation. Drivers have no way of knowing whether local reporting requirements exist at the particular location where an accident occurs. Existing federal notification requirements (49 CFR § 171.15) can ensure that the appropriate local emergency response officials are notified in the event of an hazardous materials incident.

[Proposed Legislative Text: 49 U.S.C. 5125(b)(1)(D)]

(D) the ~~written~~ notification, recording, and reporting of the unintentional release in transportation of hazardous material.

**SAFETY IMPACTS** – Non-uniform regulations force carriers to bypass certain jurisdictions, resulting in a delay in the delivery of hazardous materials and increased vehicle miles traveled. Statistically, the more time hazardous materials spend in transportation or the more miles they must travel, the more likely it is that they will be involved in an incident.

**ECONOMIC IMPACTS** – Non uniform regulations make it difficult to train workers that perform their duties in multiple jurisdictions. This leads to increase incidents of non-compliance and associated fines for failure to comply with unique regulatory requirements that vary from state-to-state.

### **Issue 3: Wetlines**

Over the past 10 years there have been more than 182 million shipments of flammable liquids in cargo tanks. Regrettably, over the same period of time, there have been 6 fatalities attributable to the transportation of these products in external product piping (*i.e.*, wetlines). Due to this incredibly low incident rate, the trucking industry, International Brotherhood of Teamsters Tank Haul Division, all leading cargo tank manufacturers, and petroleum shippers oppose legislation to ban the transportation of hazardous materials in wetlines.

If the Committee chooses to move forward with legislation to ban wetlines, we recommend several changes to the proposal to better target the wetlines incidents that have resulted in fatalities, while reducing the potential unsafe impact on tank repair shop workers and the costs to the industry.

#### **A. Narrow the Restriction to Flammable Liquids**

The transportation of combustibles, corrosives and other hazardous materials in cargo tank wetlines has not resulted in any known fatalities or injuries. For this reason, we believe that any restriction on the transportation of hazardous materials in wetlines should be limited to flammable liquids. Limiting the new construction restriction to flammable liquids will have no negative impact on safety, will greatly reduce the cost of this control measure, and will allow fleets the flexibility to allocate assets for the transportation of products such as home heating oil and diesel fuel.

Proposed Legislative Amendment [5118(a)(1) and (2)]:

“(1) PROHIBITION FOR VEHICLES MANUFACTURED AFTER 2010.—Subject to subsection (b), the Secretary shall prohibit the transportation of ~~hazardous material~~ flammable liquids in the external product piping of all cargo tank motor vehicles . . . .”

“(2) PROHIBITION FOR ALL VEHICLES.—Subject to subsection (b), no person may offer for transportation or transport a ~~hazardous material~~ flammable liquids in the external product piping of a cargo tank motor vehicle . . . .”

#### **B. Allow additional time for New Equipment**

Any wetlines prohibition applicable to new equipment would benefit from a reasonable transition period to allow cargo tank manufacturers the time necessary to create cost effective alternative solutions. Because there currently are no other viable alternatives to comply with the wetlines ban, the legislation would essentially require the use of a purging system. The tank truck equipment manufacturing industry should be given time to develop, test, and produce options beyond purging systems that would cause flammable vapors to remain in the wetlines – a situation that is potentially more dangerous than the presence of flammable liquids.

Proposed Legislative Amendment [5118(a)(1)]:

“(1) PROHIBITION FOR VEHICLES MANUFACTURED AFTER ~~2010~~ 2014. . . .  
. . . in the external product piping of all cargo tank motor vehicles manufactured on or after ~~2~~ 5 years after the date of enactment of the Hazardous Material Transportation Safety Act of 2009.”

### **C. Eliminate or Extend the Effective Date of the Retrofit Requirement**

While incident data prepared by the Pipeline Hazardous Materials Safety Administration at the request of Congress clearly demonstrate that this legislation is not needed, should the Committee move forward with a wetlines ban, the significant cost impact on the industry and the very real potential increased exposure to risk of death or injury by repair shop workers would be reduced by limiting this legislation to new equipment only.

An internet review of newspaper articles and other reports found that three times as many shop workers have died in explosions over the past 10 years compared to the number of fatalities attributed to wetlines incidents. This number understates the magnitude of this problem, as a newspaper search would not reveal all of the incidents that may have occurred while conducting welding operations on tank trucks. The industry is concerned that the requirement to bring over 20,000 petroleum trailers into shops for retrofitting will significantly increase this exposure to risk. Deaths will increase not because shop workers are careless, but because the exposure to risk will so greatly increase.

As an alternative to eliminating the unintended requirement for retrofitting the existing tank truck fleet, we request that the date for prohibiting wetlines be extended to December 31, 2030. This would allow the industry to operate its sizeable existing fleet without incurring significant increased operational and equipment costs and would reduce the need for retrofitting and the increased risk to shop workers. A trailer purchased in 2010 would typically be used in flammable liquids service for 20 years before being transferred into non-flammable service, or retrofitted. Trailers purchased over the past ten years and more would be able to be converted on non-flammable liquid service if the amendment in Section A of this paper is adopted.

Proposed Legislative Amendment [5118(a)(2)]:

“(2) PROHIBITION FOR ALL VEHICLES.— . . . the external product piping of a cargo tank motor vehicle on or after December 31, ~~2020~~ 2030.”

### **D. Means of Compliance to Provide an Equivalent Level of Safety**

The current legislation does not allow tank truck equipment manufacturers to develop methods to protect the wetlines on all cargo tank motor vehicles, including trailers, from impact during an incident, nor does it consider the variety of cargo tank motor vehicle combinations such as those used in Michigan, the Northeast, or on the West Coast. We request that the flexibility to provide an equivalent level of safety that has been provided for straight trucks also be extended to all cargo tank motor vehicles under standards developed by the Secretary of Transportation.

Proposed Legislative Amendment [5118(b)(1)]:

“(1) a cargo tank motor vehicle ~~designed and constructed with engine, body, and cargo tank permanently mounted on the same chassis~~ with product piping protected from impact by another motor vehicle by the structural components of the cargo tank motor vehicle, such as damage protection guards, framing members, or wheel assemblies; or by other design approaches providing an equivalent level of safety as determined by the Secretary of Transportation.

## **Issue 4: Eliminate OSHA's Overlapping Jurisdiction**

Congress granted OSHA authority to regulate employee health and safety except in those instances when another federal agency has exercised its authority over the same subject matter. This limitation on OSHA's authority is designed to avoid duplicative or conflicting regulatory requirements. In 1990, Congress granted OSHA overlapping authority for hazardous materials training; however, OSHA's authority was also extended to hazardous materials "handling." Regrettably, this duplicative authority over hazardous materials handling exposes the regulated community to conflicting hazmat safety standards. We strongly urge that DOT retain exclusive authority for regulating hazardous materials handling *in transportation*, and that OSHA be required to work through DOT to address any worker safety issues that DOT regulations fail to address.

[Proposed Legislative Text: 49 U.S.C. 5107(g)]

(g) Relationship to Other Laws. -

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(2) An action of the Secretary under subsections (a)-(d) of this section ~~and section 5106~~ is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(3) The Secretary of Labor shall identify any gaps in the hazardous materials transportation regulations that create a demonstrated unsafe condition for hazardous materials employees and shall transmit to the Secretary any recommended changes to the hazardous materials regulations to address any gaps identified. Upon receipt of recommendations from the Secretary of Labor described in this subparagraph (g)(3), the Secretary shall either:

(A) proceed with rulemaking to address any gaps identified; or

(B) respond to the Secretary of Labor in writing as to why a rulemaking is not necessary.

**SAFETY IMPACTS** – Duplicative regulatory authority leads to inconsistent regulations across jurisdictional lines. OSHA does not have the authority to ensure uniform regulations, in fact, OSHA encourages states to enact more stringent worker protection regulations than the federal baseline, leading to a myriad of differing regulatory requirements across jurisdictional lines. Non-uniform regulations force carriers to bypass certain jurisdictions, resulting in a delay in the delivery of hazardous materials and increased vehicle miles traveled. Statistically, the more time hazardous materials spend in transportation or the more miles they must travel, the more likely it is that they will be involved in an incident. The potential problems associated with OSHA's overlapping jurisdiction became obvious last year when OSHA proposed revisions to its explosives standard. If promulgated as proposed, this standard would be inconsistent with DOT's regulations in a number of areas covering the transportation of hazardous materials. Some of these inconsistencies include: different fire extinguisher standards, requirements to move fixed refueling facilities, trailer modifications, and segregation requirements.

**ECONOMIC IMPACTS** – Non uniform regulations make it difficult to train workers that perform their duties in multiple jurisdictions. This leads to increase incidents of non-compliance and associated fines for failure to comply with unique regulatory requirements that vary from state-to-state. The costs associated with some of the OSHA explosives standards proposals are enormous and would lead to the rational economic decision by many carriers to no longer transport these materials.